

**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.

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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.

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NEW SOUTH WALES

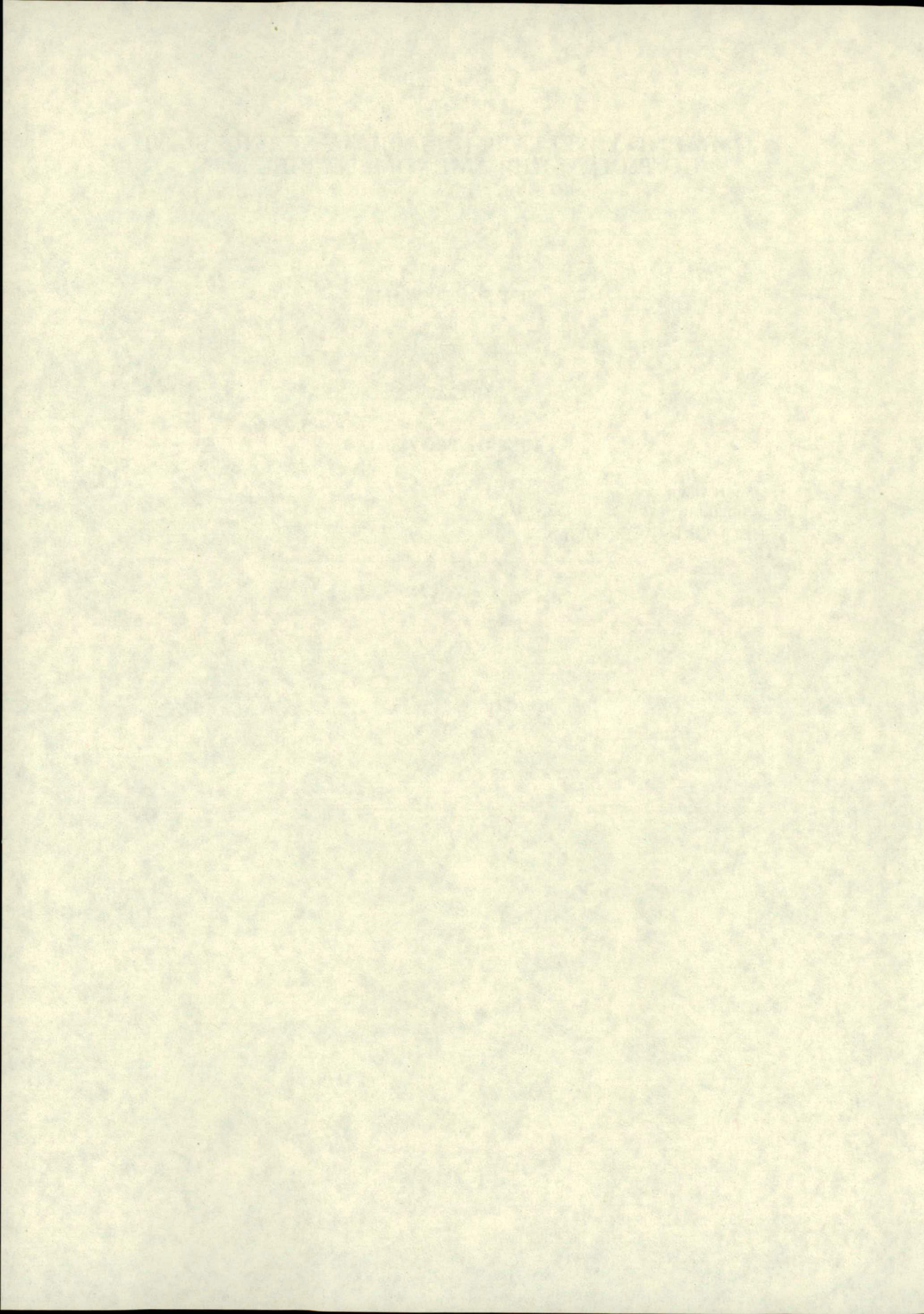


## TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 52, 1987

SCHEDULE 1—AMENDMENTS

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**COMMUNITY WELFARE (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Community Welfare Act 1987 so as to reconstitute the Community Welfare Appeals Tribunal; and for other purposes.

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*Community Welfare (Disability Services and Guardianship) Amendment 1987*

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

**Short title**

1. This Act may be cited as the Community Welfare (Disability Services and Guardianship) Amendment Act 1987.

**5 Amendment of Act No. 52, 1987**

2. The Community Welfare Act 1987 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 2)

10 (1) Section 2 (**Commencement**)—

(a) Section 2 (1)—

Omit “subsection (2)”, insert instead “subsections (2) and (3)”.

(b) Section 2 (3)—

After section 2 (2), insert:

15 (3) Part 6 shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(2) Section 3 (**Definitions**)—

Section 3 (1)—

20 Insert, in appropriate alphabetical order, the following definitions:

“child” means a person who is under the age of 18 years;

“facility”, in relation to any provision of the community welfare legislation, means any premises the subject of an order in force under section 3A (1) in respect of that provision;

25 “Tribunal” means the Community Welfare Appeals Tribunal constituted under this Act;

“Visitor” means a person appointed as a Visitor for a facility under section 3B.

(3) Sections 3A, 3B—

30 After section 3, insert:

**Facilities**

3A. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility—

35 (a) for the purposes of the community welfare legislation generally; or



*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(b) for the purposes of any specified provision of the community welfare legislation.

5 (2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

10 (4) An order under subsection (1) shall not be made in relation to premises under the control of a person (other than the Crown or a person acting on behalf of the Crown) except with the consent in writing of the firstmentioned person.

15 (5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister (other than the Minister administering this Act) except with the consent in writing of that other Minister.

20 (6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to the community welfare legislation.

**Visitors**

25 3B. (1) The Minister may appoint an eligible person to be a Visitor for a facility.

(2) A person is an eligible person if, in the opinion of the Minister, the person—

- (a) is expert in some branch of community welfare; and
- (b) demonstrates concern for persons in need of community welfare services,

30 but not if the person is an officer.

(3) A Visitor shall hold office for 2 years and is, if otherwise qualified, eligible for re-appointment.

(4) A Visitor may, in respect of a facility for which the Visitor is appointed—

- 35 (a) enter and inspect the facility at any reasonable time;
- (b) confer privately with any person who is resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(d) exercise such other functions as may be prescribed by the regulations.

5 (5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

(4) Parts 6 and 7—

Omit Part 6, insert instead:

10 **PART 6—THE COMMUNITY WELFARE APPEALS TRIBUNAL**

**Division 1—Constitution of the Tribunal**

**Constitution of the Tribunal**

15 43. (1) There shall be a Community Welfare Appeals Tribunal.

(2) The Tribunal shall consist of at least 5 members who shall be appointed by the Governor.

(3) The members of the Tribunal shall be appointed from one or more of the following classes of persons:

20 (a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;

(b) medical practitioners;

(c) barristers;

25 (d) solicitors;

(e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

(4) Of the members—

30 (a) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as President of the Tribunal; and

35 (b) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as Deputy President of the Tribunal.

(5) The Tribunal has the functions conferred or imposed on it by or under this or any other Act.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(6) Schedule 3 applies to the Tribunal.

**Registrar and other staff of the Tribunal**

5 44. A Registrar and such other staff as are necessary for the purpose of enabling the Tribunal to exercise its functions shall be appointed under the Public Service Act 1979.

**Composition of the Tribunal**

45. (1) The Tribunal shall, for the purpose of exercising its functions, be constituted by no fewer than 3 and no more than 5 of its members.

10 (2) The President of the Tribunal shall nominate the persons to constitute the Tribunal for the purposes of any particular sitting.

(3) The presiding member at any sitting of the Tribunal shall be—

15 (a) if the Tribunal is so constituted as to include the President of the Tribunal—the President of the Tribunal;

(b) if the Tribunal is so constituted as not to include the President of the Tribunal but is so constituted as to include the Deputy President of the Tribunal—the Deputy President of the Tribunal; or

20 (c) if the Tribunal is so constituted as to include neither the President nor the Deputy President of the Tribunal—such member of the Tribunal as the President of the Tribunal nominates.

**25 Sittings of the Tribunal**

46. If the Governor has appointed 6 or more members, more than one sitting of the Tribunal may be held at the same time.

**Procedure at sittings of the Tribunal**

30 47. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Act, the regulations and the rules of the Tribunal, be as determined by the Tribunal.

**Voting**

35 48. (1) Questions arising at a sitting of the Tribunal shall be determined by a majority of the votes of the members present and voting.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(2) The member presiding at any sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

**Division 2—Proceedings before the Tribunal**5 **Proceedings generally**

49. (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

10 (2) Proceedings before the Tribunal shall be by way of a new hearing and no weight shall be given to the decision the subject of the proceedings.

(3) Proceedings before the Tribunal shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

**Preliminary conferences**

15 50. The Tribunal or, if the Tribunal so directs, a member of the Tribunal may, before formally commencing to hear any proceedings, confer informally with the parties to the proceedings and make any determination with respect to the decision that is agreed to by the parties to the proceedings.

20 **Lodging of material documents with the Tribunal**

25 51. (1) A person who has made a decision that is the subject of an appeal to the Tribunal shall, within the period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

30 (2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, on request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

35 (3) If the Tribunal is of the opinion that other particular documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a  
40 notice in writing—

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) stating that the Tribunal is of that opinion; and  
 (b) directing the person to lodge with the Tribunal, within a period of time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control.

(4) A person shall not fail to comply with a direction under this section.

Penalty: 5 penalty units.

**Proceedings to be open to the public**

52. Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in the absence of the public.

**Publication of names etc.**

53. (1) A person shall not, except with the consent of the Tribunal, publish or broadcast the name of any child—

- (a) who appears as a witness before the Tribunal in any proceedings;  
 (b) to whom any proceedings before the Tribunal relate; or  
 (c) who is mentioned or otherwise involved in any proceedings before the Tribunal,

whether before or after the proceedings are disposed of.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

**Right of appearance**

54. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by a barrister or solicitor or, by leave of the Tribunal, by an agent.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(2) The Tribunal, in proceedings before it with respect to a child, may appoint a person to act as guardian ad litem for the child.

5 (3) The Tribunal, in proceedings before it relating to a child, may, if it appears to the Tribunal that the child ought to be separately represented—

(a) order that the child be separately represented; and

(b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

10 (4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subsection (3) (b).

**Presentation of cases**

15 55. A party to proceedings before the Tribunal may—

(a) call and examine any witness;

(b) cross-examine any witness called by another party;

(c) examine any copy of any document or part of a document lodged with the Tribunal under section 51;

(d) give evidence on oath;

20 (e) produce documents and exhibits to the Tribunal; and

(f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

**Presiding member may compel attendance of witnesses etc.**

25 56. (1) The member presiding at a sitting of the Tribunal may—

(a) by instrument in writing require any person on whom the instrument is served personally or by post—

30 (i) to appear before the Tribunal for the purpose of giving evidence; or

(ii) to produce to the Tribunal any document that is relevant to the proceedings before the Tribunal, at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of giving evidence on oath; and

35 (c) administer such an oath.

SCHEDULE 1—AMENDMENTS—*continued*

(2) When a document is produced to the Tribunal pursuant to a requirement made under this section, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

5      **Witnesses to answer questions**

57. (1) A member of the Tribunal may require a person who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

10      (2) A person is not excused from answering such a question on the ground that the answer might tend to incriminate the person but, where the person claims (before answering the question) that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under  
15      section 58 or proceedings in relation to a charge of perjury in respect of the answer.

**Refusal to attend or to answer questions etc.**

58. A person shall not—

- 20      (a) fail to comply with a requirement made of the person under section 56 or 57 to the extent to which the person is lawfully able to comply with the requirement; or  
    (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing before the Tribunal.

25      Penalty: 5 penalty units.

**Witnesses' expenses**

59. A person (other than an officer) who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect  
30      of the person.

**Adjournments**

60. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

35      (2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function of adjourning proceedings.

SCHEDULE 1—AMENDMENTS—*continued***Division 3—Decisions of the Tribunal****Decisions of the Tribunal to set out reasons etc.**

61. (1) A decision of the Tribunal with respect to proceedings before it—

5 (a) shall be in the form of an instrument in writing that includes the reasons for the decision; and

(b) shall be signed by the member who presided at the sitting of the Tribunal at which the decision was made.

10 (2) No decision of the Tribunal shall be vitiated merely because of any informality or want of form.

**Costs**

15 62. (1) The Tribunal may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

20 (3) A certificate purporting to be signed by the President, the Deputy President or the Registrar of the Tribunal and containing a statement as to any matters relating to the award of costs under this section is admissible in evidence and is *prima facie* evidence of those matters.

**Powers of the Tribunal in respect of appeals**

25 63. (1) The Tribunal, in determining an appeal, has the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

30 (a) the frequency of appeals made by or on behalf of that person; or

(b) any other matter that the Tribunal considers relevant,

35 determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.



*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued***Effect of decisions of the Tribunal**

5 64. Subject to any appeal to the Supreme Court under Division 4, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

**Operation and implementation of decisions pending appeal**

10 65. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(2) The Tribunal or the President of the Tribunal may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account—

- 15 (a) the interests of any persons who may be affected by the determination of the appeal;
- (b) any submission made by or on behalf of the person who made the decision to which the appeal relates; and
- (c) the public interest,

20 make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

25 (3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

30 (4) Subject to subsection (5), neither the Tribunal nor the President of the Tribunal shall—

- 35 (a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—
- 40

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- (i) the person who made the decision to which the appeal relates;
- (ii) the person who requested the making of the order under subsection (2); and
- 5 (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders,

10 have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President of the Tribunal from making an order without giving to any person referred to in that subsection a reasonable opportunity

15 to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity.

(6) If such an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

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(7) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

25

(a) is subject to such conditions as are specified in the order; and

(b) has effect—

30 (i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or

35 (ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

**Division 4—Appeals from decisions of the Tribunal****Appeals to the Supreme Court**

40 66. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

5 (2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under this section shall be instituted—

10 (a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or

(b) within such further time as the Supreme Court may allow.

15 (4) The Supreme Court shall hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

20 (a) an order affirming or setting aside the decision of the Tribunal; and

(b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

25 (6) Subject to any interlocutory order made by the Supreme Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

**Division 5—General****Power of entry**

30 67. The provisions of—

(a) section 83 of the Children (Care and Protection) Act 1987; and

(b) section 93 of the Disability Services and Guardianship Act 1987,

35 apply to a member of the Tribunal in the same way as they apply to an authorised officer within the meaning of those sections, but as if the powers conferred by those sections were conferred on the member for the purpose of the member's functions as such a member instead of for the purposes specified in those sections.

SCHEDULE 1—AMENDMENTS—*continued***Misconduct in proceedings before the Tribunal**

68. (1) A person shall not, in proceedings before the Tribunal—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during proceedings before the Tribunal;
- (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
- (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

Penalty: 5 penalty units.

(2) The Tribunal may, in proceedings before it, direct a person who does any thing referred to in subsection (1) to leave the place where the proceedings are being conducted.

(3) A person to whom such a direction is given shall not fail to comply with the direction.

Penalty: 5 penalty units.

**Record of proceedings**

69. (1) The member presiding at a sitting of the Tribunal shall cause a record to be kept of any decision made at the sitting and of the reasons for that decision.

(2) The regulations may make further provision with respect to the keeping of records of proceedings before the Tribunal.

**Authentication of documents etc.**

70. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President, the Deputy President or the Registrar of the Tribunal.

(2) Judicial notice shall be taken of the signature of the President, the Deputy President or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

**Certain proceedings prohibited**

71. (1) No proceedings shall lie against the Tribunal or any of its members or members of staff for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Tribunal, member or member of staff has acted in good faith and with reasonable care.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

5 (2) Any member of the Tribunal who is a judicial officer (within the meaning of the Judicial Officers Act 1986) shall, in the execution of his or her functions as a member of the Tribunal, have the same protection and immunity as he or she has as such an officer.

**Application of the Defamation Act 1974**

72. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

10 **Rules**

73. (1) Five members nominated by the President of the Tribunal (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

15 (2) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

**Reports**

20 74. (1) The President of the Tribunal shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

25 (2) A report shall deal with such matters as the Minister directs and with such other matters as the President of the Tribunal considers appropriate to include in the report.

**PART 7—MISCELLANEOUS****Limitation of personal liability**

30 75. No matter or thing done by the Minister, the Director-General, an officer or any other person shall, if the matter or thing was done in good faith and with reasonable care for the purposes of executing the community welfare legislation, subject the Minister, the Director-General, the officer or that other person personally to any action, liability, claim or demand.

35 **Disclosure of information**

76. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made—

Community Welfare (Disability Services and Guardianship) Amendment 1987SCHEDULE 1—AMENDMENTS—*continued*

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- 5 (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

10 Penalty: 10 penalty units or imprisonment for 12 months, or both.

**Proceedings for offences**

15 77. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

20 78. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any council or committee and its members and functions;
- (b) the Community Welfare Fund;
- (c) the Home Care Service;
- 25 (d) the Community Disaster Relief Fund; and
- (e) the Community Welfare Appeals Tribunal.

## (5) Schedule 3—

After Schedule 2, insert:

**SCHEDULE 3—PROVISIONS RELATING TO THE TRIBUNAL**

30 (Sec. 43)

**Age of members**

1. A person of or above the age of 65 years is not eligible to be appointed as a member of the Tribunal.

**Term and vacation of office etc.**

35 2. (1) A member of the Tribunal shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or for such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for re-appointment.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(2) The Governor may remove a member of the Tribunal from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member of the Tribunal shall be deemed to have vacated office—

5

(a) if the member dies;

(b) if the member resigns office by instrument in writing addressed to the Minister;

10

(c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

(d) on the member's reaching the age of 65 years; or

(e) if the member is removed from office by the Governor.

**Remuneration etc.**

15

3. (1) A member of the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

20

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Tribunal and a member is not, as a member, subject to that Act.

**President and Deputy President**

25

4. (1) The President or Deputy President of the Tribunal holds office until ceasing to be a member and is eligible, if re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the President's functions—

(a) if the President—

30

(i) delegates those functions to the Deputy President under clause 5;

(ii) is absent from New South Wales; or

(iii) is prevented by illness or other incapacity from exercising those functions; or

(b) if there is no person holding the office of President.

35

(3) While the Deputy President of the Tribunal is authorised to exercise the President's functions, a reference in this Act to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President of the Tribunal exercises the President's functions, the Deputy President shall be deemed to be the President.

40

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President of the Tribunal to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President while exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

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SCHEDULE 1—AMENDMENTS—*continued*

**Delegation**

5. The President of the Tribunal may delegate to the Deputy President the exercise of any of the President's functions, other than this power of delegation.



**COMMUNITY WELFARE (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 258**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Amendment of Act No. 52, 1987
- SCHEDULE 1—AMENDMENTS
-



**COMMUNITY WELFARE (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 258**

NEW SOUTH WALES



**Act No. 258, 1987**

An Act to amend the Community Welfare Act 1987 so as to reconstitute the Community Welfare Appeals Tribunal; and for other purposes.  
[Assented to 16 December 1987]

*Community Welfare (Disability Services and Guardianship) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Community Welfare (Disability Services and Guardianship) Amendment Act 1987.

**Amendment of Act No. 52, 1987**

2. The Community Welfare Act 1987 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 2)

**(1) Section 2 (Commencement)—****(a) Section 2 (1)—**

Omit “subsection (2)”, insert instead “subsections (2) and (3)”.

**(b) Section 2 (3)—**

After section 2 (2), insert:

(3) Part 6 shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**(2) Section 3 (Definitions)—****Section 3 (1)—**

Insert, in appropriate alphabetical order, the following definitions:

“child” means a person who is under the age of 18 years;

“facility”, in relation to any provision of the community welfare legislation, means any premises the subject of an order in force under section 3A (1) in respect of that provision;

“Tribunal” means the Community Welfare Appeals Tribunal constituted under this Act;

“Visitor” means a person appointed as a Visitor for a facility under section 3B.

**(3) Sections 3A, 3B—**

After section 3, insert:

**Facilities**

3A. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility—

(a) for the purposes of the community welfare legislation generally; or

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(b) for the purposes of any specified provision of the community welfare legislation.

(2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

(4) An order under subsection (1) shall not be made in relation to premises under the control of a person (other than the Crown or a person acting on behalf of the Crown) except with the consent in writing of the firstmentioned person.

(5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister (other than the Minister administering this Act) except with the consent in writing of that other Minister.

(6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to the community welfare legislation.

**Visitors**

3B. (1) The Minister may appoint an eligible person to be a Visitor for a facility.

(2) A person is an eligible person if, in the opinion of the Minister, the person—

- (a) is expert in some branch of community welfare; and
- (b) demonstrates concern for persons in need of community welfare services,

but not if the person is an officer.

(3) A Visitor shall hold office for 2 years and is, if otherwise qualified, eligible for re-appointment.

(4) A Visitor may, in respect of a facility for which the Visitor is appointed—

- (a) enter and inspect the facility at any reasonable time;
- (b) confer privately with any person who is resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and

Community Welfare (Disability Services and Guardianship) Amendment 1987SCHEDULE 1—AMENDMENTS—*continued*

(d) exercise such other functions as may be prescribed by the regulations.

(5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

(4) Parts 6 and 7—

Omit Part 6, insert instead:

**PART 6—THE COMMUNITY WELFARE APPEALS  
TRIBUNAL**

**Division 1—Constitution of the Tribunal**

**Constitution of the Tribunal**

43. (1) There shall be a Community Welfare Appeals Tribunal.

(2) The Tribunal shall consist of at least 5 members who shall be appointed by the Governor.

(3) The members of the Tribunal shall be appointed from one or more of the following classes of persons:

- (a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;
- (b) medical practitioners;
- (c) barristers;
- (d) solicitors;
- (e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

(4) Of the members—

- (a) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as President of the Tribunal; and
- (b) one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as Deputy President of the Tribunal.

(5) The Tribunal has the functions conferred or imposed on it by or under this or any other Act.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(6) Schedule 3 applies to the Tribunal.

**Registrar and other staff of the Tribunal**

44. A Registrar and such other staff as are necessary for the purpose of enabling the Tribunal to exercise its functions shall be appointed under the Public Service Act 1979.

**Composition of the Tribunal**

45. (1) The Tribunal shall, for the purpose of exercising its functions, be constituted by no fewer than 3 and no more than 5 of its members.

(2) The President of the Tribunal shall nominate the persons to constitute the Tribunal for the purposes of any particular sitting.

(3) The presiding member at any sitting of the Tribunal shall be—

- (a) if the Tribunal is so constituted as to include the President of the Tribunal—the President of the Tribunal;
- (b) if the Tribunal is so constituted as not to include the President of the Tribunal but is so constituted as to include the Deputy President of the Tribunal—the Deputy President of the Tribunal; or
- (c) if the Tribunal is so constituted as to include neither the President nor the Deputy President of the Tribunal—such member of the Tribunal as the President of the Tribunal nominates.

**Sittings of the Tribunal**

46. If the Governor has appointed 6 or more members, more than one sitting of the Tribunal may be held at the same time.

**Procedure at sittings of the Tribunal**

47. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Act, the regulations and the rules of the Tribunal, be as determined by the Tribunal.

**Voting**

48. (1) Questions arising at a sitting of the Tribunal shall be determined by a majority of the votes of the members present and voting.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(2) The member presiding at any sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

**Division 2—Proceedings before the Tribunal**

**Proceedings generally**

49. (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Proceedings before the Tribunal shall be by way of a new hearing and no weight shall be given to the decision the subject of the proceedings.

(3) Proceedings before the Tribunal shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

**Preliminary conferences**

50. The Tribunal or, if the Tribunal so directs, a member of the Tribunal may, before formally commencing to hear any proceedings, confer informally with the parties to the proceedings and make any determination with respect to the decision that is agreed to by the parties to the proceedings.

**Lodging of material documents with the Tribunal**

51. (1) A person who has made a decision that is the subject of an appeal to the Tribunal shall, within the period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

(2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, on request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

(3) If the Tribunal is of the opinion that other particular documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing—



*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) stating that the Tribunal is of that opinion; and
  - (b) directing the person to lodge with the Tribunal, within a period of time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control.
- (4) A person shall not fail to comply with a direction under this section.

Penalty: 5 penalty units.

**Proceedings to be open to the public**

52. Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in the absence of the public.

**Publication of names etc.**

53. (1) A person shall not, except with the consent of the Tribunal, publish or broadcast the name of any child—

- (a) who appears as a witness before the Tribunal in any proceedings;
- (b) to whom any proceedings before the Tribunal relate; or
- (c) who is mentioned or otherwise involved in any proceedings before the Tribunal,

whether before or after the proceedings are disposed of.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

**Right of appearance**

54. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by a barrister or solicitor or, by leave of the Tribunal, by an agent.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(2) The Tribunal, in proceedings before it with respect to a child, may appoint a person to act as guardian ad litem for the child.

(3) The Tribunal, in proceedings before it relating to a child, may, if it appears to the Tribunal that the child ought to be separately represented—

- (a) order that the child be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subsection (3) (b).

**Presentation of cases**

55. A party to proceedings before the Tribunal may—

- (a) call and examine any witness;
- (b) cross-examine any witness called by another party;
- (c) examine any copy of any document or part of a document lodged with the Tribunal under section 51;
- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal; and
- (f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

**Presiding member may compel attendance of witnesses etc.**

56. (1) The member presiding at a sitting of the Tribunal may—

- (a) by instrument in writing require any person on whom the instrument is served personally or by post—
  - (i) to appear before the Tribunal for the purpose of giving evidence; or
  - (ii) to produce to the Tribunal any document that is relevant to the proceedings before the Tribunal, at a time, date and place specified in the instrument;
- (b) require a person who appears before the Tribunal to be sworn for the purpose of giving evidence on oath; and
- (c) administer such an oath.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

**SCHEDULE 1—AMENDMENTS—*continued***

(2) When a document is produced to the Tribunal pursuant to a requirement made under this section, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

**Witnesses to answer questions**

57. (1) A member of the Tribunal may require a person who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

(2) A person is not excused from answering such a question on the ground that the answer might tend to incriminate the person but, where the person claims (before answering the question) that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under section 58 or proceedings in relation to a charge of perjury in respect of the answer.

**Refusal to attend or to answer questions etc.**

58. A person shall not—

- (a) fail to comply with a requirement made of the person under section 56 or 57 to the extent to which the person is lawfully able to comply with the requirement; or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing before the Tribunal.

Penalty: 5 penalty units.

**Witnesses' expenses**

59. A person (other than an officer) who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of the person.

**Adjournments**

60. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

(2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function of adjourning proceedings.

Community Welfare (Disability Services and Guardianship) Amendment 1987SCHEDULE 1—AMENDMENTS—*continued***Division 3—Decisions of the Tribunal****Decisions of the Tribunal to set out reasons etc.**

61. (1) A decision of the Tribunal with respect to proceedings before it—

- (a) shall be in the form of an instrument in writing that includes the reasons for the decision; and
- (b) shall be signed by the member who presided at the sitting of the Tribunal at which the decision was made.

(2) No decision of the Tribunal shall be vitiated merely because of any informality or want of form.

**Costs**

62. (1) The Tribunal may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

(3) A certificate purporting to be signed by the President, the Deputy President or the Registrar of the Tribunal and containing a statement as to any matters relating to the award of costs under this section is admissible in evidence and is *prima facie* evidence of those matters.

**Powers of the Tribunal in respect of appeals**

63. (1) The Tribunal, in determining an appeal, has the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

- (a) the frequency of appeals made by or on behalf of that person; or
- (b) any other matter that the Tribunal considers relevant,

determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.

**SCHEDULE 1—AMENDMENTS—*continued*****Effect of decisions of the Tribunal**

64. Subject to any appeal to the Supreme Court under Division 4, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

**Operation and implementation of decisions pending appeal**

65. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(2) The Tribunal or the President of the Tribunal may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account—

- (a) the interests of any persons who may be affected by the determination of the appeal;
- (b) any submission made by or on behalf of the person who made the decision to which the appeal relates; and
- (c) the public interest,

make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

(4) Subject to subsection (5), neither the Tribunal nor the President of the Tribunal shall—

- (a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (i) the person who made the decision to which the appeal relates;
- (ii) the person who requested the making of the order under subsection (2); and
- (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders,

have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President of the Tribunal from making an order without giving to any person referred to in that subsection a reasonable opportunity to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity.

(6) If such an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

(7) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect—
  - (i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or
  - (ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

**Division 4—Appeals from decisions of the Tribunal****Appeals to the Supreme Court**

66. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under this section shall be instituted—

(a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or

(b) within such further time as the Supreme Court may allow.

(4) The Supreme Court shall hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

(a) an order affirming or setting aside the decision of the Tribunal; and

(b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

(6) Subject to any interlocutory order made by the Supreme Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

**Division 5—General****Power of entry**

67. The provisions of—

(a) section 83 of the Children (Care and Protection) Act 1987; and

(b) section 93 of the Disability Services and Guardianship Act 1987,

apply to a member of the Tribunal in the same way as they apply to an authorised officer within the meaning of those sections, but as if the powers conferred by those sections were conferred on the member for the purpose of the member's functions as such a member instead of for the purposes specified in those sections.

*Community Welfare (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

**Misconduct in proceedings before the Tribunal**

68. (1) A person shall not, in proceedings before the Tribunal—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during proceedings before the Tribunal;
- (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
- (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

Penalty: 5 penalty units.

(2) The Tribunal may, in proceedings before it, direct a person who does any thing referred to in subsection (1) to leave the place where the proceedings are being conducted.

(3) A person to whom such a direction is given shall not fail to comply with the direction.

Penalty: 5 penalty units.

**Record of proceedings**

69. (1) The member presiding at a sitting of the Tribunal shall cause a record to be kept of any decision made at the sitting and of the reasons for that decision.

(2) The regulations may make further provision with respect to the keeping of records of proceedings before the Tribunal.

**Authentication of documents etc.**

70. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President, the Deputy President or the Registrar of the Tribunal.

(2) Judicial notice shall be taken of the signature of the President, the Deputy President or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

**Certain proceedings prohibited**

71. (1) No proceedings shall lie against the Tribunal or any of its members or members of staff for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Tribunal, member or member of staff has acted in good faith and with reasonable care.



*Community Welfare (Disability Services and Guardianship) Amendment 1987*

**SCHEDULE 1—AMENDMENTS—*continued***

(2) Any member of the Tribunal who is a judicial officer (within the meaning of the Judicial Officers Act 1986) shall, in the execution of his or her functions as a member of the Tribunal, have the same protection and immunity as he or she has as such an officer.

**Application of the Defamation Act 1974**

72. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

**Rules**

73. (1) Five members nominated by the President of the Tribunal (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

(2) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

**Reports**

74. (1) The President of the Tribunal shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the President of the Tribunal considers appropriate to include in the report.

**PART 7—MISCELLANEOUS**

**Limitation of personal liability**

75. No matter or thing done by the Minister, the Director-General, an officer or any other person shall, if the matter or thing was done in good faith and with reasonable care for the purposes of executing the community welfare legislation, subject the Minister, the Director-General, the officer or that other person personally to any action, liability, claim or demand.

**Disclosure of information**

76. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made—

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- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

**Proceedings for offences**

77. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

78. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any council or committee and its members and functions;
- (b) the Community Welfare Fund;
- (c) the Home Care Service;
- (d) the Community Disaster Relief Fund; and
- (e) the Community Welfare Appeals Tribunal.

## (5) Schedule 3—

After Schedule 2, insert:

**SCHEDULE 3—PROVISIONS RELATING TO THE TRIBUNAL**

(Sec. 43)

**Age of members**

1. A person of or above the age of 65 years is not eligible to be appointed as a member of the Tribunal.

**Term and vacation of office etc.**

2. (1) A member of the Tribunal shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or for such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for re-appointment.

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(2) The Governor may remove a member of the Tribunal from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member of the Tribunal shall be deemed to have vacated office—

- (a) if the member dies;
- (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (d) on the member's reaching the age of 65 years; or
- (e) if the member is removed from office by the Governor.

**Remuneration etc.**

3. (1) A member of the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Tribunal and a member is not, as a member, subject to that Act.

**President and Deputy President**

4. (1) The President or Deputy President of the Tribunal holds office until ceasing to be a member and is eligible, if re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the President's functions—

- (a) if the President—
  - (i) delegates those functions to the Deputy President under clause 5;
  - (ii) is absent from New South Wales; or
  - (iii) is prevented by illness or other incapacity from exercising those functions; or
- (b) if there is no person holding the office of President.

(3) While the Deputy President of the Tribunal is authorised to exercise the President's functions, a reference in this Act to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President of the Tribunal exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President of the Tribunal to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President while exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

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SCHEDULE 1—AMENDMENTS—*continued*

**Delegation**

5. The President of the Tribunal may delegate to the Deputy President the exercise of any of the President's functions, other than this power of delegation.