

**CHILDREN (CARE AND PROTECTION) (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 Children (Care and Protection) Act 1987 so as—

- (a) to make provision with respect to the carrying out of medical and dental treatment on children;
- (b) to omit the provisions of that Act relating to the Community Welfare Appeals Tribunal, consequent upon the enactment of the proposed Community Welfare (Disability Services and Guardianship) Amendment Act 1987 which re-enacts those provisions in the Community Welfare Act 1987; and
- (c) to make other minor, consequential and ancillary amendments.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1) amends and replaces certain definitions in section 3 of the Principal Act as a consequence of the other amendments effected by Schedule 1.

Schedule 1 (2) omits sections 5 and 6 of the Principal Act as a consequence of their re-enactment in the Community Welfare Act 1987 by the proposed Community Welfare (Disability Services and Guardianship) Amendment Act 1987.

Schedule 1 (3) omits the definitions of "dental treatment" and "medical treatment" from section 20 (4) of the Principal Act.

Schedule 1 (4) inserts new sections 20A and 20B into the Principal Act:

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

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Proposed section 20A provides that a registered medical practitioner or registered dentist may carry out medical or dental treatment on a child without the consent of the child or the child's parents or guardians if the medical practitioner or dentist is of the opinion that it is necessary, as a matter of urgency, to carry out that treatment in order to save the child's life or to prevent serious damage to the child's health.

Proposed section 20B imposes a penalty of 7 years' imprisonment on a person who carries out "special medical treatment" (that is, treatment that is intended or likely to render a person infertile or other treatment of a kind declared by the regulations under the Principal Act to be special medical treatment) on a child otherwise than (in the case of treatment carried out by a registered medical practitioner) in order to save the child's life or to prevent serious damage to the child's health or otherwise than with the consent of the Supreme Court.

Schedule 1 (5) repeals Part 8 of the Principal Act (which deals with the constitution and functions of the Community Welfare Appeals Tribunal) as a consequence of the re-enactment of the provisions of that Part in the Community Welfare Act 1987 by the proposed Community Welfare (Disability Services and Guardianship) Amendment Act 1987.

Schedule 1 (6) renumbers Part 9 of the Principal Act as Part 8, thus preserving the sequential Part numbering of the Principal Act following the repeal of Part 8 by Schedule 1 (5).

Schedule 1 (7) inserts a new section 112 into the Principal Act. This new section is merely a re-enactment of section 104 of the Principal Act, being a section that, as one of the provisions of Part 8 of the Principal Act, is to be repealed by Schedule 1 (5).

Schedule 1 (8) amends section 121 of the Principal Act so as to ensure that proceedings for an offence arising under proposed section 20B (1) are dealt with on indictment rather than summarily before a Local Court.

Schedule 1 (9) omits Schedules 3 and 4 to the Principal Act as a consequence of the re-enactment of the provisions of those Schedules in the Community Welfare Act 1987 by the proposed Community Welfare (Disability Services and Guardianship) Amendment Act 1987.

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**CHILDREN (CARE AND PROTECTION) (DISABILITY  
SERVICES AND GUARDIANSHIP) AMENDMENT BILL  
1987**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 54, 1987

SCHEDULE 1—AMENDMENTS

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**CHILDREN (CARE AND PROTECTION) (DISABILITY  
SERVICES AND GUARDIANSHIP) AMENDMENT BILL  
1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

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.

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

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**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.

**5 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.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**)—

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

20 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:

25 “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;

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

Omit the sections.

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

Section 20 (4)—

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

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

SCHEDULE 1—AMENDMENTS—*continued*

(4) Sections 20A, 20B—

After section 20, insert:

**Emergency medical treatment**

5 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,

10 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

15 (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.

20 (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

25 (b) in the case of a child who is of or above the age of 16 years—the child.

30 (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

35 (b) in the case of a child who is of or above the age of 16 years—the child.

**Special medical treatment**

40 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.

*Children (Care and Protection) (Disability Services and Guardianship)  
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—

- 5 (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—

10 "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;

15 "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
- 20 (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—

25 Omit "9", insert instead "8".

(7) Section 112—

Before section 113, insert:

**Appeals to the Community Welfare Appeals Tribunal**

30 112. (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;
- 35 (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;

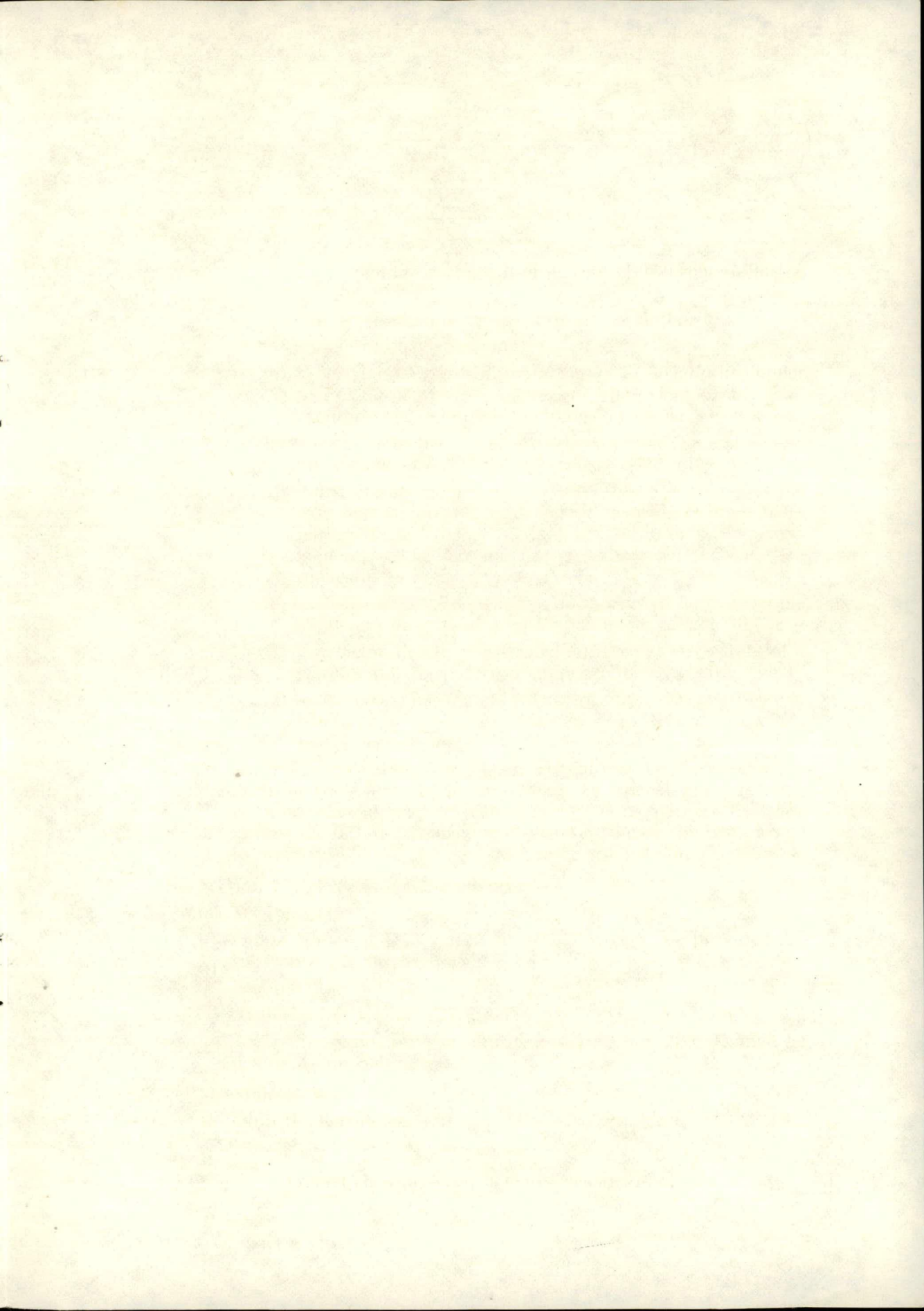


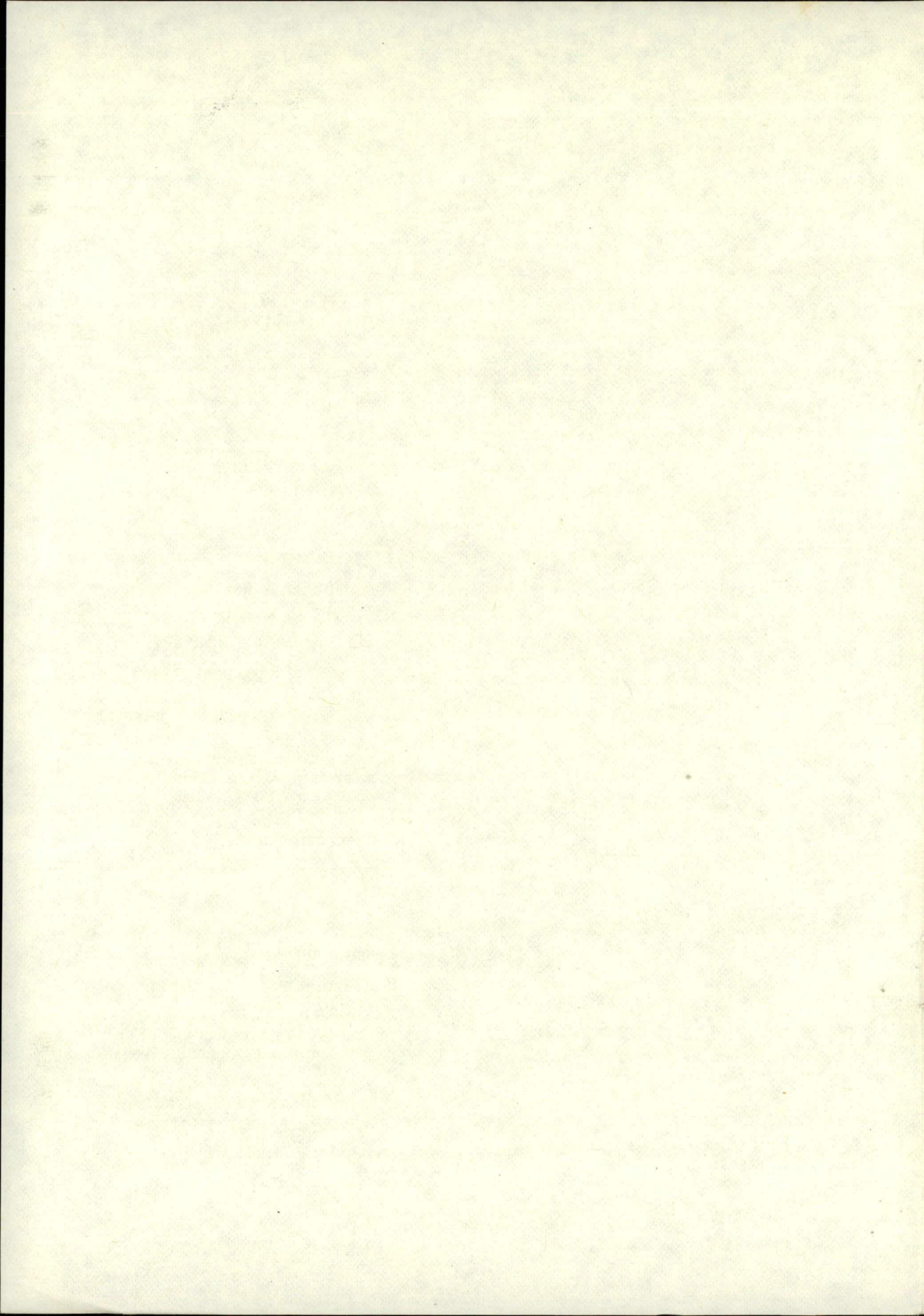
*Children (Care and Protection) (Disability Services and Guardianship)  
Amendment 1987*

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;
- 5 (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);
- 10 (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;
- 15 (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);
- 20 (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  
25 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  
30 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.
- 35 (9) Schedules 3, 4—  
Omit the Schedules.







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

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 54, 1987

SCHEDULE 1—AMENDMENTS

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UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR

SUBJECT: [Illegible]

DATE: [Illegible]  
BY: [Illegible]



**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*

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**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.

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**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”.



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

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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.

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

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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;

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

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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.

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

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SCHEDULE 1—AMENDMENTS—*continued*

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