

FIRST PRINT

**MENTAL HEALTH (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 Mental Health Act 1983 so as—

- (a) to make provision with respect to the carrying out of certain medical treatment on patients under that Act; and
- (b) 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) omits the definition of “intellectually disabled person under guardianship” from section 4 of the Principal Act.

Schedule 1 (2) and (3) amend sections 86 and 108 of the Principal Act as a consequence of the amendment effected by Schedule 1 (1).

Schedule 1 (4) amends section 178 of the Principal Act as a consequence of the amendment effected by Schedule 1 (5).

Schedule 1 (5) inserts a new section 183A into the Principal Act. The proposed section 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 declared by the regulations under the Principal Act to be special medical treatment) on a patient under that Act otherwise than (in the case of treatment carried out by a registered medical practitioner) in order to save the patient’s life or to prevent serious damage to the patient’s health or otherwise than with the consent of the Mental Health Review Tribunal.

*Mental Health (Disability Services and Guardianship) Amendment 1987*

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Schedule 1 (6) amends section 197 of the Principal Act (which deals with proceedings for offences under that Act) so as to ensure that proceedings for an offence arising under proposed section 183A (1) are dealt with on indictment rather than summarily before a Local Court.

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# MENTAL HEALTH (DISABILITY SERVICES AND GUARDIANSHIP) AMENDMENT BILL 1987

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 178, 1983

SCHEDULE 1—AMENDMENTS

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**MENTAL HEALTH (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Mental Health Act 1983 in connection with the carrying out of certain medical treatment on patients under that Act; and for other purposes.

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*Mental Health (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 Mental Health (Disability Services and Guardianship) Amendment Act 1987.

**5 Commencement**

2. (1) Subject to this section, this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1), and section 3 in its application to that provision, shall commence on the commencement of Part 3 of the Disability Services and  
10 Guardianship Act 1987.

(3) The provisions of Schedule 1 (2), and section 3 in its application to those provisions, shall commence on—

- (a) the commencement of Part 3 of the Disability Services and Guardianship Act 1987; or  
15 (b) the commencement of Part V of the Mental Health Act 1983, whichever is the later.

(4) Schedule 1 (3), and section 3 in its application to that provision, shall commence on—

- (a) the commencement of Part 3 of the Disability Services and  
20 Guardianship Act 1987; or  
(b) the commencement of Part VI of the Mental Health Act 1983, whichever is the later.

(5) The provisions of Schedule 1 (4)–(6), and section 3 in its application to those provisions, shall commence on the commencement of Part 5 of the  
25 Disability Services and Guardianship Act 1987.

**Amendment of Act No. 178, 1983**

3. The Mental Health Act 1983 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec.3)

30 (1) Section 4 (**Definitions**)—

Section 4 (1)—

Omit the definition of “intellectually disabled person under guardianship”.

*Mental Health (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (2) Section 86 (**Proceedings for inquiry before Magistrate**)—
- (a) Section 86 (2) (b)—  
Omit “in respect of a person other than a person to whom paragraph (e) applies.”.
- 5 (b) Section 86 (2) (e)—  
Omit the paragraph.
- (3) Section 108 (**Discharge of certain patients on relative’s or friend’s application**)—
- Section 108 (2) (c)—
- 10 Omit the paragraph, insert instead:
- (c) where the patient is a person under guardianship within the meaning of Part 3 of the Disability Services and Guardianship Act 1987—that person’s guardian consents to the application.
- 15 (4) Section 178 (**Application for consent**)—
- (a) Section 178 (2) (a)—  
Omit “except as provided by paragraph (b) (iii).”.
- (b) Section 178 (2) (b) (i)—  
Omit “operation;”, insert instead “operation; or”.
- 20 (c) Section 178 (2) (b) (ii)—  
Omit “person; or”, insert instead “person.”.
- (d) Section 178 (2) (b) (iii)—  
Omit the subparagraph.
- (5) Section 183A—
- 25 After section 183, insert:  
**Special medical treatment**  
183A. (1) A person shall not carry out special medical treatment on a patient otherwise than in accordance with this section.
- 30 Penalty on indictment: imprisonment for 7 years.
- (2) A registered medical practitioner may carry out special medical treatment on a patient 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 patient in order to save the patient’s life or to prevent serious damage to the patient’s health; or
- 35 (b) the Tribunal consents to the carrying out of the treatment.

*Mental Health (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(3) Sections 177–179 apply to and in respect of the carrying out of special medical treatment in the same way as they apply to and in respect of the performance of a surgical operation.

5 (4) Consent to the carrying out of special medical treatment on a patient shall not be granted if the patient is under the age of 16 years.

(5) In this section—

“medical treatment” includes—

- 10 (a) any medical procedure, operation or examination; and  
 (b) any treatment, procedure, operation or examination declared by the regulations to be medical treatment for the purposes of this section;

“special medical treatment” means—

- 15 (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.

20 (6) Section 197 (**Proceedings for offences**)—

(a) Section 197—

Omit “Proceedings”, insert instead “Except as provided by subsection (2), proceedings”.

(b) Section 197 (2)—

25 At the end of section 197, insert:

(2) Proceedings for an offence under section 183A (1) shall be dealt with on indictment.



**MENTAL HEALTH (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 260**

NEW SOUTH WALES

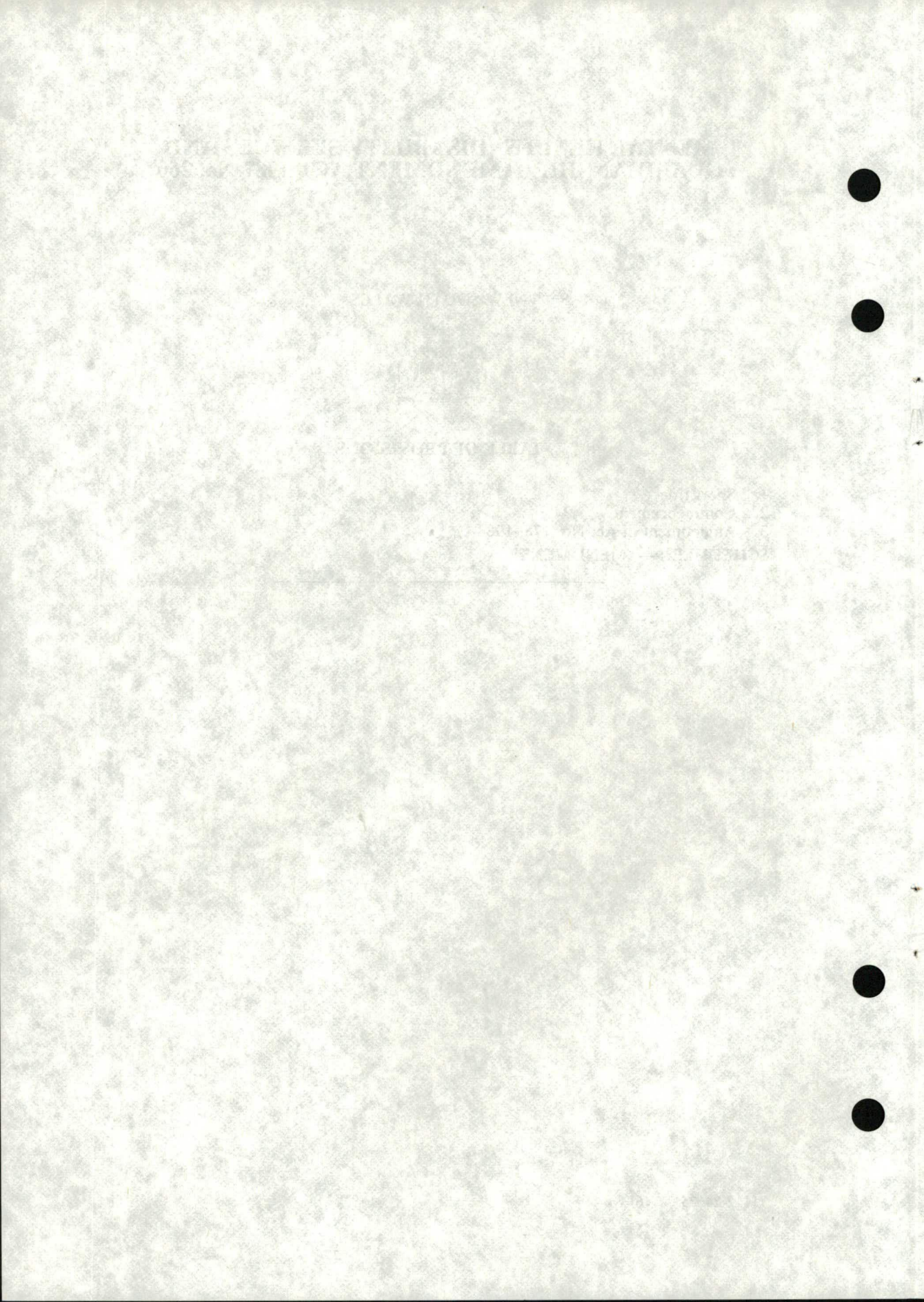


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 178, 1983

SCHEDULE 1—AMENDMENTS

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**MENTAL HEALTH (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 260**

NEW SOUTH WALES



**Act No. 260, 1987**

An Act to amend the Mental Health Act 1983 in connection with the carrying out of certain medical treatment on patients under that Act; and for other purposes. [Assented to 16 December 1987]

*Mental Health (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 Mental Health (Disability Services and Guardianship) Amendment Act 1987.

**Commencement**

2. (1) Subject to this section, this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1), and section 3 in its application to that provision, shall commence on the commencement of Part 3 of the Disability Services and Guardianship Act 1987.

(3) The provisions of Schedule 1 (2), and section 3 in its application to those provisions, shall commence on—

(a) the commencement of Part 3 of the Disability Services and Guardianship Act 1987; or

(b) the commencement of Part V of the Mental Health Act 1983,

whichever is the later.

(4) Schedule 1 (3), and section 3 in its application to that provision, shall commence on—

(a) the commencement of Part 3 of the Disability Services and Guardianship Act 1987; or

(b) the commencement of Part VI of the Mental Health Act 1983,

whichever is the later.

(5) The provisions of Schedule 1 (4)–(6), and section 3 in its application to those provisions, shall commence on the commencement of Part 5 of the Disability Services and Guardianship Act 1987.

**Amendment of Act No. 178, 1983**

3. The Mental Health Act 1983 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec.3)

(1) Section 4 (**Definitions**)—

Section 4 (1)—

Omit the definition of “intellectually disabled person under guardianship”.

*Mental Health (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (2) Section 86 (**Proceedings for inquiry before Magistrate**)—
- (a) Section 86 (2) (b)—  
Omit “in respect of a person other than a person to whom paragraph (e) applies,”.
- (b) Section 86 (2) (e)—  
Omit the paragraph.
- (3) Section 108 (**Discharge of certain patients on relative’s or friend’s application**)—  
Section 108 (2) (c)—  
Omit the paragraph, insert instead:
- (c) where the patient is a person under guardianship within the meaning of Part 3 of the Disability Services and Guardianship Act 1987—that person’s guardian consents to the application.
- (4) Section 178 (**Application for consent**)—
- (a) Section 178 (2) (a)—  
Omit “except as provided by paragraph (b) (iii),”.
- (b) Section 178 (2) (b) (i)—  
Omit “operation;”, insert instead “operation; or”.
- (c) Section 178 (2) (b) (ii)—  
Omit “person; or”, insert instead “person,”.
- (d) Section 178 (2) (b) (iii)—  
Omit the subparagraph.
- (5) Section 183A—  
After section 183, insert:  
**Special medical treatment**  
183A. (1) A person shall not carry out special medical treatment on a patient otherwise than in accordance with this section.  
Penalty on indictment: imprisonment for 7 years.  
(2) A registered medical practitioner may carry out special medical treatment on a patient 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 patient in order to save the patient’s life or to prevent serious damage to the patient’s health; or
- (b) the Tribunal consents to the carrying out of the treatment.

*Mental Health (Disability Services and Guardianship) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(3) Sections 177–179 apply to and in respect of the carrying out of special medical treatment in the same way as they apply to and in respect of the performance of a surgical operation.

(4) Consent to the carrying out of special medical treatment on a patient shall not be granted if the patient is under the age of 16 years.

(5) In this section—

“medical treatment” includes—

- (a) any medical procedure, operation or examination; and
- (b) any treatment, procedure, operation or examination 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.

(6) Section 197 (**Proceedings for offences**)—

(a) Section 197—

Omit “Proceedings”, insert instead “Except as provided by subsection (2), proceedings”.

(b) Section 197 (2)—

At the end of section 197, insert:

(2) Proceedings for an offence under section 183A (1) shall be dealt with on indictment.



