

**CHILDREN (CARE AND PROTECTION) (DISABILITY
SERVICES AND GUARDIANSHIP) AMENDMENT ACT
1987 No. 259**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**CHILDREN (CARE AND PROTECTION) (DISABILITY SERVICES
AND GUARDIANSHIP) AMENDMENT ACT 1987 No. 259**

NEW SOUTH WALES



Act No. 259, 1987

An Act to amend the Children (Care and Protection) Act 1987 so as to make provision with respect to the carrying out of medical and dental treatment on children; and so as to make provision as a consequence of the enactment of the Community Welfare (Disability Services and Guardianship) Amendment Act 1987. [Assented to 16 December 1987]

*Children (Care and Protection) (Disability Services and Guardianship)
Amendment 1987*

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987.

Commencement

2. (1) Except as provided by this section, this Act shall commence on the day occurring 28 days after the date of assent to this Act or on such earlier day (or days) as may be appointed by proclamation.

(2) Items (3), (4) and (8) of Schedule 1, and section 3 in its application to those items, shall commence on the commencement of Part 5 of the Disability Services and Guardianship Act 1987.

Amendment of Act No. 54, 1987

3. The Children (Care and Protection) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**)—

(a) Section 3 (1), definition of “Community Welfare Appeals Tribunal”—

Omit “established by section 103”, insert instead “constituted under the Community Welfare Act 1987”.

(b) Section 3 (1)—

Omit the definition of “facility”, insert instead:

“facility” has the same meaning as it has in the Community Welfare Act 1987;

(c) Section 3 (1)—

Omit the definition of “Visitor”, insert instead:

“Visitor” has the same meaning as it has in the Community Welfare Act 1987;

(2) Sections 5 (**Facilities**), 6 (**Visitors**)—

Omit the sections.

(3) Section 20 (**Ordinary medical and dental treatment**)—

Section 20 (4)—

Omit the definitions of “dental treatment” and “medical treatment”.

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SCHEDULE 1—AMENDMENTS—*continued*

(4) Sections 20A, 20B—

After section 20, insert:

Emergency medical treatment

20A. (1) A registered medical practitioner may carry out medical treatment on a child without the consent of—

- (a) the child; or
- (b) a parent or guardian of the person of the child,

if the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's health.

(2) A registered dentist may carry out dental treatment on a child without the consent of—

- (a) the child; or
- (b) a parent or guardian of the person of the child,

if the dentist is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's health.

(3) Medical or dental treatment carried out on a child under this section shall, for all purposes, be taken to have been carried out with the consent of—

- (a) in the case of a child who is under the age of 16 years—a parent or guardian of the person of the child; or
- (b) in the case of a child who is of or above the age of 16 years—the child.

(4) Nothing in this section relieves a registered medical practitioner or registered dentist from liability in respect of the carrying out of medical or dental treatment on a child, being a liability to which the medical practitioner or dentist would have been subject had the treatment been carried out with the consent of—

- (a) in the case of a child who is under the age of 16 years—a parent or guardian of the person of the child; or
- (b) in the case of a child who is of or above the age of 16 years—the child.

Special medical treatment

20B. (1) A person shall not carry out special medical treatment on a child who is under the age of 16 years otherwise than in accordance with this section.

Penalty on indictment: imprisonment for 7 years.

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Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(2) A registered medical practitioner may carry out special medical treatment on a child who is under the age of 16 years 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 child in order to save the child's life or to prevent serious damage to the child's health; or
- (b) the Supreme Court consents to the carrying out of the treatment.

(3) In this section—

“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 section;

“special medical treatment” means—

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

(5) Part 8—

Omit the Part.

(6) Part 9, heading—

Omit “9”, insert instead “8”.

(7) Section 112—

Before section 113, insert:

Appeals to the Community Welfare Appeals Tribunal

112. (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, as the case may be—
 - (i) to grant a licence or authority;
 - (ii) to grant a consent;
 - (iii) to impose a condition on a licence or authority;
 - (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority;

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SCHEDULE 1—AMENDMENTS—*continued*

(v) to grant an application to vary a fostering authority;
or

(vi) to suspend or revoke a licence or authority,

as referred to in Schedule 1;

(b) a decision of the Minister to grant an exemption under section 48 (1) or 50 (4), 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 give an approval referred to in section 42 (2) or 44 (2);

(d) a decision of the Minister or the Director-General, as the case may be, to refuse to make a decision referred to in paragraph (a), (b) or (c) that the Minister or Director-General, as the case may be, is empowered and has been requested to make;

(e) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2);

(f) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e);

(g) 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.

(8) Section 121 (**Proceedings for offences**)—

(a) Section 121—

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

(b) Section 121 (2)—

At the end of section 121, insert:

(2) Proceedings for an offence under section 20B (1) shall be dealt with on indictment.

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SCHEDULE 1—AMENDMENTS—*continued*

- (9) Schedules 3, 4—
Omit the Schedules.