

**MISCELLANEOUS ACTS (MENTAL HEALTH) REPEAL AND  
AMENDMENT ACT 1990 No. 11**

NEW SOUTH WALES



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**MISCELLANEOUS ACTS (MENTAL HEALTH) REPEAL AND  
AMENDMENT ACT 1990 No. 11**

NEW SOUTH WALES



**Act No. 11,1990**

An Act to repeal and amend certain Acts in connection with the enactment of the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990. [Assented to 1 June 1990]

**The Legislature of New South Wales enacts:**

**Short title**

**1.** This Act may be cited as the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990.

**Commencement**

**2.** This Act commences on a day or days to be appointed by proclamation.

**Repeals**

**3.** Each Act specified in Schedule 1 is repealed.

**Amendments**

**4.** Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1—REPEALS**

(Sec. 3)

Mental Defectives (Convicted Persons) Act 1939 No. 19

Mental Health Act 1958 No. 45

Mental Health (Powers of Attorney) Amendment Act 1983 No. 27

Mental Health Act 1983 No. 178

Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 No. 181

Mental Health (Be Facto Relationships) Amendment Act 1984 No. 151

Mental Health (Disability Services and Guardianship) Amendment Act 1987 No. 260

Mental Health (Mental Disorder) Amendment Act 1989 No. 101

**SCHEDULE 2—AMENDMENTS**

(Sec. 4)

**CHILDREN (CARE AND PROTECTION) ACT 1987 No. 54**

**Section 3 (Definitions):**

Omit paragraph (a) (iii) of the definition of "exempt premises" in section 3 (1), insert instead:

- (iii) a hospital or an authorised hospital within the meaning of the Mental Health Act 1990;

**CRIMES ACT 1900 No. 40**

(1) **Section 1 (Short title and contents of Act):**

Omit the matter relating to Parts 11A and 11B.

(2) **Parts 11A (Unfitness to be tried for an offence) and 11B (Defence of mental illness):**

Omit the Parts.

**CRIMINAL APPEAL ACT 1912 No. 16**

(1) **Section 2 (Definitions):**

- (a) Omit the definition of "Conviction" from section 2 (1), insert instead:

**"Conviction"** includes a finding or verdict under or in accordance with section 14,22 (1) (c) or (d) or 30 (2) of the Mental Health (Criminal Procedure) Act 1990 in respect of a person;

- (b) From the definition of "Sentence" in section 2 (1), omit "section 428P of the Crimes Act 1900 and an order under section 428ZB of the Crimes Act 1900", insert instead "section 23 of the Mental Health (Criminal Procedure) Act 1990, a penalty imposed, or any order made, under section 23 (2) of the Mental Health (Criminal Procedure) Act 1990 and an order under section 39 of the Mental Health (Criminal Procedure) Act 1990".

SCHEDULE 2—AMENDMENTS— *continued*

(2) Section 6A:

Omit the section, insert instead:

**Powers of court in relation to certain convictions and sentences concerning mentally ill persons**

6A. On an appeal under section 5 (1) against a conviction or sentence, being:

- (a) a finding or verdict under or in accordance with section 14, 22 (1) or 30 (2) of the Mental Health (Criminal Procedure) Act 1990 in respect of a person; or
- (b) a limiting term within the meaning of section 24 of the Mental Health (Criminal Procedure) Act 1990 or an order under section 39 of that Act in respect of a person; or
- (c) a penalty imposed, or any order made, under section 23 (2) of the Mental Health (Criminal Procedure) Act 1990 in respect of a person,

the court may make any finding, verdict, order or determination which could have been made in relation to the proceedings before the court of trial.

**DISABILITY SERVICES AND GUARDIANSHIP ACT 1987 No. 257**

(1) Section 3 (**Definitions**):

- (a) Omit paragraph (a) (iii) of the definition of "exempt premises" in section 3 (1), insert instead:
  - (iii) a hospital or an authorised hospital within the meaning of the Mental Health Act 1990;
- (b) Omit section 3 (2) (c), insert instead:
  - (c) who is a mentally ill person within the meaning of Chapter 3 of the Mental Health Act 1990; or

(2) Section 23 (**Guardianship orders of no effect in certain circumstances**):

Omit section 23 (a), insert instead:

SCHEDULE 2—AMENDMENTS—*continued*

- (a) a temporary patient, a continued treatment patient or a forensic patient within the meaning of the Mental Health Act 1990; or
- (3) Section 34 (**Application of Part**):
  - Omit section 34 (2), insert instead
  - (2) In the event of an inconsistency between the provisions of this Part and the provisions of the Mental Health Act 1990, the provisions of the Mental Health Act 1990 prevail.

**HEALTH ADMINISTRATION ACT 1982 No. 135**

Section 22 (**Disclosure of information**):

- (a) Section 22 (c):
  - Omit “or” where lastly occurring.
- (b) At the end of section 22 (d), insert:
  - ; or
  - (e) in any other prescribed circumstances,

**INTERPRETATION ACT 1987 No. 15**

Section 21 (**Meaning of commonly used words and expressions**):

- After the definition of "make" in section 21 (1), insert:
  - "**mentally incapacitated person**" means a person who is a temporary patient, a continued treatment patient or a forensic patient within the meaning of the Mental Health Act 1990, or a protected person within the meaning of the Protected Estates Act 1983;

**LEGAL AID COMMISSION ACT 1979 No. 78**

(1) Section 4 (**Definitions**):

- From the definition of "legal aid" in section 4 (1), omit "Mental Health Act 1983", insert instead "Mental Health Act 1990".

SCHEDULE 2—AMENDMENTS— *continued*

(2) Section 11 (**Provision of legal aid**):

From section 11 (2), omit "Mental Health Act 1983", insert instead "Mental Health Act 1990".

**MEDICAL PRACTITIONERS ACT 1938 No. 37**

Section 27 (**Definitions**):

From paragraph (b1) of the definition of "professional misconduct" in section 27 (1), omit "section 183A (1) of the Mental Health Act 1983", insert instead "section 207 (1) of the Mental Health Act 1990".

**MISCELLANEOUS ACTS (COMMUNITY WELFARE) REPEAL AND AMENDMENT ACT 1987 No. 58**

(1) Section 2 (**Commencement**):

Omit section 2 (10) and (11).

(2) Schedule 4 (**Further amendments**):

Omit items (3) (a) and (b) of the provisions relating to the Children (Care and Protection) Act 1987.

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

(1) Section 2 (**Commencement**):

Omit section 2 (7), (8), (9) and (10).

(2) Schedule 1 (**Amendments**):

Omit items (1) (b) and (c), (2) and (3) of the provisions relating to the Disability Services and Guardianship Act 1987.

**PRISONS ACT 1952 No. 9**

Section 4 (**Definitions**):

Omit paragraph (a) of the definition of "convicted prisoner" in section 4 (1), insert instead:

- (a) a person under sentence of penal servitude or imprisonment imposed by any court, judge or

SCHEDULE 2—AMENDMENTS— *continued*

justice or ordered to be detained in strict custody pursuant to section 25 or 39 of the Mental Health (Criminal Procedure) Act 1990;

**PROTECTED ESTATES ACT 1983 No. 179**

(1) Section 4 (**Definitions**):

- (a) Omit the definition of "hospital" from section 4 (1), insert instead:

**"hospital"** has the same meaning as in the Mental Health Act 1990;

- (b) Omit the definition of "informal patient" from section 4 (1), insert instead:

**"informal patient"** has the same meaning as in the Mental Health Act 1990;

- (c) Omit the definition of "Tribunal" from section 4 (1), insert instead:

**"Tribunal"** means the Mental Health Review Tribunal constituted under the Mental Health Act 1990;

(2) Section 15 (**Notice that person's capability to manage affairs will be considered**):

- (a) Omit "section 86 (3) of the Mental Health Act, 1983," insert instead "section 38 of the Mental Health Act 1990".

- (b) Omit "section 86 (1)", insert instead "section 38".

- (c) Omit "section 86 (2)", insert instead "section 38".

(3) Section 16 (**Consideration by magistrate of capability of patients to manage affairs**):

From section 16 (1), omit "section 91 of the Mental Health Act, 1983", insert instead "section 51 of the Mental Health Act 1990".

(4) Section 18 (**Consideration of capability of forensic patients to manage affairs**):

Omit "section 118, 119 or 125 of the Mental Health Act, 1983", insert instead "section 81, 82 or 86 of the Mental Health Act 1990".



SCHEDULE 2—AMENDMENTS— *continued*

(5) Section 79 (**Court visitors**):

Omit "Mental Health Act, 1983," insert instead "Mental Health Act 1990".

**REAL PROPERTY ACT 1900 No. 25**

Section 74M (**Withdrawal of caveats**):

Omit section 74M (1) (g), insert instead:

- (g) where the caveator is a protected person within the meaning of the Protected Estates Act 1983—by the person appointed as manager of the person's estate or the Protective Commissioner, as the case requires; or

**SENTENCING ACT 1989 No. 87**

(1) Section 13 (**Exclusions from this Part**):

Omit section 13 (d), insert instead:

- (d) to detention in strict custody under section 25 or 39 of the Mental Health (Criminal Procedure) Act 1990; or

(2) Section 50 (**Report to the Minister**):

Omit section 50 (2) (b), insert instead:

- (b) may report to the Minister on whether the detention in strict custody in a prison of a person under section 25 or 39 of the Mental Health (Criminal Procedure) Act 1990 should be continued or not.

(3) Section 51 (**Information concerning prisoners and parolees**):

Omit section 51 (1) (d), insert instead:

- (d) who is being detained in strict custody in a prison under section 25 or 39 of the Mental Health (Criminal Procedure) Act 1990,

SCHEDULE 2—AMENDMENTS— *continued*

**STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975  
(1976 No. 4)**

Schedule 2 (**Public Offices**):

Omit the matter relating to the President, Deputy President and full-time member of the Mental Health Review Tribunal.

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*[Minister's second reading speech made in-  
Legislative Assembly on 22 March 1990  
Legislative Council on 2 May 1990]*