

COMMUNITY WELFARE (DISABILITY SERVICES AND GUARDIANSHIP) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Disability Services and Guardianship Bill 1987.

The object of this Bill is to amend the Community Welfare Act 1987 so as to insert into that Act provisions that are currently included in the Children (Care and Protection) Act 1987 in relation to—

- (a) the declaration of facilities for the purposes of the community welfare legislation;
- (b) the appointment of Visitors to such facilities; and
- (c) the constitution and functions of the Community Welfare Appeals Tribunal.

Clause 1 specifies the short title of the proposed Act.

Clause 2 gives effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1) amends section 2 of the Principal Act so as to provide for the commencement of the provisions to be inserted into that Act by the proposed Act in relation to the constitution and functions of the Community Welfare Appeals Tribunal.

Schedule 1 (2) inserts several definitions into section 3 of the Principal Act as a consequence of the other amendments to be effected by Schedule 1.

Schedule 1 (3) inserts new sections 3A and 3B into the Principal Act:

Proposed section 3A re-enacts the provisions of section 5 of the Children (Care and Protection) Act 1987 which deals with the declaration of premises as facilities for the purposes of the community welfare legislation.

Proposed section 3B re-enacts the provisions of section 6 of the Children (Care and Protection) Act 1987 which deals with the appointment of Visitors to facilities referred to in proposed section 3A.

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Schedule 1 (4) omits Part 6 of the Principal Act and inserts instead proposed Parts 6 and 7. Proposed Part 6 re-enacts the provisions of Part 8 of, and Schedule 4 to, the Children (Care and Protection) Act 1987 in relation to the constitution and functions of the Community Welfare Appeals Tribunal. Proposed Part 7 re-enacts the provisions of the old Part 6 of the Principal Act, thus enabling the Principal Act, as amended by the proposed Act, to retain simple sequential numbering. The following provisions are included in the proposed Parts 6 and 7:

PART 6—THE COMMUNITY WELFARE APPEALS TRIBUNAL

Division 1—Constitution of the Tribunal

Proposed section 43 establishes the Tribunal and provides for the appointment of its members (of whom there are to be at least 5) and its President and Deputy President.

Proposed section 44 provides for the appointment of a Registrar and of such other staff as may be necessary to enable the Tribunal to exercise its functions.

Proposed section 45 provides for the composition of the Tribunal for the purposes of any particular sitting.

Proposed section 46 enables the Tribunal to hold more than one sitting at the same time whenever it has 6 or more members.

Proposed section 47 provides for the procedure to be followed by the Tribunal at any of its sittings.

Proposed section 48 provides for the resolution of any questions that arise at a sitting of the Tribunal.

Division 2—Proceedings before the Tribunal

Proposed section 49 ensures that the Tribunal is not bound by the rules of evidence or by other strict legal technicalities.

Proposed section 50 enables the Tribunal to conduct preliminary conferences in order to bring the parties to a proceeding to agreement on the matters to which the proceeding relates.

Proposed section 51 enables the Tribunal to require the person or body by whom the decision the subject of an appeal to the Tribunal was made to lodge relevant material documents with the Tribunal.

Proposed section 52 provides that proceedings before the Tribunal shall be open to the public except where the Tribunal determines otherwise.

Proposed section 53 restricts the publication of the identity of children involved in proceedings before the Tribunal.

Proposed section 54 specifies the persons who may appear in proceedings before the Tribunal and enables such persons to be represented by a solicitor or barrister or, by leave of the Tribunal, by an agent.

Proposed section 55 specifies the rights that a party to proceedings before the Tribunal has in relation to the presentation of evidence.

Proposed section 56 enables the member presiding at a sitting of the Tribunal to require persons to appear before the Tribunal to give evidence or to produce to the Tribunal any document relevant to proceedings before the Tribunal.

Proposed section 57 requires witnesses to answer questions put to them in the course of proceedings before the Tribunal.

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Proposed section 58 imposes a penalty of 5 penalty units (that is, \$500) on a person who fails to comply with a requirement referred to in proposed section 56 or 57 or who, while appearing before the Tribunal, makes an unsworn statement that the person knows to be false or misleading.

Proposed section 59 provides for the payment of allowances and expenses to witnesses who appear before the Tribunal.

Proposed section 60 enables the Tribunal to adjourn its proceedings.

Division 3—Decisions of the Tribunal

Proposed section 61 prescribes the form in which the decisions of the Tribunal are to be given.

Proposed section 62 enables the Tribunal to give directions as to the payment of costs.

Proposed section 63 enables the Tribunal to exercise the same powers as the Minister or Director-General was able to exercise in relation to the decision the subject of the proceedings before the Tribunal, and further enables the Tribunal to limit the rights of any party to proceedings before it to bring further proceedings in respect of the same matter.

Proposed section 64 provides that a decision of the Tribunal is final and is to be given effect to as if it were the decision of the Minister or the Director-General, as the case may be.

Proposed section 65 provides that the making of an appeal to the Tribunal does not of itself affect the decision the subject of the appeal.

Division 4—Appeals from decisions of the Tribunal

Proposed section 66 enables a party to proceedings before the Tribunal to appeal to the Supreme Court, on a question of law, from any decision of the Tribunal.

Division 5—General

Proposed section 67 enables the Tribunal to exercise the same powers of entry in relation to certain premises as may be exercised by officers of the Department of Youth and Community Services.

Proposed section 68 imposes a penalty of 5 penalty units (that is, \$500) on persons who are guilty of misconduct during the course of proceedings before the Tribunal.

Proposed section 69 requires the member presiding at a sitting of the Tribunal to cause a record to be kept of the decisions at the sitting.

Proposed section 70 provides for the authentication of documents by the President, the Deputy President or the Registrar of the Tribunal.

Proposed section 71 protects 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 Principal Act.

Proposed section 72 gives the protection of section 18 of the Defamation Act 1974 to the proceedings of the Tribunal.

Proposed section 73 provides for the making of rules governing the practice and procedure of the Tribunal.

Proposed section 74 requires the President of the Tribunal to submit reports to the Minister on the work and activities of the Tribunal.

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PART 7—MISCELLANEOUS

Proposed section 75 limits the personal liability of the Minister, the Director-General and other persons in respect of things done by them for the purposes of executing the Principal Act.

Proposed section 76 imposes a penalty of 10 penalty units (that is, \$1,000) or imprisonment for 12 months, or both, on persons who, without lawful authority, disclose information obtained in connection with the administration or execution of the Principal Act.

Proposed section 77 enables proceedings for an offence against the Principal Act to be dealt with summarily before a Local Court constituted by a Magistrate.

Proposed section 78 enables the Governor-in-Council to make regulations for the purposes of the Principal Act.

Schedule 1 (5) inserts a new Schedule 3 into the Principal Act. The following provisions are included in the proposed Schedule:

SCHEDULE 3—PROVISIONS RELATING TO THE TRIBUNAL

Proposed clause 1 limits the age of members of the Tribunal to 65 years.

Proposed clause 2 concerns the term of office of, and vacation of office by, members of the Tribunal.

Proposed clause 3 provides for the remuneration of members of the Tribunal.

Proposed clause 4 concerns the functions of the President and Deputy President of the Tribunal.

Proposed clause 5 enables the President of the Tribunal to delegate his or her functions to the Deputy President.
