

DISABILITY SERVICES AND GUARDIANSHIP ACT 1987
No. 257

NEW SOUTH WALES



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DISABILITY SERVICES AND GUARDIANSHIP ACT 1987 No. 257

NEW SOUTH WALES



Act No. 257, 1987

An Act with respect to the provision of services for, and the guardianship of, persons who have disabilities. [Assented to 16 December 1987]

See also Community Welfare (Disability Services and Guardianship) Amendment Act 1987; Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987; Mental Health (Disability Services and Guardianship) Amendment Act 1987; Protected Estates (Disability Services and Guardianship) Amendment Act 1987; Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987.

Disability Services and Guardianship 1987

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Disability Services and Guardianship Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice employed in the Attorney General’s Department;

“authorised officer”, in relation to any provision of this Act, means—

- (a) an officer who is declared to be an authorised officer for the purposes of that provision; or
- (b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,

by an order in force under subsection (3);

“Board” means the Guardianship Board constituted under this Act;

“child” means a person who is under the age of 18 years;

“Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal constituted under the Community Welfare Act 1987;

“Department” means the Department of Youth and Community Services;

“Director-General” means the Director-General of the Department;

“exempt premises” means—

(a) the premises of—

- (i) a State school or a registered school within the meaning of the Education and Public Instruction Act 1987;
- (ii) a private hospital or nursing home licensed under the Private Hospitals Act 1908;
- (iii) an admission centre or a mental hospital within the meaning of the Mental Health Act 1958 or an authorised hospital within the meaning of the Mental Health Act 1958;

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- (iv) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or
- (v) a hospital or other institution under the control of an area health service constituted under the Area Health Services Act 1986;

(b) any premises belonging to a class of premises prescribed by the regulations; or

(c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order in force under subsection (4);

“guardian” means a person who is, whether under this Act or any other Act or law, a guardian of the person of some other person (other than a child who is under the age of 16 years);

“licence” means a licence for a residential centre or occupational centre that has been granted under clause 2 of Schedule 2 and that is in force;

“licensed manager”, in relation to a licensed residential centre or licensed occupational centre, means the person for the time being specified under section 84 (1) (c) or 91 (1) (c) in the licence for that centre;

“licensed occupational centre” means premises specified under section 91 (1) (b) in a licence for an occupational centre;

“licensed residential centre” means premises specified under section 84 (1) (b) in a licence for a residential centre;

“maintenance” includes the provision of clothing, support, training and education;

“occupational centre” means any premises at which 2 or more persons who have disabilities (disregarding any persons who are related to the person in charge of the premises) are provided with services (which may include care, training, employment, education and recreation), but does not include a residential centre or exempt premises;

“officer” means an officer or temporary employee within the meaning of the Public Service Act 1979;

“party”, in relation to any proceedings before the Board in respect of an application under this Act, means—

- (a) the applicant;
- (b) the person to whom the application relates;
- (c) the Public Guardian; and
- (d) any other person on whom the application has been served in accordance with this Act;

“person responsible” means—

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(a) in relation to a person other than a child—

- (i) in the case of a person (other than a person referred to in subparagraph (ii), (iii) or (iv)) who has a spouse—the person's spouse;
- (ii) in the case of a person (other than a person referred to in subparagraph (iii) or (iv)) who does not have a spouse or who has a spouse who is a person under guardianship—a person who has, subject to subsection (5), the care of the person;
- (iii) in the case of a person (other than a person referred to in subparagraph (iv)) who is a person under guardianship—a guardian of the person; or
- (iv) in the case of a person who is in the care of the Director-General under section 13—a person who was a person responsible for the person immediately before the person came to be in the care of the Director-General; and

(b) in relation to a child—a person responsible for the child within the meaning of the Children (Care and Protection) Act 1987;

“person under guardianship” means a person (other than a child who is under the age of 16 years) who is, whether under this Act or any other Act or law, a person in respect of whom some other person has the functions of a guardian of that person's person;

“premises” includes any land, building, vehicle or vessel;

“proprietor”, in relation to premises, means—

- (a) if the premises are not leased—the owner, or (if there is more than one owner) any of the owners, of the premises; or
- (b) if the premises are leased—the lessee, or (if there is more than one lessee) any of the lessees, who is entitled to immediate possession of the premises;

“Public Guardian” means the Public Guardian referred to in section 77;

“residential centre” means any premises at which one or more persons who have disabilities (disregarding any persons who are related to the person in charge of the premises) reside and are cared for, but does not include exempt premises;

“spouse” includes—

- (a) in relation to a man—a woman who lives with the man as his wife on a bona fide domestic basis although not married to him; and
- (b) in relation to a woman—a man who lives with the woman as her husband on a bona fide domestic basis although not married to her.

(2) In this Act, a reference to a person who has a disability is a reference to a person—

- (a) who is intellectually, physically, psychologically or sensorily disabled;

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- (b) who is of advanced age;
- (c) who is a mentally ill person within the meaning of the Mental Health Act 1958; or
- (d) who is otherwise disabled,

and who, by virtue of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social habilitation.

(3) For the purposes of the definition of “authorised officer” in subsection (1), the Minister may, by order published in the Gazette—

- (a) declare any officer to be an authorised officer; or
- (b) declare any class of officers to be authorised officers,

for the purposes of any provision of this Act.

(4) For the purposes of paragraph (c) of the definition of “exempt premises” in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.

(5) A person who resides in an institution (such as a hospital, nursing home, boarding house or hostel) at which he or she is cared for by some other person is not, merely because of that fact, in the care of that other person, but remains in the care of the person (if any) in whose care he or she was immediately before he or she came to reside in the institution.

(6) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

General principles

4. It is the duty of everyone exercising functions under this Act with respect to persons who have disabilities to observe the following principles:

- (a) the welfare and interests of such persons should be given paramount consideration;
- (b) the freedom of decision and freedom of action of such persons should be restricted as little as possible;
- (c) such persons should be encouraged, as far as possible, to live a normal life in the community;
- (d) the views of such persons in relation to the exercise of those functions should be taken into consideration;
- (e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised;

- (f) such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs;
- (g) such persons should be protected from neglect, abuse and exploitation;
- (h) the community should be encouraged to apply and promote these principles.

PART 2—PROVISION OF SERVICES

Objects of Part

5. The objects of this Part are—
- (a) to identify services that are necessary to promote the well-being of persons who have disabilities; and
 - (b) to ensure that such services are provided for those persons so as to enable them, as far as possible, to live a normal life in the community.

Provision of services

6. (1) The Director-General has the function of assisting in the provision of the following services for or with respect to persons who have disabilities:

- (a) accommodation;
- (b) maintenance;
- (c) care;
- (d) medical and dental treatment;
- (e) advisory services;
- (f) employment;
- (g) any other service prescribed by the regulations or any other service belonging to a class of services so prescribed.

(2) The Director-General may exercise that function—

- (a) by providing any one or more of those services—
 - (i) directly to persons in need of those services; or
 - (ii) through organisations whose objects include the provision of such services to persons in need of them; and
- (b) by encouraging other persons and organisations to provide such services to persons in need of them.

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PART 3—GUARDIANSHIP**Division 1—Preliminary****Definitions****7. In this Part—**

“continuing guardianship order” means a guardianship order (whether plenary or limited) that is specified to be continuing, as referred to in section 16 (1) (b);

“guardian”, in relation to a person under guardianship, means the person for the time being appointed by a guardianship order as the guardian of that person’s person;

“guardianship order” means an order referred to in section 14;

“limited guardianship order” means a guardianship order (whether continuing or temporary) that is specified to be limited, as referred to in section 16 (1) (c);

“person in need of a guardian” means a person who has a disability and who, by virtue of that fact, is totally or partially incapable of managing his or her person;

“person under guardianship” means a person in respect of whom a guardianship order is in force;

“plenary guardianship order” means a guardianship order (whether continuing or temporary) that is specified to be plenary, as referred to in section 16 (1) (c);

“temporary guardianship order” means a guardianship order (whether plenary or limited) that is specified to be temporary, as referred to in section 16 (1) (b).

Jurisdiction of the Supreme Court not affected

8. (1) Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the guardianship of persons.

(2) This section does not affect the operation of section 22 (Termination of Supreme Court orders).

Division 2—Applications for guardianship orders**Applications**

9. (1) An application for a guardianship order in respect of a person may be made to the Board—

- (a) by the person;
- (b) by a person responsible for the person;
- (c) by the Public Guardian; or

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- (d) by any other person who, in the opinion of the Board, has a genuine concern for the welfare of the person.

(2) An application may not be made in respect of a person who is under the age of 16 years.

(3) An application shall specify the grounds on which it is alleged that the person is a person in need of a guardian.

Service of applications

10. (1) The applicant for a guardianship order in respect of a person shall, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) the person;
- (b) each person responsible for the person who can reasonably be located; and
- (c) the Public Guardian.

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Board on the application.

Removal of persons pursuant to order of the Board

11. (1) If an application for a guardianship order has been made with respect to a person—

- (a) the Board may, if it considers it to be appropriate in the circumstances of the case, make an order for the removal of the person from any premises; and
- (b) an authorised officer or a member of the police force may, pursuant to the order, enter the premises, search the premises for the person and remove the person from the premises.

(2) An authorised officer or a member of the police force may, for the purposes of entering and searching premises and removing a person pursuant to an order in force under this section, use all reasonable force.

Power of search and removal of persons

12. (1) An officer or a member of the police force may apply to an authorised justice for the issue of a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a person who appears to be a person in need of a guardian and who—

- (a) is being unlawfully detained against his or her will; or
- (b) is likely to suffer serious damage to his or her physical, emotional or mental health or well-being unless immediate action is taken.

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(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the person; and
- (c) to remove the person from the premises.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a person pursuant to the warrant, use all reasonable force.

Care of persons pending proceedings

13. (1) If an officer or member of the police force removes a person from any premises under section 11 or 12, the officer or member of the police force shall forthwith place the person in the care of the Director-General at a place approved by the Minister for the purposes of this section.

(2) If a person has been removed from any premises under section 12 and placed in the care of the Director-General, the Director-General shall not keep the person in his or her care for more than 3 days unless the Director-General has, before the expiration of that period, made an application for a guardianship order in respect of the person.

Division 3—Guardianship orders**Board may make guardianship orders**

14. (1) If, after conducting a hearing into any application made to it for a guardianship order in respect of a person, the Board is satisfied that the person is a person in need of a guardian, it may make a guardianship order in respect of the person.

(2) In considering whether or not to make a guardianship order in respect of a person, the Board shall have regard to—

- (a) the views (if any) of—
 - (i) the person; and
 - (ii) any persons responsible for the person;

- (b) the importance of preserving the person's existing family relationships;
- (c) the importance of preserving the person's particular cultural and linguistic environments; and
- (d) the practicability of services being provided to the person without the need for the making of such an order.

Restrictions on Board's power to make guardianship orders

15. (1) A guardianship order shall not be made in respect of a person—

- (a) if the person is under the age of 16 years; or
- (b) in the case of a person who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons—unless the Supreme Court consents to the making of the order.

(2) A temporary guardianship order shall not be made in circumstances in which it is practicable to make a continuing guardianship order appointing a person other than the Public Guardian as the guardian of the person under guardianship.

(3) A continuing guardianship order appointing the Public Guardian as the guardian of a person under guardianship shall not be made in circumstances in which such an order can be made appointing some other person as the guardian of the person.

(4) A plenary guardianship order shall not be made in circumstances in which a limited guardianship order would suffice.

Guardianship orders

16. (1) A guardianship order—

- (a) shall appoint a person who is of or above the age of 18 years as the guardian of the person of the person under guardianship;
- (b) shall specify whether the order is continuing or temporary;
- (c) shall specify whether the order is plenary or limited; and
- (d) may be made subject to such conditions as the Board considers appropriate to specify in the order.

(2) A limited guardianship order shall specify—

- (a) the extent (if any) to which the guardian shall have custody of the person under guardianship; and
- (b) which of the functions of a guardian the guardian shall have in respect of the person under guardianship.

Guardians

17. (1) A person shall not be appointed as the guardian of a person under guardianship unless the Board is satisfied that—

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- (a) the personality of the proposed guardian is generally compatible with that of the person under guardianship;
- (b) there is no undue conflict between the interests (particularly, the financial interests) of the proposed guardian and those of the person under guardianship; and
- (c) the proposed guardian is both willing and able to exercise the functions conferred or imposed by the proposed guardianship order.

(2) Subsection (1) does not apply to the appointment of the Public Guardian as the guardian of a person under guardianship.

(3) If, at the expiration of the period for which a temporary guardianship order has effect, the Board is satisfied—

- (a) that it is appropriate that a further guardianship order should be made with respect to the person under guardianship; and
- (b) that there is no other person who it is satisfied is appropriate to be the person's guardian,

the Board may, in accordance with this Division, make a continuing guardianship order appointing the Public Guardian as the guardian of the person.

(4) The Public Guardian shall be appointed as the guardian of a person the subject of a temporary guardianship order.

Term of guardianship orders

18. (1) A continuing guardianship order has effect—

- (a) in the case of an initial order—for such period (not exceeding 1 year from the date when it was made) as the Board may specify in the order; or
- (b) in the case of an order that is renewed—for such period (not exceeding 3 years from the date when it was renewed) as the Board may specify in the order.

(2) A temporary guardianship order has effect—

- (a) in the case of an initial order—for such period (not exceeding 30 days from the date when it was made) as the Board may specify in the order; or
- (b) in the case of an order that is renewed—for such period (not exceeding 30 days from the date when it was renewed) as the Board may specify in the order.

(3) A temporary guardianship order may be renewed only once.

Orders to be forwarded to the Public Guardian

19. If the Board makes a continuing guardianship order appointing a person other than the Public Guardian as a guardian, it shall cause a copy of the order to be forwarded to the Public Guardian.

Alternative guardians

20. (1) A continuing guardianship order (other than an order appointing the Public Guardian as a guardian) may appoint a person to be an alternative guardian of the person under guardianship.

(2) During the absence or incapacity of the guardian of a person the subject of a continuing guardianship order, the person's alternative guardian has the functions of the person's guardian.

Relationship of guardians to persons under guardianship

21. (1) Subject to any conditions specified in the order, the guardian of a person the subject of a plenary guardianship order—

- (a) has custody of the person to the exclusion of any other person; and
- (b) has the functions of a guardian of that person's person, to the exclusion of any other person, as if the person were a minor within the meaning of the Minors (Property and Contracts) Act 1970.

(2) Subject to any conditions specified in the order, the guardian of a person the subject of a limited guardianship order—

- (a) has custody of the person, to the exclusion of any other person, to such extent (if any) as the order provides; and
- (b) has such of the functions of a guardian of that person's person, to the exclusion of any other person, as the order provides.

(3) Section 49 of the Minors (Property and Contracts) Act 1970 does not apply to a person the subject of a plenary guardianship order.

Termination of Supreme Court orders

22. On the making of a guardianship order in respect of a person the subject of an order made by the Supreme Court in the exercise of its jurisdiction with respect to the guardianship of persons, the order made by the Supreme Court shall cease to have effect.

Guardianship orders of no effect in certain circumstances

23. A guardianship order does not have effect in relation to a person while the person is—

- (a) a temporary patient or continued treatment patient within the meaning of the Mental Health Act 1958 or a forensic patient within the meaning of the Mental Health Act 1983; or
- (b) the subject of a subsequent order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, appointing a guardian of that person's person.

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Division 4—Assessment and review of guardianship orders**Board to assess persons under guardianship**

24. The Board shall, within the first half of the period for which an initial continuing guardianship order is to have effect, cause an assessment to be made of the person the subject of the order and of the operation of the order in respect of the person.

Review of guardianship orders

25. (1) The Board may, on its own motion, review any guardianship order.

(2) The Board shall review each guardianship order—

- (a) at the request of any person entitled to request a review of the order; and
- (b) at the expiration of the period for which the order has effect.

(3) The following persons are entitled to request a review of a guardianship order:

- (a) the guardian;
- (b) the person under guardianship;
- (c) the Public Guardian;
- (d) any other person who, in the opinion of the Board, has a genuine concern for the welfare of the person under guardianship.

(4) Notwithstanding section 18, a guardianship order that would otherwise cease to have effect before the completion of such a review continues to have effect until the completion of the review.

(5) On reviewing a guardianship order pursuant to subsection (1) or (2) (a), the Board—

- (a) may vary the order;
- (b) may suspend or revoke the order; or
- (c) may take no further action in relation to the order.

(6) On reviewing a guardianship order pursuant to subsection (2) (b), the Board—

- (a) may renew, or renew and vary, the order; or
- (b) may take no further action in relation to the order.

(7) The provisions of Division 3 apply to the variation or renewal of a guardianship order in the same way as they apply to the making of such an order.

PART 4—DIRECTIONS TO GUARDIANS**Applications**

26. An application may be made to the Board by the guardian of a person under guardianship for directions as to the exercise of the guardian's functions in respect of that person.

Service of applications

27. (1) The applicant for directions in respect of a person under guardianship shall, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) the person; and
- (b) the Public Guardian.

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Board on the application.

Board may give directions

28. (1) After conducting a hearing into any application made by a guardian in respect of a person under guardianship, the Board may give directions as to the exercise of the guardian's functions in respect of that person.

(2) In considering such an application, the Board shall have regard to—

- (a) the views (if any) of—
 - (i) the person under guardianship; and
 - (ii) the guardian;
- (b) the importance of preserving the person's existing family relationships; and
- (c) the importance of preserving the person's particular cultural and linguistic environments.

(3) If the Board gives a direction under this section, it shall cause a copy of the direction to be forwarded to the Public Guardian.

Restrictions on Board's power to give directions

29. A direction shall not be given in respect of a person under guardianship who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, unless the Supreme Court consents to the making of the direction.

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Limitation of liability

30. No proceedings shall lie against the guardian of a person under guardianship for or on account of any act, matter or thing done or omitted to be done by the guardian in good faith and in accordance with a direction given under this Part.

Jurisdiction of the Supreme Court not affected

31. Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the guardianship of persons.

PART 5—MEDICAL AND DENTAL TREATMENT**Division 1—Preliminary****Objects**

32. The objects of this Part are—

- (a) to ensure that people are not deprived of necessary medical or dental treatment merely because they lack the capacity to consent to the carrying out of such treatment; and
- (b) to ensure that any medical or dental treatment that is carried out on such people is carried out for the purpose only of promoting and maintaining their health and well-being.

Definitions

33. (1) In this Part—

“dental treatment” includes any treatment that is declared by the regulations to be dental treatment for the purposes of this Part;

“major medical treatment” means medical treatment (other than special medical treatment) that is declared by the regulations to be major medical treatment for the purposes of this Part;

“medical treatment” includes—

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

“minor medical treatment” means medical treatment that is neither special medical treatment nor major medical treatment;

“patient” means a person on whom some other person is proposing that medical or dental treatment be carried out;

“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

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- (b) any other medical treatment that is declared by the regulations to be special medical treatment for the purposes of this Part.
- (2) For the purposes of this Part, a person is incapable of giving consent to the carrying out of medical or dental treatment if the person—
 - (a) is incapable of understanding the general nature and effect of the proposed treatment; or
 - (b) is incapable of indicating whether or not he or she consents or does not consent to the treatment being carried out.
- (3) For the purposes of this Part, a person shall be taken to object to the carrying out of medical or dental treatment—
 - (a) if the person indicates (by whatever means) that he or she does not want the treatment to be carried out; or
 - (b) if the person—
 - (i) has previously indicated, in similar circumstances, that he or she did not then want the treatment to be carried out; and
 - (ii) has not subsequently indicated to the contrary.
- (4) In this Part, a reference to a person responsible for a patient means—
 - (a) in relation to a person (other than a child) who is in the care of the Director-General under section 13—the Director-General;
 - (b) in relation to a child who is in the care of the Minister or the Director-General under Part 5 or 6 of the Children (Care and Protection) Act 1987—the Minister or the Director-General, as the case may be; or
 - (c) in relation to any other person—the person responsible for the person as referred to in the definition of “person responsible” in section 3 (1).

Application of Part

- 34. (1) This Part applies to a patient—
 - (a) who is of or above the age of 16 years; and
 - (b) who is incapable of giving consent to the carrying out of medical or dental treatment.
- (2) In the event of an inconsistency between the provisions of this Part and the provisions of the Mental Health Act 1958 or the Mental Health Act 1983, the provisions of the Mental Health Act 1958 or the Mental Health Act 1983, as the case may be, shall prevail.

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Division 2—Medical and dental treatment**Offences**

35. (1) A person shall not carry out special medical treatment on a patient to whom this Part applies otherwise than in accordance with this Part or a consent given under this Part.

Penalty on indictment: imprisonment for 7 years.

(2) A person shall not carry out major medical treatment, minor medical treatment or dental treatment on a patient to whom this Part applies otherwise than in accordance with this Part or a consent given under this Part.

Penalty: 10 penalty units or imprisonment for 1 year, or both.

(3) A person who carries out major medical treatment, minor medical treatment or dental treatment on a patient to whom this Part applies otherwise than in accordance with this Part, or a consent given under this Part, is not guilty of an offence under subsection (2) if the treatment is carried out in accordance with an order made by the Supreme Court in the exercise of its jurisdiction with respect to the guardianship of persons.

(4) This section does not limit the operation of any other Act or law under which minor medical treatment may be carried out on a person without that person's consent.

Special medical treatment

36. A registered medical practitioner may carry out special medical treatment on a patient to whom this Part applies 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 Board consents to the carrying out of the treatment.

Major medical treatment

37. A registered medical practitioner may carry out major medical treatment on a patient to whom this Part applies 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;
- (b) a person responsible for the patient consents to the carrying out of the treatment; or
- (c) the Board consents to the carrying out of the treatment.

Minor medical treatment

38. A registered medical practitioner may carry out minor medical treatment on a patient to whom this Part applies 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;
- (b) a person responsible for the patient consents to the carrying out of the treatment;
- (c) the Public Guardian consents to the carrying out of the treatment; or
- (d) the Board consents to the carrying out of the treatment.

Dental treatment

39. A registered dentist may carry out dental treatment on a patient to whom this Part applies if—

- (a) the dentist 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;
- (b) a person responsible for the patient consents to the carrying out of the treatment;
- (c) the Public Guardian consents to the carrying out of the treatment; or
- (d) the Board consents to the carrying out of the treatment.

Division 3—Consents given otherwise than by the Board**Consents given by persons responsible for patients**

40. (1) Any person may request a person responsible for a patient to whom this Part applies for that person's consent to the carrying out of medical or dental treatment on the patient.

(2) Such a request shall specify—

- (a) the grounds on which it is alleged that the patient is a patient to whom this Part applies;
- (b) the particular condition of the patient that requires treatment;
- (c) the alternative courses of treatment that are available in relation to that condition;
- (d) the general nature and effect of each of those courses of treatment;
- (e) the nature and degree of the significant risks (if any) associated with each of those courses of treatment; and
- (f) the reasons for which it is proposed that any particular course of treatment should be carried out.

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(3) In considering such an application, the person responsible for the patient shall have regard to—

- (a) the views (if any) of the patient;
- (b) the matters referred to in subsection (2); and
- (c) the objects of this Part.

(4) The regulations may make provision for the manner and form in which—

- (a) requests under this section shall be made; and
- (b) consents under this section shall be given.

Consents given by the Public Guardian

41. (1) Any person may request the Public Guardian for the Public Guardian's consent to the carrying out of medical or dental treatment on a patient to whom this Part applies.

(2) Such a request shall not be made unless—

- (a) there appears to be no person responsible for the patient; or
- (b) there is such a person but that person cannot reasonably be located or is unable or unwilling to respond to the request.

(3) Such a request shall specify—

- (a) the grounds on which it is alleged that the patient is a patient to whom this Part applies;
- (b) the particular condition of the patient that requires treatment;
- (c) the alternative courses of treatment that are available in relation to that condition;
- (d) the general nature and effect of each of those courses of treatment;
- (e) the nature and degree of the significant risks (if any) associated with each of those courses of treatment; and
- (f) the reasons for which it is proposed that any particular course of treatment should be carried out.

(4) In considering such an application, the Public Guardian shall have regard to—

- (a) the views (if any) of—
 - (i) the patient; and
 - (ii) any persons responsible for the patient;
- (b) the matters referred to in subsection (3); and
- (c) the objects of this Part.

(5) The regulations may make provision for the manner and form in which—

- (a) requests under this section shall be made; and

- (b) consents under this section shall be given.

Division 4—Consents given by the Board

Applications

42. (1) Any person may apply to the Board for consent to the carrying out of medical or dental treatment on a patient to whom this Part applies.

(2) Such an application shall specify—

- (a) the grounds on which it is alleged that the patient is a patient to whom this Part applies;
- (b) the particular condition of the patient that requires treatment;
- (c) the alternative courses of treatment that are available in relation to that condition;
- (d) the general nature and effect of each of those courses of treatment;
- (e) the nature and degree of the significant risks (if any) associated with each of those courses of treatment; and
- (f) the reasons for which it is proposed that any particular course of treatment should be carried out.

(3) An application for consent to the carrying out of minor medical treatment or dental treatment may not be made unless—

- (a) an application for the carrying out of that treatment has previously been made to the Public Guardian; and
- (b) the Public Guardian has failed to consent to the carrying out of the treatment.

Service of applications

43. (1) The applicant for consent shall, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) the patient;
- (b) the person who is proposing that medical or dental treatment be carried out on the patient;
- (c) each person responsible for the patient who can reasonably be located; and
- (d) the Public Guardian.

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Board on the application.

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Board may give consent

44. (1) If, after conducting a hearing into an application for consent to the carrying out of medical or dental treatment on a patient to whom this Part applies, the Board is satisfied that it is appropriate for the treatment to be carried out, it may consent to the carrying out of the treatment.

(2) In considering such an application, the Board shall have regard to—

(a) the views (if any) of—

(i) the patient;

(ii) the person who is proposing that medical or dental treatment be carried out on the patient;

(iii) any persons responsible for the patient; and

(iv) the Public Guardian;

(b) the matters referred to in section 42 (2); and

(c) the objects of this Part.

(3) Nothing in this section requires the Board to consider an application relating to a patient if it is not satisfied that the applicant has a sufficient interest in the health and well-being of the patient.

Restrictions on Board's power to give consent

45. (1) Consent to the carrying out of medical or dental treatment on a patient to whom this Part applies shall not be given unless the Board is satisfied that the proposed treatment is, in all the circumstances, the most appropriate form of treatment to be carried out for the purpose of promoting and maintaining the patient's health and well-being.

(2) Consent to the carrying out of special medical treatment on a patient to whom this Part applies shall not be given unless the Board is satisfied that it is necessary 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.

Division 5—General**Effect of consent**

46. (1) Subject to subsections (2) and (3), a consent given under this Part in respect of the carrying out of medical or dental treatment on a patient to whom this Part applies has effect—

(a) as if the patient had been capable of giving consent to the carrying out of the treatment; and

(b) as if the treatment had been carried out with the patient's consent.

(2) A consent given by a person responsible for the patient has no effect—

(a) if the person by whom the proposed treatment is to be carried out is aware, or ought reasonably to be aware, that the patient objects to the carrying out of the treatment; or

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- (b) if the proposed treatment is to be carried out for any purpose other than that of promoting or maintaining the health and well-being of the patient.
- (3) A consent given by the Public Guardian has no effect—
 - (a) if the person by whom the proposed treatment is to be carried out is aware, or ought reasonably to be aware, that—
 - (i) the patient; or
 - (ii) a person responsible for the patient,
 objects to the carrying out of the treatment; or
 - (b) if the proposed treatment is to be carried out for any purpose other than that of promoting or maintaining the health and well-being of the patient.

Preservation of liability

47. Nothing in this Part relieves a person from liability in respect of the carrying out of medical or dental treatment on a patient to whom this Part applies, being a liability to which the person would have been subject—

- (a) had the patient been capable of giving consent to the carrying out of the treatment; and
- (b) had the treatment been carried out with the patient's consent.

Clinical records

48. The regulations may make provision for or with respect to the keeping of records of medical or dental treatment carried out on a patient to whom this Part applies.

PART 6—THE GUARDIANSHIP BOARD**Division 1—Constitution of the Board****Constitution of the Board**

49. (1) There shall be a Guardianship Board.
- (2) The Board shall consist of at least 10 members who shall be appointed by the Governor.
- (3) Of the members of the Board—
- (a) at least 3 shall be persons who are either barristers of 5 years' standing or solicitors of 7 years' standing;
 - (b) at least 3 shall be persons (such as medical practitioners, psychologists and social workers) who, in the opinion of the Minister, have experience in assessing or treating persons to whom Part 3, 4 or 5 relates; and

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- (c) at least 4 shall be persons (other than those referred to in paragraph (a) or (b)) who, in the opinion of the Minister, have had experience with persons to whom Part 3, 4 or 5 relates.
- (4) Of the members of the Board referred to in subsection (3) (a)—
 - (a) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as President of the Board; and
 - (b) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as Deputy President of the Board.
- (5) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (6) Schedule 1 applies to the Board.

Registrar and other staff of the Board

50. A Registrar and such other staff as are necessary for the purpose of enabling the Board to exercise its functions shall be appointed under the Public Service Act 1979.

Composition of the Board

51. (1) The Board shall, for the purpose of exercising its functions, be constituted by no fewer than 3 and no more than 5 of its members of whom—
- (a) at least 1 is a member referred to in section 49 (3) (a);
 - (b) at least 1 is a member referred to in section 49 (3) (b); and
 - (c) at least 1 is a member referred to in section 49 (3) (c).
- (2) The President of the Board shall nominate the persons to constitute the Board for the purposes of any particular sitting.
- (3) The presiding member at any sitting of the Board shall be—
- (a) if the Board is so constituted as to include the President of the Board—the President of the Board;
 - (b) if the Board is so constituted as not to include the President of the Board but is so constituted as to include the Deputy President of the Board—the Deputy President of the Board; or
 - (c) if the Board is so constituted as to include neither the President nor the Deputy President of the Board—the member of the Board who is a member referred to in section 49 (3) (a) or, if there is more than one such member, such one of those members as the President of the Board nominates.

Sittings of the Board

52. More than one sitting of the Board may be held at the same time.

Procedure at sittings of the Board

53. (1) The procedure for the arranging of, and for the conduct of business at, any sitting of the Board shall, subject to this Act, the regulations and the rules of the Board, be as determined by the Board.

(2) The Board shall exercise the functions conferred or imposed on it by the Protected Estates Act 1983 in accordance with that Act and the regulations under that Act.

(3) In the event of an inconsistency between—

- (a) this Act, the regulations or the rules of the Board; and
- (b) the Protected Estates Act 1983 or the regulations under that Act,

the Protected Estates Act 1983 and the regulations under that Act shall prevail.

Voting

54. (1) Questions arising at a sitting of the Board shall be determined by a majority of the votes of the members present and voting.

(2) The member presiding at any sitting of the Board shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Notwithstanding subsection (1), questions of law arising at a sitting of the Board shall be determined by the presiding member of the Board.

Division 2—Proceedings before the Board**Proceedings generally**

55. (1) The Board is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Proceedings before the Board shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

Proceedings to be open to the public

56. Proceedings before the Board shall be open to the public unless the Board, in any particular case, determines that the proceedings shall be conducted wholly or partly in the absence of the public.

Publication of names etc.

57. (1) A person shall not, except with the consent of the Board, publish or broadcast the name of any prescribed person—

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- (a) who appears as a witness before the Board in any proceedings;
- (b) to whom any proceedings before the Board relate; or
- (c) who is mentioned or otherwise involved in any proceedings before the Board,

whether before or after the proceedings are disposed of.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Board that includes the name of any prescribed person the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a prescribed person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

(4) In this section—

“prescribed person” means—

- (a) a person under guardianship;
- (b) a person to whom an application under Part 3, 4 or 5 relates; or
- (c) a child.

Right of appearance

58. (1) In any proceedings before the Board, the parties to the proceedings may appear in person or, by leave of the Board, be represented by a barrister, solicitor or agent.

(2) The Board, in proceedings before it with respect to a prescribed person, may appoint a person to act as guardian ad litem for the person.

(3) The Board, in proceedings before it relating to a prescribed person, may, if it appears to the Board that the person ought to be separately represented—

- (a) order that the person be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the person.

(4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Board has made an order under subsection (3) (b).

(5) In this section—

“prescribed person” means—

- (a) a person under guardianship;
- (b) a person to whom an application under Part 3, 4 or 5 relates; or
- (c) a child.

Presentation of cases

59. A party to proceedings before the Board may—

- (a) call and examine any witness;
- (b) cross-examine any witness called by another party;
- (c) give evidence on oath;
- (d) produce documents and exhibits to the Board; and
- (e) otherwise adduce, orally or in writing, to the Board such matters, and address the Board on such matters, as are relevant to the proceedings.

Presiding member may compel attendance of witnesses etc.

60. (1) The member presiding at a sitting of the Board may—

- (a) by instrument in writing require any person on whom the instrument is served personally or by post—
 - (i) to appear before the Board for the purpose of giving evidence; or
 - (ii) to produce to the Board any document that is relevant to the proceedings before the Board,at a time, date and place specified in the instrument;
- (b) require a person who appears before the Board to be sworn for the purpose of giving evidence on oath; and
- (c) administer such an oath.

(2) When a document is produced to the Board pursuant to a requirement under this section, the Board may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

Witnesses to answer questions

61. (1) A member of the Board may require a person who appears before the Board to answer a question that is reasonably related to the proceedings before the Board.

(2) A person is not excused from answering such a question on the ground that the answer might tend to incriminate the person but, where the person claims (before answering the question) that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under section 62 or proceedings in relation to a charge of perjury in respect of the answer.

Refusal to attend or to answer questions etc.

62. A person shall not—

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- (a) fail to comply with a requirement made of the person under section 60 or 61 to the extent to which the person is lawfully able to comply with the requirement; or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing before the Board.

Penalty: 5 penalty units.

Witnesses' expenses

63. A person (other than an officer) who is required to appear or to give evidence before the Board is entitled to be paid such allowances and expenses as the Minister may determine in respect of the person.

Adjournments

64. (1) The Board may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

(2) In the absence from a sitting of the Board of one or more, but not all, of the members nominated to constitute the Board at that sitting, the remaining member or members may exercise the Board's function of adjourning proceedings.

Dismissal of frivolous proceedings etc.

65. If, before or during proceedings before it, the Board is satisfied that the proceedings are frivolous or vexatious, it may—

- (a) dismiss the proceedings; and
- (b) order the person who brought the proceedings to pay the costs of the proceedings.

Conciliation to be attempted

66. (1) The Board shall not make a decision in respect of an application made to it until it has brought, or used its best endeavours to bring, the parties to a settlement.

(2) Any meetings conducted or proceedings held in the course of attempting to bring or bringing the parties to a settlement shall not be conducted or held in public.

(3) Any statement or admission made during the course of a conciliation hearing is not, except with the consent of all the parties, admissible as evidence in proceedings before the Board or in any court.

Division 3—Appeals from decisions of the Board**Appeals to the Supreme Court**

67. (1) A party to a proceeding before the Board may appeal to the Supreme Court from any decision of the Board in that proceeding—

- (a) as of right, on a question of law; or
- (b) by leave of the Supreme Court, on any other question.

(2) An appeal by a person under this section shall be instituted—

- (a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Board is furnished to the person; or
- (b) within such further time as the Supreme Court may allow.

(3) The Supreme Court shall hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(4) Without affecting the generality of subsection (3), the orders that may be made by the Supreme Court on an appeal include—

- (a) an order affirming or setting aside the decision of the Board; and
- (b) an order remitting the case to be heard and decided again by the Board (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

(5) Subject to any interlocutory order made by the Supreme Court, an appeal operates to stay the decision appealed against.

Division 4—General**Decisions of the Board to set out reasons etc.**

68. (1) A decision of the Board with respect to proceedings before it—

- (a) shall be in the form of an instrument in writing that includes the reasons for the decision; and
- (b) shall be signed by the member who presided at the sitting of the Board at which the decision was made.

(2) No decision of the Board shall be vitiated merely because of any informality or want of form.

Costs

69. (1) The Board may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

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(3) A certificate purporting to be signed by the President, the Deputy President or the Registrar of the Board and containing a statement as to any matters relating to the award of costs under this section is admissible in evidence and is prima facie evidence of those matters.

Misconduct in proceedings before the Board

70. (1) A person shall not, in proceedings before the Board—

- (a) wilfully insult the Board;
- (b) wilfully misbehave during proceedings before the Board;
- (c) wilfully and without lawful excuse interrupt proceedings before the Board; or
- (d) without lawful excuse disobey a direction of the Board during proceedings before the Board.

Penalty: 5 penalty units.

(2) The Board may, in proceedings before it, direct a person who does any thing referred to in subsection (1) to leave the place where the proceedings are being conducted.

(3) A person to whom such a direction is given shall not fail to comply with the direction.

Penalty: 5 penalty units.

Record of proceedings

71. (1) The member presiding at a sitting of the Board shall cause a record to be kept of any decision made at the sitting and of the reasons for that decision.

(2) The regulations may make further provision with respect to the keeping of records of proceedings before the Board.

Authentication of documents etc.

72. (1) Any document requiring authentication by the Board is sufficiently authenticated if it is signed by the President, the Deputy President or the Registrar of the Board.

(2) Judicial notice shall be taken of the signature of the President, the Deputy President or the Registrar of the Board when appearing on a document issued by the Board.

Certain proceedings prohibited

73. (1) No proceedings shall lie against the Board or any of its members or members of staff for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Board, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Board, member or member of staff has acted in good faith and with reasonable care.

(2) Any member of the Board who is a judicial officer (within the meaning of the Judicial Officers Act 1986) shall, in the execution of his or her functions as a member of the Board, have the same protection and immunity as he or she has as such an officer.

Application of the Defamation Act 1974

74. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Board shall be deemed to be an inquiry within the meaning of that section.

Rules

75. (1) Five members nominated by the President of the Board (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Board.

(2) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

Reports

76. (1) The President of the Board shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Board.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the President of the Board considers appropriate to include in the report.

PART 7—THE PUBLIC GUARDIAN**The Public Guardian**

77. (1) There shall be a Public Guardian and a Deputy Public Guardian.

(2) The Protective Commissioner shall be the Public Guardian and the Deputy Protective Commissioner shall be the Deputy Public Guardian.

(3) The Public Guardian has the functions conferred or imposed on the Public Guardian by or under this or any other Act or law.

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(4) During any illness or absence of the Public Guardian or during any vacancy in the office of the Public Guardian, the Deputy Public Guardian has the functions of the Public Guardian.

(5) Any function exercised by the Deputy Public Guardian while acting pursuant to subsection (4) shall be deemed to have been exercised by the Public Guardian.

(6) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Public Guardian to exercise the functions of the Public Guardian.

(7) The members of the staff of the office of the Protective Commissioner shall be the members of the staff of the office of the Public Guardian.

Delegation

78. (1) The Public Guardian may delegate—

- (a) to any officer employed within the Department; or
- (b) to any other person prescribed by the regulations or belonging to a class of persons prescribed by the regulations,

the exercise of any of the Public Guardian's functions under Part 5.

(2) The Public Guardian may delegate to any member of the staff of the office of the Public Guardian the exercise of any of the Public Guardian's functions, other than this power of delegation.

Information concerning the functions of the Public Guardian etc.

79. The Public Guardian shall ensure that information is readily available to members of the public concerning—

- (a) the provisions of this Act with respect to—
 - (i) the appointment of guardians; and
 - (ii) the exercise by guardians of their functions as guardians;
- (b) the functions of the Public Guardian;
- (c) the rights of persons under this or any other Act or law in relation to the exercise by the Public Guardian of those functions; and
- (d) any practice or procedure followed by the Public Guardian in the exercise of those functions.

Reports

80. (1) The Public Guardian shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Public Guardian.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Public Guardian considers appropriate to include in the report.

**PART 8—LICENSING OF RESIDENTIAL CENTRES AND
OCCUPATIONAL CENTRES****Division 1—Residential centres****Application of Division**

81. This Division applies to such classes of residential centres as may be prescribed by the regulations for the purposes of this Division.

Unauthorised persons not to conduct residential centres

82. (1) A person shall not—

- (a) conduct a residential centre; or
- (b) advertise himself or herself or hold himself or herself out as being willing to conduct a residential centre,

unless the centre is licensed and the person is the licensed manager of the centre.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) A person who is the licensed manager of a licensed residential centre shall not contravene any condition of the licence that applies to the person.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(3) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 94.

Unlicensed premises etc. not to be used as residential centres

83. (1) The proprietor of any premises shall not permit the premises to be used for the purposes of a residential centre unless the centre is licensed.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) The licensee of a licensed residential centre—

- (a) shall not fail to ensure that the centre complies with any condition of the licence that applies to the centre; and
- (b) shall not contravene any condition of the licence that applies to the licensee.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(3) The licensee of a licensed residential centre shall not fail to produce the licence to an officer requesting the licensee to do so.

Penalty: 2 penalty units.

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(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 94.

Licences

84. (1) A licence for a residential centre shall specify—

- (a) the person or body to whom it is granted;
- (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—the person so appointed.

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 2 applies to a licence for a residential centre.

Notification of deaths at licensed residential centres

85. (1) If a person who has a disability dies at a licensed residential centre, the licensed manager of the centre shall not fail to cause notice of the death to be given forthwith to—

- (a) the nearest relative of the person;
- (b) a member of the police force;
- (c) the Director-General; and
- (d) in the case of a person under guardianship within the meaning of Part 3—the Public Guardian.

Penalty: 5 penalty units.

(2) This section does not apply in respect of a person who is related to the licensed manager of the licensed residential centre.

Removal of children from unlicensed residential centres

86. (1) If—

- (a) a child resides at a residential centre conducted otherwise than on licensed premises or conducted on licensed premises otherwise than by the licensed manager;

- (b) an officer requests a person responsible for the child to remove the child from the residential centre; and
- (c) the child is not forthwith so removed,

the child shall be deemed to be a child in need of care within the meaning of the Children (Care and Protection) Act 1987 and, on application made to the Children's Court in accordance with the provisions of Part 5 of that Act, may be dealt with by the Children's Court in any manner in which the Children's Court may, under that Part, deal with a child who it is satisfied is in need of care.

(2) This section does not apply in respect of a child who resides in a residential centre and who is related to the person who has the care of the child at that centre.

Assessment of certain removal expenses

87. (1) If a person has been convicted of an offence under section 83 of being the proprietor of premises on which an unlicensed residential centre is conducted—

- (a) any person who has a disability and—
 - (i) who resided in the premises at the time when the person was convicted of the offence; and
 - (ii) who has, within 28 days after that time, moved from the premises to another residence; and
- (b) the Director-General, if the Department has incurred expense in connection with the moving of such a person from the premises to another residence,

may, within 12 months after that time, apply to a Local Court for an assessment of removal and other expenses.

(2) The Local Court to which such an application is made may make an assessment of the amount that to the Local Court seems a just and reasonable sum to compensate for—

- (a) the person's removal expenses;
- (b) the cost of accommodation for the person for the period of 3 days immediately following the removal; and
- (c) any other expense in connection with the removal incurred by the applicant when the person moved from the premises to another residence.

(3) An assessment under subsection (2) shall be deemed to be a judgment of the Local Court for the amount in favour of the applicant and against the person who was convicted of the offence in respect of which the application was made.

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(4) A reference in this section to a person being convicted includes a reference to a person being dealt with under section 556A of the Crimes Act 1900.

Division 2—Occupational centres**Application of Division**

88. This Division applies to such classes of occupational centres as may be prescribed by the regulations for the purposes of this Division.

Unauthorised persons not to conduct occupational centres

89. (1) A person shall not—

- (a) conduct an occupational centre; or
- (b) advertise himself or herself or hold himself or herself out as being willing to conduct an occupational centre,

unless the centre is licensed and the person is the licensed manager of the centre.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) A person who is the licensed manager of a licensed occupational centre shall not contravene any condition of the licence that applies to the person.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(3) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of an occupational centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 94.

Unlicensed premises etc. not to be used as occupational centres

90. (1) The proprietor of any premises shall not permit the premises to be used for the purposes of an occupational centre unless the centre is licensed.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) The licensee of a licensed occupational centre—

- (a) shall not fail to ensure that the centre complies with any condition of the licence that applies to the centre; and
- (b) shall not contravene any condition of the licence that applies to the licensee.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(3) The licensee of a licensed occupational centre shall not fail to produce the licence to an officer requesting the licensee to do so.

Penalty: 2 penalty units.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 94.

Licences

91. (1) A licence for an occupational centre shall specify—

- (a) the person or body to whom it is granted;
- (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 2 applies to a licence for an occupational centre.

Removal of children from unlicensed occupational centres

92. (1) If a child is in attendance at an occupational centre conducted otherwise than on licensed premises or conducted on licensed premises otherwise than by the licensed manager, an authorised officer may direct any person responsible for the child to cause the child to cease attending the centre.

(2) A person responsible for the child shall not fail to comply with a direction given under this section.

Penalty: 5 penalty units.

(3) This section does not apply in respect of a child who is related to the person who has the care of the child at the occupational centre.

Division 3—General

Entry without warrant into certain premises

93. (1) For the purpose of—

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- (a) making an inquiry in relation to an application under this Act with respect to the premises of any residential centre or occupational centre;
- (b) ensuring that the provisions of this Act and the regulations with respect to the premises of any licensed residential centre or licensed occupational centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with; or
- (c) ensuring that the conditions of any exemption relating to the premises of a residential centre or occupational centre are being complied with,

an authorised officer may at any time, without any authority other than that conferred by this section, enter the premises and inspect them and observe and converse with any person apparently residing or attending there.

(2) In exercising the powers conferred by this section, an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in this section authorises the examination of any person against that person's will.

Exemptions

94. (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 82 (1) or (2), 83 (1), (2) or (3), 89 (1) or (2) or 90 (1), (2) or (3).

(2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene any condition to which the exemption is subject.

(3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

Revocation of exemptions

95. (1) If the Minister intends to revoke an exemption given under section 94 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

Reports

96. (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a residential centre or occupational centre.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

PART 9—MISCELLANEOUS

Appeals to the Community Welfare Appeals Tribunal

97. (1) An appeal may be made to the Community Welfare Appeals Tribunal against any of the following decisions:

- (a) a decision of the Minister or the Director-General—
 - (i) to grant a licence;
 - (ii) to grant a consent;
 - (iii) to impose a condition on a licence;
 - (iv) to revoke or vary any condition of, or to impose a further condition on, a licence; or
 - (v) to suspend or revoke a licence,as referred to in Schedule 2;
- (b) a decision of the Minister to grant an exemption under section 94 (1), to limit the extent of any such exemption or to impose conditions on any such exemption;
- (c) a decision of the Minister or the Director-General to refuse to make a decision referred to in paragraph (a) or (b) that the Minister or Director-General is empowered and has been requested to make;
- (d) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

(2) If, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in such circumstances as may be prescribed by the regulations, be made against the failure to make the decision by the person empowered to make it as if that person had refused to make the decision.

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Service of notices etc.

98. (1) Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is—

- (a) delivered personally to the person;
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served; or
- (c) where no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.

(2) If such a notice or instrument is—

- (a) sent by post as referred to in subsection (1) (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or
- (b) published or otherwise dealt with as referred to in subsection (1) (c), it shall be deemed to have been served at such time as may be prescribed by the regulations.

(3) This section does not affect any other provision of this Act relating to the service of notices or other instruments.

Notices etc. to be written in other languages

99. (1) If—

- (a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on any person; and
- (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,

the Director-General shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with this section does not vitiate any thing done under any other provision of this Act.

Limitation of personal liability

100. No matter or thing done by the Minister, the Director-General, the Public Guardian, an officer or any other person shall, if the matter or thing was done in good faith and with reasonable care for the purposes of executing this Act, subject the Minister, the Director-General, the Public Guardian, the officer or that other person personally to any action, liability, claim or demand.

Disclosure of information

101. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

Search warrants

102. (1) An officer or a member of the police force may apply to an authorised justice for the issue of a search warrant if the officer or member of the police force has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any officer or member of the police force named in the warrant—

- (a) to enter the premises;
- (b) to inspect the premises for evidence of a contravention of this Act or the regulations; and
- (c) to observe and converse with any person apparently residing there.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this Act or the regulations.

Obstruction

103. A person shall not wilfully hinder, obstruct, delay, assault or threaten with violence any other person in the exercise of that other person's functions under this Act.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

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Person falsely representing to be an officer

104. A person, not being an officer employed within the Department, shall not—

- (a) assume or use the designation of an officer or falsely represent himself or herself to be officially associated in any capacity with the Department; or
- (b) use, for any fraudulent purpose, any designation which that person previously held in the Department.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

False or misleading statements

105. A person shall not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application—

- (a) make a statement; or
- (b) furnish information,

that the person knows to be false or misleading in a material particular.

Penalty: 5 penalty units.

Proceedings for offences

106. (1) Except as provided by subsection (2), proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence under section 35 (1) shall be dealt with on indictment.

Procedural matters

107. (1) In the absence of proof to the contrary, the authority of the Minister, the Director-General, the Public Guardian or any officer to exercise any function conferred or imposed on the Minister, the Director-General, the Public Guardian or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

(2) An averment in any complaint or information made or laid under this Act—

- (a) that any instrument, purporting to have been made, issued or granted under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified;
- (b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;

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- (c) that any person was, on a date specified in the averment, a person under guardianship within the meaning of Part 3; or
 - (d) that any person was, on a date specified in the averment, an officer,
- shall be prima facie evidence of the facts averred.

Regulations

108. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the provision of services under Part 2;
- (b) the conditions to be imposed on guardianship orders under Part 3;
- (c) the practice and procedure of the Board;
- (d) the functions of the Public Guardian;
- (e) the establishment, operation and management of residential centres and occupational centres;
- (f) the making of applications under this Act;
- (g) the imposition, waiver and remission of fees and charges in relation to the making of applications and the issue of licences;
- (h) the giving of notices under this Act;
- (i) the keeping of registers for the purposes of this Act; and
- (j) the exemption of persons or bodies from the operation of the regulations.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

SCHEDULE 1—PROVISIONS RELATING TO THE BOARD

(Sec. 49)

Term and vacation of office etc.

1. (1) A member of the Board shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for re-appointment.

(2) The Governor may remove a member of the Board from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member of the Board shall be deemed to have vacated office if the member—

- (a) dies;
- (b) resigns office by instrument in writing addressed to the Minister;

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SCHEDULE 1—PROVISIONS RELATING TO THE BOARD—*continued*

- (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (d) is removed from office by the Governor.

Remuneration etc.

2. (1) A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Board and a member of the Board is not, as a member, subject to that Act.

President and Deputy President

3. (1) The President or Deputy President of the Board holds office until ceasing to be a member and is eligible, if re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

(2) The Deputy President of the Board may exercise the President's functions—

(a) if the President—

- (i) delegates those functions to the Deputy President under clause 4;
 - (ii) is absent from New South Wales; or
 - (iii) is prevented by illness or other incapacity from exercising those functions;
- or

(b) if there is no person holding the office of President.

(3) While the Deputy President of the Board is authorised to exercise the President's functions, a reference in this Act to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President of the Board exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President of the Board to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President while exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

4. The President of the Board may delegate to the Deputy President the exercise of any of the President's functions, other than this power of delegation.

SCHEDULE 2—PROVISIONS RELATING TO LICENCES

(Secs. 84, 91)

Eligible applicants

1. A person is not eligible to make an application for a licence unless—

- (a) the person is the proprietor of the premises for which the licence is applied for;
- or

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SCHEDULE 2—PROVISIONS RELATING TO LICENCES—*continued*

- (b) the Minister consents to the making of the application by that person.

Grant of licences

2. (1) Where a person makes an application to the Minister for a licence, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.

- (2) On receipt of the report, the Minister shall—

- (a) grant the licence to the applicant; or
- (b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence should not be refused.

(3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant—

- (a) grant the licence to the applicant; or
- (b) refuse the licence and cause to be served on the applicant a notice stating the grounds on which the licence has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed to conduct the residential centre or occupational centre, there are already available adequate residential centres or occupational centres, as the case may be.

Change of licensed managers

3. (1) A licensee may apply for the Minister's consent to the replacement of the licensed manager under the licence by another person.

(2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the licensed manager and the other person specified in the application—

- (a) if the Minister considers the other person suitable to act as the licensed manager under the licence—consent to the other person's becoming the licensed manager under the licence; or
- (b) refuse the application.

(3) When the Minister has consented to another person's becoming the licensed manager under a licence—

- (a) any person who was the licensed manager under the licence immediately before the consent was given ceases to be the licensed manager under the licence; and
- (b) the other person shall be deemed to be the person specified under section 84 (1) (c) or 91 (1) (c), as the case may be, in the licence.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence to which it relates is subject.

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SCHEDULE 2—PROVISIONS RELATING TO LICENCES—*continued*

Duration of licences

4. (1) Unless sooner revoked, a licence shall remain in force for such period, not exceeding 3 years, as is specified in the licence, commencing on the date on which it is granted, or such later date as is specified in the licence, as the case may be.

(2) If an application for a further licence in relation to the same residential centre or occupational centre as that to which the licence relates is made by the licensee under the licence while the licence is in force, the licence shall remain in force until the application is finally dealt with.

Conditions of licence

5. A licence is subject to—

- (a) any condition prescribed by the regulations for licences generally or for a class of licences to which the licence belongs; and
- (b) any other condition in force in relation to the licence, being a condition that the Minister thought fit to impose on the licence and that was—
 - (i) specified in the licence when it was granted; or
 - (ii) subsequently imposed on the licence under clause 6.

Revocation, variation or addition of conditions on licences

6. (1) If the Minister intends to revoke or vary any condition of a licence or to impose a further condition on a licence, the Minister shall cause to be served on—

- (a) the licensee under the licence; and
- (b) the licensed manager under the licence,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence specified in the notice or to impose on the licence a further condition specified in the notice, as the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) revoke or vary the condition specified in the notices; or
- (b) impose the further condition, as specified in the notices, on the licence to which the notices relate,

by a further notice served on that person or those persons.

(3) Notwithstanding subclauses (1) and (2), if the licensee under a licence has requested that a condition of the licence be revoked or varied or that a further condition be imposed on the licence, the Minister may, by notice served on the licensee and the licensed manager under the licence—

- (a) revoke or vary the condition; or
- (b) impose the further condition,

as the case may require.

*Disability Services and Guardianship 1987***SCHEDULE 2—PROVISIONS RELATING TO LICENCES—*continued*****Suspension and revocation of licences**

7. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence for a residential centre or occupational centre, are that—

- (a) the licensee under the licence has requested that the licence be suspended or revoked;
- (b) either the licensee or the licensed manager under the licence is no longer a fit and proper person to be concerned in the conduct of the centre to which the licence relates;
- (c) either of those persons has contravened a provision of this Act or the regulations, or a condition of the licence, that applies to that person;
- (d) the premises of the centre do not comply with a provision of this Act or the regulations, or a condition of the licence, that applies to them;
- (e) the premises of the centre are not being used as such a centre;
- (f) the licensee (not being a person deemed to have been granted the licence under section 84 (1) (a) or 91 (1) (a), as the case may be) is not the proprietor of the premises of the centre; or
- (g) the licensed manager does not conduct the centre.

(2) If the Director-General intends to suspend or revoke a licence, the Director-General shall cause to be served on—

- (a) the licensee under the licence; and
- (b) the licensed manager under the licence,

a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence for a period (not exceeding 6 months) specified in the notice or to revoke the licence on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

(3) When 28 days have expired after notices have been served under subclause (2), the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) suspend the licence to which the notices relate for the period (not exceeding 6 months) specified in the notices; or
- (b) revoke the licence to which the notices relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence is suspended or revoked, as the case may be.

(4) Notwithstanding subclauses (2) and (3), if the licensee under a licence has requested that the licence be suspended or revoked, the Director-General may, by notice served on the licensee and the licensed manager under the licence—

- (a) suspend the licence for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence,

as the case may require.

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SCHEDULE 2—PROVISIONS RELATING TO LICENCES—*continued*

(5) A licence shall be deemed not to be in force during any period for which it is suspended.

(6) If a licence has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence by serving on both the person who was the licensee under the licence and the person who was the licensed manager under the licence, immediately before it was suspended, a notice stating that the licence is restored.

Temporary licensed managers

8. (1) The Minister may, by instrument in writing, authorise a person specified in the instrument to act as the licensed manager under a licence for a period so specified that occurs during an absence (by reason of illness or otherwise) of the licensed manager under the licence.

(2) While a person is authorised by an instrument referred to in subclause (1) to act as licensed manager under a licence—

- (a) that person shall be deemed to be the person specified under section 84 (1) (c) or 91 (1) (c) in the licence;
- (b) the conditions of the licence that apply to the licensed manager under the licence shall, for the purposes of section 82 (2) or 89 (2), be deemed to apply to the person so authorised as if that person were the licensed manager under the licence.

(3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the licensed manager under a licence, revoke the instrument on any ground that the Minister considers sufficient.