

DISABILITY SERVICES AND GUARDIANSHIP BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

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

The objects of this Bill are—

- (a) to enable services to be provided to persons who have disabilities (Part 2);
 - (b) to provide for the guardianship of certain adults who are unable to manage their persons (Part 3);
 - (c) to enable the guardians of certain adults to seek directions as to how they should exercise their functions as guardians (Part 4);
 - (d) to enable consents to medical and dental treatment to be obtained for certain adults who are incapable of giving consent to the carrying out of such treatment (Part 5);
 - (e) to constitute a Guardianship Board with functions relating to the matters referred to in paragraphs (b), (c) and (d) (Part 6);
 - (f) to establish the office of Public Guardian with functions relating to the matters referred to in paragraphs (b), (c) and (d) (Part 7); and
 - (g) to provide for the regulation of residential and occupational centres in which persons who have disabilities are accommodated or at which such persons are provided with services (Part 8).
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PART 1—PRELIMINARY

This Part contains provisions—

- (a) providing for the short title to the proposed Act (clause 1);
- (b) providing for the commencement of the proposed Act on a day or days to be appointed by proclamation (clause 2);
- (c) defining certain expressions for the purposes of the proposed Act, in particular the expressions “guardian”, “occupational centre”, “person responsible”, “person under guardianship”, “person who has a disability”, “Public Guardian” and “residential centre” (clause 3); and
- (d) setting out certain principles to be observed by persons and bodies exercising functions under the proposed Act (clause 4).

PART 2—PROVISION OF SERVICES

This Part deals with the provision of services to persons who have disabilities and contains provisions—

- (a) stating the objects of the proposed Part 2 (clause 5); and
- (b) conferring on the Director-General the function of assisting in the provision of welfare services for or with respect to persons who have disabilities (clause 6).

PART 3—GUARDIANSHIP

Division 1—Preliminary

This Division contains provisions—

- (a) defining certain expressions for the purposes of the proposed Part 3 (clause 7); and
- (b) preserving the jurisdiction of the Supreme Court with respect to the guardianship of persons (clause 8).

Division 2—Applications for guardianship orders

This Division deals with matters relating to the making of applications for guardianship orders and contains provisions—

- (a) specifying by whom such applications may be made (clause 9);
- (b) providing for the service of such applications (clause 10);
- (c) providing for the removal from premises of persons the subject of such applications pursuant to orders made by the Guardianship Board (clause 11);
- (d) providing for the search for and removal from premises of persons apparently in need of a guardian, pursuant to search warrants issued by an authorised justice (clause 12); and
- (e) enabling the Director-General to have the care of persons removed from premises as referred to in clauses 11 and 12 (clause 13).

Division 3—Guardianship orders

This Division deals with the making of guardianship orders by the Guardianship Board and contains provisions—

- (a) enabling the Board to make a guardianship order in respect of a person who it is satisfied is in need of a guardian (clause 14);
- (b) imposing certain restrictions on the Board’s power to make guardianship orders (clause 15);

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- (c) providing that a guardianship order shall appoint a person as the guardian of the person to whom it relates, shall specify whether it is continuing or temporary, shall specify whether it is plenary or limited and may be made subject to conditions (clause 16);
- (d) imposing certain restrictions on the kinds of persons who may be appointed as guardians (clause 17);
- (e) specifying the period for which a guardianship order shall have effect (clause 18);
- (f) requiring copies of certain guardianship orders to be forwarded to the Public Guardian (clause 19);
- (g) providing for the appointment of alternative guardians (clause 20);
- (h) specifying the relationship that exists under a guardianship order between a guardian and a person under guardianship (clause 21);
- (i) providing for the termination of orders made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, upon the making of guardianship orders under the proposed Division 3 (clause 22); and
- (j) providing that a guardianship order does not have effect in relation to a person while the person is a patient under the mental health legislation or the subject of an order made by the Supreme Court (clause 23).

Division 4—Assessment and review of guardianship orders

This Division contains provisions—

- (a) providing for the assessment of persons the subject of guardianship orders (clause 24); and
- (b) providing for the review of guardianship orders (clause 25).

PART 4—DIRECTIONS TO GUARDIANS

This Part deals with the giving of directions by the Guardianship Board to guardians of persons under guardianship and contains provisions—

- (a) enabling the guardian of a person under guardianship to apply to the Board for directions (clause 26);
- (b) providing for the service of such applications (clause 27);
- (c) enabling the Board to give directions to the guardian as to the exercise of the guardian's functions (clause 28);
- (d) restricting the Board's power to give such directions in the case of persons the subject of orders made by the Supreme Court in the exercise of its jurisdiction with respect to the guardianship of persons (clause 29);
- (e) limiting the liability of guardians in respect of things done by them in accordance with such a direction (clause 30); and
- (f) preserving the jurisdiction of the Supreme Court with respect to the guardianship of persons (clause 31).

PART 5—MEDICAL AND DENTAL TREATMENT

Division 1—Preliminary

This Division contains provisions—

- (a) stating the objects of the proposed Part 5 (clause 32);
- (b) defining certain expressions for the purposes of the proposed Part 5 (clause 33); and

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- (c) describing the persons to whom the proposed Part 5 applies (clause 34).

Division 2—Medical and dental treatment

This Division regulates the carrying out of medical and dental treatment upon persons to whom the proposed Part 5 applies and contains provisions—

- (a) prohibiting persons from carrying out special medical treatment (under threat of a penalty of imprisonment for 7 years) or other medical or dental treatment (under threat of a penalty of 10 penalty units (that is, \$1,000) or imprisonment for 1 year, or both) otherwise than in accordance with the proposed Part 5 or a consent given under the proposed Part 5 (clause 35);
- (b) enabling a registered medical practitioner to carry out special medical treatment on a person to whom the proposed Part 5 applies if there is an emergency or if the Guardianship Board consents to the treatment being carried out (clause 36);
- (c) enabling a registered medical practitioner to carry out major medical treatment on a person to whom the proposed Part 5 applies if there is an emergency or if a person responsible for the person, or the Guardianship Board, consents to the treatment being carried out (clause 37);
- (d) enabling a registered medical practitioner to carry out minor medical treatment on a person to whom the proposed Part 5 applies if there is an emergency or if a person responsible for the person, or the Public Guardian or the Guardianship Board, consents to the treatment being carried out (clause 38); and
- (e) enabling a registered dentist to carry out dental treatment on a person to whom the proposed Part 5 applies if there is an emergency or if a person responsible for the person, or the Public Guardian or the Guardianship Board, consents to the treatment being carried out (clause 39).

Division 3—Consents given otherwise than by the Board

This Division contains provisions—

- (a) regulating the giving of consents to the carrying out of medical or dental treatment on a person to whom the proposed Part 5 applies by a person responsible for the person (clause 40); and
- (b) regulating the giving of consents to the carrying out of medical or dental treatment on a person to whom the proposed Part 5 applies by the Public Guardian (clause 41).

Division 4—Consents given by the Board

This Division deals with the giving of consents by the Guardianship Board to the carrying out of medical or dental treatment on a person to whom the proposed Part 5 applies and contains provisions—

- (a) enabling applications to be made to the Board for the giving of such consent (clause 42);
- (b) providing for the service of such applications (clause 43);
- (c) enabling the Board to consent to the carrying out of medical or dental treatment on persons to whom the proposed Part 5 applies (clause 44); and
- (d) restricting the Board's power to consent to the carrying out of such treatment (clause 45).

Division 5—General

This Division contains provisions—

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- (a) stating the effect of a consent given under the proposed Part 5 to the carrying out of medical or dental treatment on a person to whom the proposed Part 5 applies (clause 46);
- (b) preserving certain liabilities (for instance, liability for negligence) of persons who carry out medical or dental treatment pursuant to the proposed Part 5 or a consent given under the proposed Part 5 (clause 47); and
- (c) enabling the regulations to require the keeping of records of medical or dental treatment carried out on a person to whom the proposed Part 5 applies (clause 48).

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

This Division deals with the constitution of the Guardianship Board and contains provisions—

- (a) establishing the Board and providing for the appointment of its members (of whom there are to be at least 10) and its President and Deputy President (clause 49);
- (b) providing for the appointment of a Registrar and of such other staff as may be necessary to enable the Board to exercise its functions (clause 50);
- (c) providing for the composition of the Board for the purposes of any particular sitting (clause 51);
- (d) enabling the Board to hold more than one sitting at the same time (clause 52);
- (e) providing for the regulation of the procedure to be followed by the Board at any of its sittings (clause 53); and
- (f) providing for the resolution of any questions that arise at a sitting of the Board (clause 54).

Division 2—Proceedings before the Board

This Division deals with the manner in which proceedings before the Board shall be conducted and contains provisions—

- (a) ensuring that the Board is not bound by the rules of evidence or by other strict legal technicalities (clause 55);
- (b) providing that proceedings before the Board shall be open to the public except where the Board determines otherwise (clause 56);
- (c) restricting the publication of the identity of certain persons involved in proceedings before the Board (clause 57);
- (d) specifying the persons who may appear in proceedings before the Board and enabling such persons, with the leave of the Board, to be represented by a barrister, solicitor or agent (clause 58);
- (e) specifying the rights that a party to proceedings before the Board has in relation to the presentation of evidence (clause 59);
- (f) enabling the member presiding at a sitting of the Board to require persons to appear before the Board to give evidence or to produce to the Board any document relevant to proceedings before the Board (clause 60);
- (g) requiring witnesses to answer questions put to them in the course of proceedings before the Board (clause 61);

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- (h) imposing a penalty of 5 penalty units (that is, \$500) on a person who fails to comply with a requirement referred to in clause 60 or 61 or who, while appearing before the Board, makes an unsworn statement that the person knows to be false or misleading (clause 62);
- (i) providing for the payment of allowances and expenses to witnesses who appear before the Board (clause 63);
- (j) enabling the Board to adjourn its proceedings (clause 64);
- (k) enabling the Board to dismiss frivolous or vexatious proceedings (clause 65); and
- (l) requiring the Board to attempt to bring the parties to proceedings before it to a settlement of the matters in issue in the proceedings (clause 66).

Division 3—Appeals from decisions of the Board

This Division contains a provision enabling a party to proceedings before the Board to appeal to the Supreme Court from any decision of the Board (clause 67).

Division 4—General

This Division contains provisions—

- (a) prescribing the form in which the decisions of the Board are to be given (clause 68);
- (b) enabling the Board to give directions as to the payment of costs (clause 69);
- (c) imposing a penalty of 5 penalty units (that is, \$500) on persons who are guilty of misconduct during the course of proceedings before the Board (clause 70);
- (d) requiring the member presiding at a sitting of the Board to cause a record to be kept of the decisions made by the Board at the sitting (clause 71);
- (e) providing for the authentication of documents by the President, the Deputy President or the Registrar of the Board (clause 72);
- (f) protecting the Board, its members and its members of staff from liability in respect of things done by them in the exercise of their functions under the proposed Act (clause 73);
- (g) giving the protection of section 18 of the Defamation Act 1974 to the proceedings of the Board (clause 74);
- (h) providing for the making of rules governing the practice and procedure of the Board (clause 75); and
- (i) requiring the President of the Board to submit reports to the Minister on the work and activities of the Board (clause 76).

PART 7—THE PUBLIC GUARDIAN

This Act deals with the appointment and functions of the Public Guardian and contains provisions—

- (a) providing for the appointment of a Public Guardian and a Deputy Public Guardian, which offices are to be held by the Protective Commissioner and the Deputy Protective Commissioner, respectively (clause 77);
- (b) enabling the Public Guardian to delegate the exercise of the Public Guardian's functions to certain persons (clause 78);
- (c) requiring the Public Guardian to ensure that information is readily available to members of the public concerning matters relating to the Public Guardian and the Public Guardian's functions (clause 79); and

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- (d) requiring the Public Guardian to submit reports to the Minister on the work and activities of the Public Guardian (clause 80).

PART 8—LICENSING OF RESIDENTIAL CENTRES AND OCCUPATIONAL CENTRES

Division 1—Residential centres

This Division deals with the licensing of residential centres and contains provisions—

- (a) enabling the regulations to prescribe the classes of residential centres to which the proposed Division 1 applies (clause 81);
- (b) prohibiting the conduct of residential centres otherwise than by persons authorised to do so by a licence issued under the proposed Act (clause 82);
- (c) prohibiting the conduct of residential centres otherwise than at premises the subject of such a licence (clause 83);
- (d) providing for the grant of licences in respect of residential centres (clause 84);
- (e) requiring the licensed manager of a licensed residential centre to notify certain persons in the event of a death occurring at the centre (clause 85);
- (f) providing for the removal of children from unlicensed residential centres and for the application of Part 5 of the Children (Care and Protection) Act 1987 to children who have been removed from such premises (clause 86); and
- (g) providing for the assessment, and payment by a person who is convicted of conducting an unlicensed residential centre, of the removal expenses incurred in respect of persons who are forced to leave the centre following that person's conviction (clause 87).

Division 2—Occupational centres

This Division deals with the licensing of occupational centres and contains provisions—

- (a) enabling the regulations to prescribe the classes of occupational centres to which the proposed Division 2 applies (clause 88);
- (b) prohibiting the conduct of occupational centres otherwise than by persons authorised to do so by a licence issued under the proposed Act (clause 89);
- (c) prohibiting the conduct of occupational centres otherwise than at premises the subject of such a licence (clause 90);
- (d) providing for the grant of licences in respect of occupational centres (clause 91); and
- (e) providing for the removal of children from unlicensed occupational centres (clause 92).

Division 3—General

This Division contains provisions—

- (a) enabling an authorised officer to enter the premises of a residential centre or occupational centre at any time (clause 93);
- (b) enabling the Minister to exempt persons from the operation of certain provisions of the proposed Divisions 1 and 2 (clause 94);
- (c) enabling the Minister to revoke such an exemption (clause 95); and
- (d) requiring the Director-General to submit reports to the Minister on the activities of licensees under the proposed Part 8 (clause 96).

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PART 9—MISCELLANEOUS

This Part contains provisions—

- (a) enabling appeals to be made to the Community Welfare Appeals Tribunal against certain decisions of the Minister or the Director-General (clause 97);
- (b) providing for the service of notices under the proposed Act (clause 98);
- (c) requiring certain notices to be written in a language with which the person to whom the notice is directed is familiar (clause 99);
- (d) limiting the personal liability of the Minister, the Director-General, the Public Guardian and other persons in respect of things done by them for the purposes of executing the proposed Act (clause 100);
- (e) prohibiting the unauthorised disclosure of information obtained in connection with the administration or execution of the proposed Act (clause 101);
- (f) providing for the issue of search warrants in cases where an authorised officer or a member of the police force believes that the proposed Act or the regulations under the proposed Act are being contravened at any premises (clause 102);
- (g) imposing a penalty of 10 penalty units (that is, \$1,000) or imprisonment for 12 months, or both, on a person who wilfully hinders or obstructs any person exercising functions under the proposed Act (clause 103);
- (h) imposing a penalty of 10 penalty units (that is, \$1,000) or imprisonment for 12 months, or both, on any person who falsely represents himself or herself to be officially associated in any capacity with the Department of Youth and Community Services (clause 104);
- (i) imposing a penalty of 5 penalty units (that is, \$500) on a person who, in any application under the proposed Act or any inquiry connected with any such application, makes any statement or furnishes any information that the person knows to be false or misleading in a material particular (clause 105);
- (j) enabling proceedings for an offence against the proposed Act or the regulations under the proposed Act (other than the offence of unlawfully carrying out special medical treatment referred to in clause 35) to be dealt with summarily before a Local Court constituted by a Magistrate (clause 106);
- (k) providing for certain evidentiary matters (clause 107); and
- (l) enabling the Governor-in-Council to make regulations for the purposes of the proposed Act (clause 108).

SCHEDULE 1—PROVISIONS RELATING TO THE BOARD

This Schedule contains provisions—

- (a) concerning the term of office of, and vacation of office by, members of the Board (clause 1);
- (b) providing for the remuneration of members of the Board (clause 2);
- (c) concerning the functions of the President and Deputy President of the Board (clause 3); and
- (d) enabling the President of the Board to delegate his or her functions to the Deputy President (clause 4).

SCHEDULE 2—PROVISIONS RELATING TO LICENCES

This Schedule contains provisions—

- (a) requiring the applicant for a licence to be the proprietor of the premises to which the application relates (clause 1);

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- (b) prescribing the procedure for the consideration of applications and the granting of licences (clause 2);
 - (c) prescribing the procedure under which a new manager can be appointed under a licence (clause 3);
 - (d) providing that licences are generally to have effect for 3 years but, where an application for renewal has been made, are to continue in force until the application is finally dealt with (clause 4);
 - (e) providing for the imposition of conditions on licences (clause 5);
 - (f) providing for the revocation or variation of conditions of licences and the imposition of additional conditions on licences (clause 6);
 - (g) providing for the suspension and revocation of licences (clause 7); and
 - (h) enabling temporary managers to be appointed to act in the position of a licensed manager who is ill or otherwise absent (clause 8).
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