

**MISCELLANEOUS ACTS (DISABILITY SERVICES AND
GUARDIANSHIP) REPEAL AND AMENDMENT ACT 1987**
No. 262

NEW SOUTH WALES



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**MISCELLANEOUS ACTS (DISABILITY SERVICES AND
GUARDIANSHIP) REPEAL AND AMENDMENT ACT 1987 No. 262**

NEW SOUTH WALES



Act No. 262, 1987

An Act to repeal certain enactments and to amend certain other enactments, and to enact savings, transitional and other provisions, consequent on the enactment of the Disability Services and Guardianship Act 1987, the Community Welfare (Disability Services and Guardianship) Amendment Act 1987, the Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987, the Mental Health (Disability Services and Guardianship) Amendment Act 1987 and the Protected Estates (Disability Services and Guardianship) Amendment Act 1987. [Assented to 16 December 1987]

Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Disability Services and Guardianship) Repeal and 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) Section 3, in its application to a provision of the Youth and Community Services Act 1973, shall commence on such day (or days) as may be appointed by proclamation.

(3) Section 4, in its application to a provision of Schedule 1, shall commence on the day on which the provision commences.

(4) The provisions of Schedule 1 relating to the Child Welfare Act 1939 and the Minors (Property and Contracts) Act 1970 shall commence on the commencement of Part 3 of the Disability Services and Guardianship Act 1987.

(5) The provision of Schedule 1 relating to the Coroners Act 1980 shall commence—

(a) on the date of assent to this Act; or

(b) on the commencement of item (1) of the provisions of Schedule 3 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 relating to the Coroners Act 1980,

whichever is the later.

(6) Item (1) (a) of the provisions of Schedule 1 relating to the Disability Services and Guardianship Act 1987 shall commence—

(a) on the date of assent to this Act; or

(b) on the commencement of the Private Health Establishments Act 1982,

whichever is the later.

(7) Item (1) (b) of the provisions of Schedule 1 relating to the Disability Services and Guardianship Act 1987 shall commence—

(a) on the date of assent to this Act; or

(b) on the commencement of Division 1 of Part II of the Mental Health Act 1983,

whichever is the later.

(8) Item (1) (c) of the provisions of Schedule 1 relating to the Disability Services and Guardianship Act 1987 shall commence—

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- (a) on the date of assent to this Act; or
- (b) on the commencement of Division 2 of Part II of the Mental Health Act 1983,

whichever is the later.

(9) Item (2) of the provisions of Schedule 1 relating to the Disability Services and Guardianship Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of section 5 of the Mental Health Act 1983,

whichever is the later.

(10) Item (3) of the provisions of Schedule 1 relating to the Disability Services and Guardianship Act 1987 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the repeal of the Mental Health Act 1958,

whichever is the later.

(11) The provisions of Schedule 1 relating to the Medical Practitioners Act 1938 shall commence on the commencement of Part 5 of the Disability Services and Guardianship Act 1987.

(12) The provision of Schedule 1 relating to the Registration of Births, Deaths and Marriages Act 1973 shall commence—

- (a) on the date of assent to this Act; or
- (b) on the commencement of the provision of Schedule 3 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 relating to the Registration of Births, Deaths and Marriages Act 1973.

whichever is the later.

Repeal of Act No. 90, 1973

- 3. The Youth and Community Services Act 1973 is repealed.

Amendments

- 4. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings, transitional and other provisions

- 5. Schedule 2 has effect.
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Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment 1987

SCHEDULE 1—AMENDMENTS

(Sec. 4)

Child Welfare Act 1939 No. 17—

Part IX—

Omit the Part.

Coroners Act 1980 No. 27—

Section 13 (3) (h)—

Omit “or a facility within the meaning of that Act”, insert instead “, in a facility within the meaning of the Community Welfare Act 1987”.

Disability Services and Guardianship Act 1987—

(1) Section 3 (1), definition of “exempt premises”—

(a) Omit paragraph (a) (ii), insert instead:

(ii) a private hospital or nursing home licensed under the Private Health Establishments Act 1982;

(b) From paragraph (a) (iii), omit “an admission centre or a mental hospital within the meaning of the Mental Health Act 1958”, insert instead “a hospital within the meaning of the Mental Health Act 1983”.

(c) From paragraph (a) (iii), omit “an authorised hospital within the meaning of the Mental Health Act 1958”, insert instead “an authorised hospital within the meaning of the Mental Health Act 1983”.

(2) Section 3 (2) (c)—

Omit “1958”, insert instead “1983”.

(3) Section 34 (2)—

(a) Omit “the Mental Health Act 1958 or” wherever occurring.

(b) Omit “. as the case may be.”.

Medical Practitioners Act 1938 No. 37—

(1) Section 27 (1), definition of “professional misconduct”—

After paragraph (b), insert:

(b1) any conduct which results in the practitioner’s being convicted of an offence under section 183A (1) of the Mental Health Act 1983, section 20B (1) of the Children (Care and Protection) Act 1987 or section 35 (1) of the Disability Services and Guardianship Act 1987;

(2) Section 49B—

Omit the section.

Minors (Property and Contracts) Act 1970 No. 60—

Section 9 (3) (c)—

Omit “Part IX of the Child Welfare Act, 1939.”, insert instead “Part 3 of the Disability Services and Guardianship Act 1987”.

Registration of Births, Deaths and Marriages Act 1973 No. 87—

Section 4 (1), definition of “institution”—

From paragraph (e), omit “or a facility within the meaning of that Act”, insert instead “. a facility within the meaning of the Community Welfare Act 1987”.

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SCHEDULE 1—AMENDMENTS—*continued*

Search Warrants Act 1985 No. 37—

Section 10, definition of “search warrant”—

Insert, in alphabetical order of Acts:

sections 12 and 102 of the Disability Services and Guardianship Act 1987;

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 5)

Interpretation

1. (1) In this Schedule—

“the cognate Acts” means—

- (a) the Community Welfare (Disability Services and Guardianship) Amendment Act 1987;
- (b) the Children (Care and Protection) (Disability Services and Guardianship) Amendment Act 1987;
- (c) the Mental Health (Disability Services and Guardianship) Amendment Act 1987; and
- (d) the Protected Estates (Disability Services and Guardianship) Amendment Act 1987;

“the Principal Act” means the Disability Services and Guardianship Act 1987.

(2) Words and expressions used in this Schedule have the same meanings as they have in the relevant provisions of the Principal Act and the cognate Acts.

Pending proceedings before Intellectually Handicapped Persons Review Tribunal

2. (1) Any proceedings under the Child Welfare Act 1939 that were pending before an Intellectually Handicapped Persons Review Tribunal immediately before the appointed day may be continued and completed, and any order, decision, determination or concurrence may be made or given in those proceedings and shall, subject to this Schedule, be given effect to, as if this Act, the Principal Act and the cognate Acts had not been enacted.

(2) The provisions of this Schedule apply to and in respect of any order, decision, determination or concurrence made or given by an Intellectually Handicapped Persons Review Tribunal in any proceedings referred to in subclause (1) as if the order, decision, determination or concurrence had been made or given immediately before the appointed day.

(3) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Orders for intellectually handicapped person to be dealt with under Part IX of the Child Welfare Act

3. (1) An order made under Part IX of the Child Welfare Act 1939 that a person be dealt with as an intellectually handicapped person under the provisions of that Part and in force immediately before the appointed day—

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
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- (a) shall, on and from that day, be deemed to be a plenary continuing guardianship order (within the meaning of Part 3 of the Principal Act) appointing the Public Guardian as the guardian of that person; and
- (b) shall, subject to the Principal Act, remain in force for the period for which it would have been in force had this Act, the Principal Act and the cognate Acts not been enacted.

(2) In this clause, "the appointed day" means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Orders placing intellectually handicapped persons in care

4. (1) An order made under section 47 (3) of the Child Welfare Act 1939 in respect of a person and in force immediately before the appointed day—

- (a) shall, on and from that day, be deemed to be a plenary continuing guardianship order (within the meaning of Part 3 of the Principal Act) appointing the Public Guardian as the guardian of the person;
- (b) shall, subject to the Principal Act, be subject to the condition that the person remain in the care of the person in whose care the person was, under that order, immediately before that day; and
- (c) shall, subject to the Principal Act, remain in force for the period of 1 year from that day.

(2) In this clause, "the appointed day" means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Interim determinations and decisions to renew orders relating to intellectually handicapped persons

5. (1) Any interim determination made by an Intellectually Handicapped Persons Review Tribunal under section 48A (5) of the Child Welfare Act 1939 and in force immediately before the appointed day—

- (a) shall, on and from that day, be deemed to be a plenary continuing guardianship order (within the meaning of Part 3 of the Principal Act) appointing the Public Guardian as the guardian of the person; and
- (b) shall, subject to the Principal Act, remain in force for the period of 60 days from that day.

(2) In this clause, "the appointed day" means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Management of estates of intellectually handicapped persons

6. (1) Where, immediately before the appointed day, the Protective Commissioner had, by virtue of section 48E of the Child Welfare Act 1939, the management of the estate of an intellectually handicapped person—

- (a) that person shall, on that day, be deemed to have become a protected person pursuant to an order made by the Supreme Court under section 13 of the Protected Estates Act 1983; and
- (b) the management of that person's estate shall, on that day, be deemed to have been committed by the Supreme Court, pursuant to section 22 of the Protected Estates Act 1983, to the Protective Commissioner.

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
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(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Intellectually handicapped persons who have been boarded-out or are adopted boarders

7. (1) A person who, immediately before the appointed day, was an intellectually handicapped person boarded-out under section 486 of the Child Welfare Act 1939 or was an adopted boarder under that Act shall, on and from that day, be deemed to be a person under guardianship (within the meaning of Part 3 of the Principal Act) the subject of a plenary continuing guardianship order—

- (a) which appoints the Public Guardian as the guardian of the person;
- (b) which, subject to the Principal Act, remains in force for the period of 1 year from that day;
- (c) which, subject to the Principal Act, is subject to the condition that the person remain in the care of the person in whose care the person was, in accordance with that section, immediately before that day; and
- (d) which is subject to the same conditions as those that applied in respect of that person immediately before that day.

(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Part 3 of that Act.

Licences to control premises conducted as day attendance centres, activity centres or sheltered workshops

8. (1) Where a licence authorising a person to control any premises, being a day attendance centre, an activity centre or a sheltered workshop, granted under Part VII, as applied by section 481, of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

- (a) the licence shall be deemed—
 - (i) to be a licence for an occupational centre granted to that person; and
 - (ii) subject to the Principal Act, to be in force for a period of 3 years from the appointed day;
- (b) the licence referred to in paragraph (a) shall be deemed to be subject to the same conditions and requirements, if any, as those to which the licence first mentioned in this clause was subject immediately before the appointed day; and
- (c) the person authorised by a licence, granted under Part VII, as applied by section 481, of the Child Welfare Act 1939, to conduct a day attendance centre, an activity centre or a sheltered workshop on those premises shall be deemed to be the licensed manager under the licence referred to in paragraph (a).

(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Division 2 of Part 8 of that Act.

Permits to control premises conducted as day attendance centres, activity centres or sheltered workshops

9. (1) Where a permit authorising a person to control any premises, being a day attendance centre, an activity centre or a sheltered workshop, granted under Part VII, as applied by section 481, of the Child Welfare Act 1939, was in force immediately before the appointed day, then, on and from that day—

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (a) the permit shall be deemed—
 - (i) to be a licence for an occupational centre granted to that person; and
 - (ii) subject to the Principal Act, to be in force until the expiration of the period for which the permit was granted;
- (b) the licence shall be deemed to be subject to the same conditions and requirements, if any, as those to which the permit was subject immediately before the appointed day; and
- (c) the person authorised by a permit, granted under Part VII, as applied by section 48i, of the Child Welfare Act 1939, to conduct a day attendance centre, an activity centre or a sheltered workshop on those premises shall be deemed to be the licensed manager under the licence.

(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Division 2 of Part 8 of that Act.

Licences for residential centres for handicapped persons

10. (1) Where a licence for a residential centre for handicapped persons, granted under section 12 of the Youth and Community Services Act 1973, was in force immediately before the appointed day, then, on and from that day—

- (a) the licence shall be deemed—
 - (i) to be a licence for a residential centre granted to that person; and
 - (ii) subject to the Principal Act, to be in force for a period of 3 years from the appointed day;
- (b) the licence referred to in paragraph (a) shall be deemed to be subject to the same conditions, if any, as those to which the licence first mentioned in this clause was subject immediately before the appointed day; and
- (c) the licensed manager under the licence, granted under section 12 of the Youth and Community Services Act 1973, shall be deemed to be the licensed manager under the licence referred to in paragraph (a).

(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Division 1 of Part 8 of that Act.

Permits for residential centres for handicapped persons

11. (1) Where a permit for a residential centre for handicapped persons, issued under section 19 of the Youth and Community Services Act 1973, was in force immediately before the appointed day, then, on and from that day—

- (a) the permit shall be deemed—
 - (i) to be a licence for a residential centre granted to that person; and
 - (ii) subject to the Principal Act, to be in force until the expiration of the period for which the permit was granted;
- (b) the licence shall be deemed to be subject to the same conditions, if any, as those to which the permit was subject immediately before the appointed day; and
- (c) the licensed manager under the permit shall be deemed to be the licensed manager under the licence.

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continued

(2) In this clause, “the appointed day” means the day appointed under section 2 of the Principal Act in relation to the commencement of Division 1 of Part 8 of that Act.

Regulations

12. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act, the Principal Act and the cognate Acts.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.