

**PROTECTED ESTATES (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 Protected Estates Act 1983 so as—

- (a) to enable the Guardianship Board constituted under the proposed Disability Services and Guardianship Act 1987 to make orders committing the estates of persons under guardianship to the management of the Protective Commissioner; and
- (b) to make other minor, consequential and ancillary amendments.

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) inserts definitions of "Board" and "person under guardianship" into section 4 (1) of the Principal Act.

Schedule 1 (2) amends section 6 of the Principal Act (which deals with inquiries referred to the Protective Commissioner) so as to enable the Guardianship Board to refer to the Protective Commissioner inquiries concerning persons under guardianship and persons to whom proceedings before it relate.

Schedule 1 (3) inserts a new section 17A into the Principal Act. The proposed new section will enable the Guardianship Board to order that the estate of a person under guardianship be subject to management under the Principal Act.

Protected Estates (Disability Services and Guardianship) Amendment 1987

Schedule 1 (4) amends section 19 of the Principal Act (which deals with the making of subsequent applications for orders placing a person's estate under management) so as to enable the Guardianship Board to make an order of the kind referred to in proposed section 17A on the application of any person having an interest in the matter and at any time after it has made a guardianship order in respect of a person.

Schedule 1 (5) amends section 20 of the Principal Act (which deals with the making of interim orders) so as to enable the Guardianship Board to make interim orders in respect of a person under guardianship or a person to whom proceedings before it relate pending further consideration of the person's capability to manage his or her affairs.

Schedule 1 (6) amends section 21 of the Principal Act (which deals with appeals against orders placing the estate of a person under guardianship under the management of the Protective Commissioner) so as to extend the operation of that section to orders made by the Guardianship Board.

Schedule 1 (7) inserts a new section 22A into the Principal Act. The proposed new section enables the Guardianship Board to make, in respect of a person the subject of an order under proposed section 17A or 19 (3), an order appointing a suitable person as the manager of that person's estate or an order committing the management of that person's estate to the Protective Commissioner.

Schedule 1 (8) amends section 30 of the Principal Act (which deals with the powers of the Protective Commissioner in respect of estates managed by other persons) so as to ensure that the Protective Commissioner has the same powers in relation to an estate for which a manager is appointed under proposed section 22A as he or she has in relation to an estate for which a manager is appointed under section 22 of the Principal Act.

Schedule 1 (9) amends section 31 of the Principal Act (which deals with the giving of security) so as to extend the operation of that section to orders made by the Guardianship Board and so as to make it clear that securities are to be given to the Protective Commissioner.

Schedule 1 (10) amends section 34 of the Principal Act (which provides for the termination of orders under that Act) so as to extend the operation of that section to orders made by the Guardianship Board.

Schedule 1 (11) amends section 35 of the Principal Act (which enables the Supreme Court to revoke orders under that Act) so as to extend the operation of that section to orders made by the Guardianship Board.

Schedule 1 (12) inserts a new section 35A into the Principal Act. The proposed new section will enable the Guardianship Board to revoke an order made by it that the estate of a person be subject to management under the Principal Act.

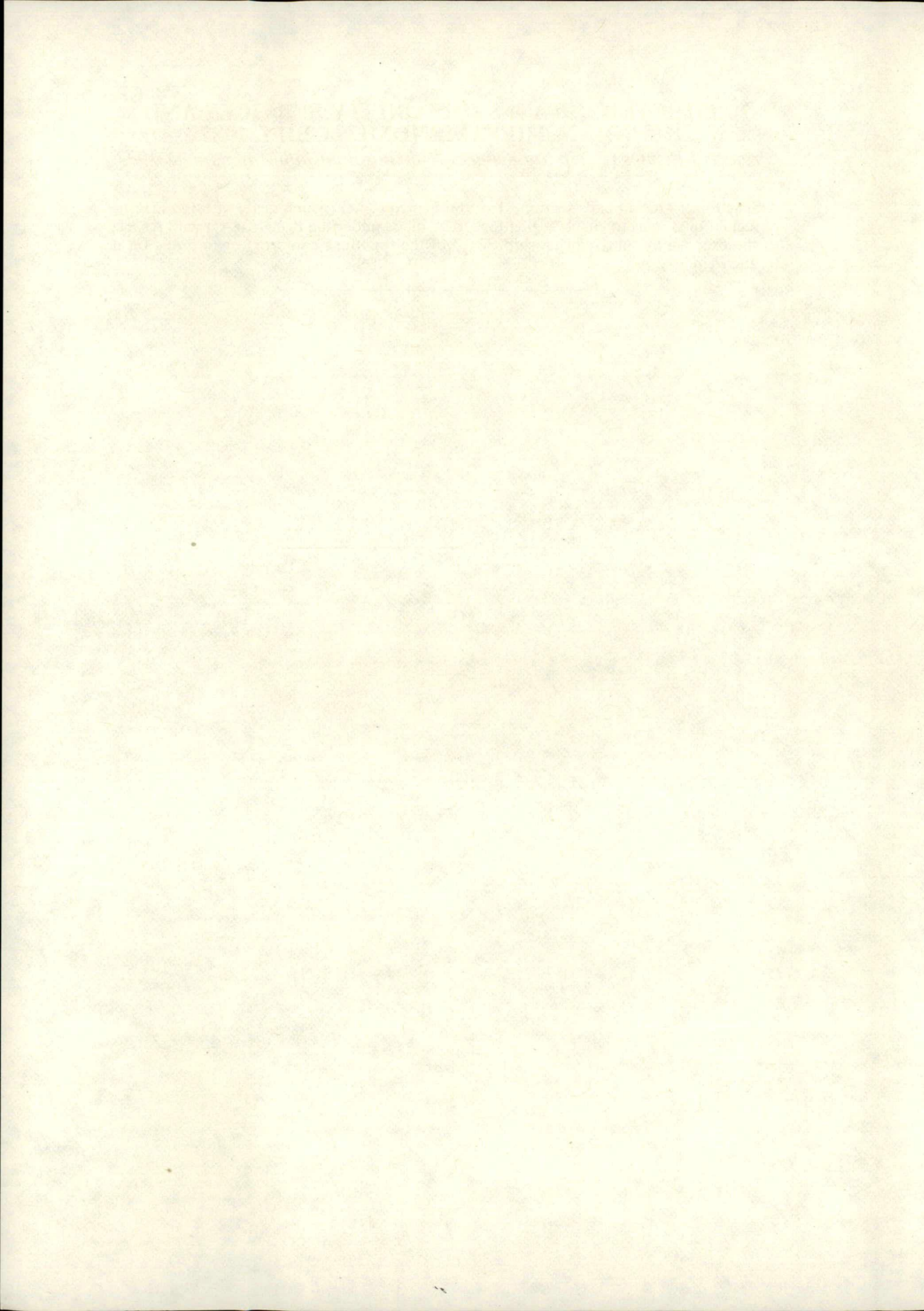
Schedule 1 (13) amends section 38 of the Principal Act (which enables the Protective Commissioner to terminate certain orders under that Act) so as to extend the operation of that section to certain orders made by the Guardianship Board.

Schedule 1 (14) amends section 41 of the Principal Act (which provides for situations where the Protective Commissioner elects not to terminate certain orders under that Act) so as to extend the operation of that section to certain orders made by the Guardianship Board.

Schedule 1 (15) amends section 57 of the Principal Act (which provides for the application of surplus income generated from the common fund kept under that Act) so as to enable such income to be applied towards the administrative costs incurred by the Protective Commissioner in his or her capacity as the Public Guardian under the proposed Disability Services and Guardianship Act 1987.

Protected Estates (Disability Services and Guardianship) Amendment 1987

Schedule 1 (16) amends section 81 of the Principal Act (which deals with the making of regulations) so as to enable regulations to be made under the Principal Act with respect to the exercise by the Guardianship Board of the functions conferred or imposed on it by the Principal Act.



**PROTECTED ESTATES (DISABILITY SERVICES AND
GUARDIANSHIP) AMENDMENT BILL 1987**

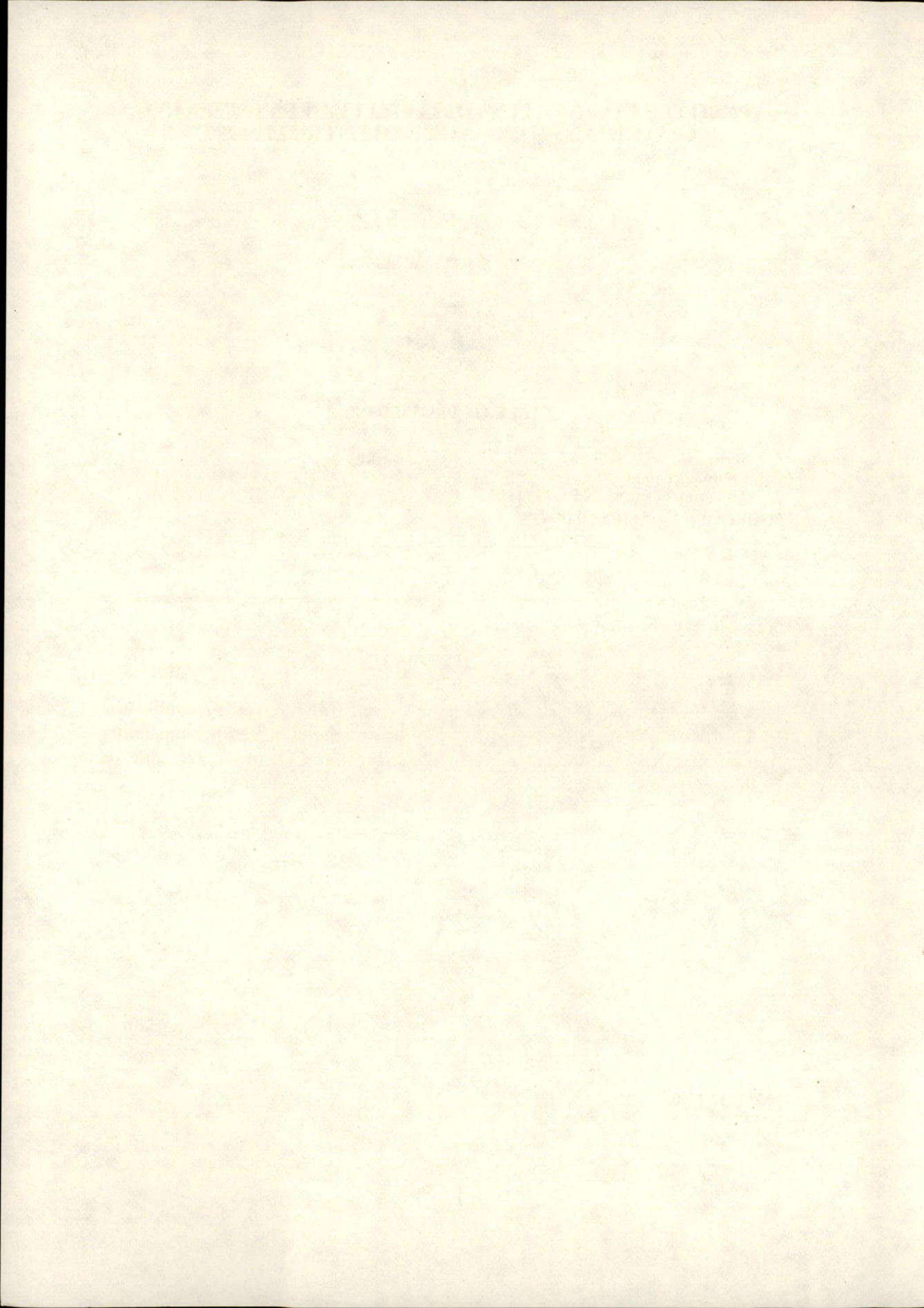
NEW SOUTH WALES



TABLE OF PROVISIONS

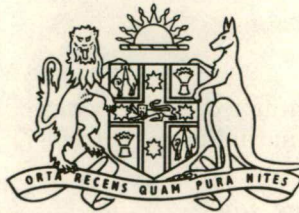
1. Short title
2. Commencement
3. Amendment of Act No. 179, 1983

SCHEDULE 1—AMENDMENTS



**PROTECTED ESTATES (DISABILITY SERVICES AND
GUARDIANSHIP) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Protected Estates Act 1983 so as to enable the Guardianship Board to make orders committing the estates of persons under guardianship to the management of the Protective Commissioner; and for other purposes.

Protected Estates (Disability Services and Guardianship) Amendment 1987

The Legislature of New South Wales enacts:

Short title

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

5 Commencement

2. This Act shall commence on the commencement of Part 3 of the Disability Services and Guardianship Act 1987.

Amendment of Act No. 179, 1983

3. The Protected Estates 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)—

Insert, in appropriate alphabetical order, the following definitions:

15

“Board” means the Guardianship Board constituted under the Disability Services and Guardianship Act 1987;

“person under guardianship” has the same meaning as it has in Part 3 of the Disability Services and Guardianship Act 1987;

(2) Section 6 (**Inquiries may be referred to the Protective Commissioner**)—

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Section 6 (2)—

At the end of section 6, insert:

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(2) The Board may, in relation to any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987, request the Protective Commissioner to conduct such inquiry as it may specify concerning—

- (a) a person to whom an application under that Part relates;
- (b) a person under guardianship; or
- (c) the estate of any such person,

and to report to the Board the result of the inquiry.

*Protected Estates (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 17A—

After section 17, insert:

Consideration of capability of persons under guardianship to manage affairs

5 17A. (1) Where the Board makes a guardianship order under Part 3 of the Disability Services and Guardianship Act 1987 in respect of a person, it may consider the person's capability to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the estate of the person be subject to management under this Act.

10 (2) Where, in any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987, the Board decides not to make a guardianship order in respect of a person, it may nevertheless consider the person's capability to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the estate of the person be subject to management under this Act.

(4) Section 19 (**Subsequent applications**)—

Section 19 (3), (4)—

20 After section 19 (2), insert:

 (3) The Board may, on the application of any person having, in the opinion of the Board, a sufficient interest in the matter and whether or not it has previously considered the question, consider the capability of a person under guardianship to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the person's estate be subject to management under this Act.

 (4) On an application under subsection (3) in relation to a person under guardianship, the Board may make an order that the estate of the person be subject to management under this Act even though there may have been no change in the person's capability to manage his or her affairs since that capability was last considered by the Board.

(5) Section 20 (**Interim orders**)—

35 (a) Section 20 (1A)—

After section 20 (1), insert:

 (1A) The Board may, in relation to any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987 and if it appears to the Board necessary or convenient to do so, make an interim order under this Division for a specified period in respect of—

40

*Protected Estates (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) a person to whom an application under that Part relates;
or
- (b) a person under guardianship,
pending further consideration of the person's capability to manage
his or her affairs.
- 5 (b) Section 20 (2)—
Omit "in respect of a patient".
- (c) Section 20 (2)—
Omit "in respect of the patient".
- 10 (6) Section 21 (**Appeals against orders**)—
- (a) Section 21 (1)—
After "Where", insert "the Board,".
- (b) Section 21 (4)—
15 Omit "The Tribunal and any member of the Tribunal shall not",
insert instead "Neither the Board or any member of the Board,
nor the Tribunal or any member of the Tribunal, shall".
- (c) Section 21 (4)—
After "order of", insert "the Board or".
- (7) Section 22A—
20 After section 22, insert:
**Management of estates of protected persons who are persons under
guardianship etc.**
22A. The Board may, by order, appoint a suitable person as
25 manager of the estate of a protected person in respect of whom it
has made an order under this Part or may, by such an order,
commit the management of the estate of any such protected
person to the Protective Commissioner.
- (8) Section 30 (**Functions of Protective Commissioner under this
Division**)—
30 Section 30 (3)—
After section 30 (2), insert:
35 (3) The Protective Commissioner may exercise the jurisdiction
and powers of the Court, as referred to in subsection (1), in respect
of an estate for which a manager has been appointed by the Board
under section 22A in the same way as the Protective
Commissioner may exercise that jurisdiction and those powers in
respect of an estate for which a manager has been appointed by
the Court under section 22.

*Protected Estates (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (9) Section 31 (**Security in respect of management**)—
 (a) Section 31 (1)—
 After “Court”, insert “or the Board”.
 (b) Section 31 (1)—
 5 After “security”, insert “to the Protective Commissioner”.
- (10) Section 34 (**Termination of management**)—
 Section 34 (1) (b)—
 Before “a patient”, insert “a person under guardianship (being a
 10 person the management of whose estate is committed to the
 Protective Commissioner) or”.
- (11) Section 35 (**Orders where person no longer incapable**)—
 Section 35 (1)—
 After “while”, insert “a person under guardianship or”.
- (12) Section 35A—
 15 After section 35, insert:
Revocation of order by the Board
 35A. Where, on application to it—
 (a) by a protected person whose estate is subject to
 management under this Act by virtue of an order made by
 20 the Board;
 (b) by the Protective Commissioner in respect of such a
 person; or
 (c) by the manager of the estate of such a person,
 25 the Board is satisfied that the protected person is capable of
 managing his or her affairs, it may revoke the order that the estate
 of the person be subject to management under this Act.
- (13) Section 38 (**Discharge of patient from hospital etc.**)—
 (a) Section 38 (1)—
 Before “a patient” where firstly occurring, insert “a person under
 30 guardianship (being a person the management of whose estate is
 committed to the Protective Commissioner) or”.
 (b) Section 38 (1)—
 Before “a patient” where secondly occurring, insert “such a person
 under guardianship or”.
- 35 (14) Section 41 (**Continuation of management after discharge etc.**)—
 (a) Section 41 (1) (a)—

*Protected Estates (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

Before “a patient” where firstly occurring, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

(b) Section 41 (1) (a)—

5 Before “a patient” where secondly occurring, insert “such a person under guardianship or”.

(c) Section 41 (1)—

Before “the Tribunal”, insert “the Board,”.

(d) Section 41 (1)—

10 After “Court”, insert “, as the case may be,”.

(e) Section 41 (2)—

Before “a patient” where firstly occurring, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

15 (f) Section 41 (2)—

Before “a patient” where secondly occurring, insert “such a person under guardianship or”.

(15) Section 57 (**Surplus income from common fund**)—

20 After “Commissioner” where lastly occurring, insert “, including the functions conferred or imposed on the Protective Commissioner in his or her capacity as the Public Guardian under the Disability Services and Guardianship Act 1987”.

(16) Section 81 (**Regulations**)—

Section 81 (1A)—

25 After section 81 (1), insert:

(1A) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to the exercise by the Board of the functions conferred or imposed on it by this Act.

**PROTECTED ESTATES (DISABILITY SERVICES AND
GUARDIANSHIP) AMENDMENT ACT 1987 No. 261**

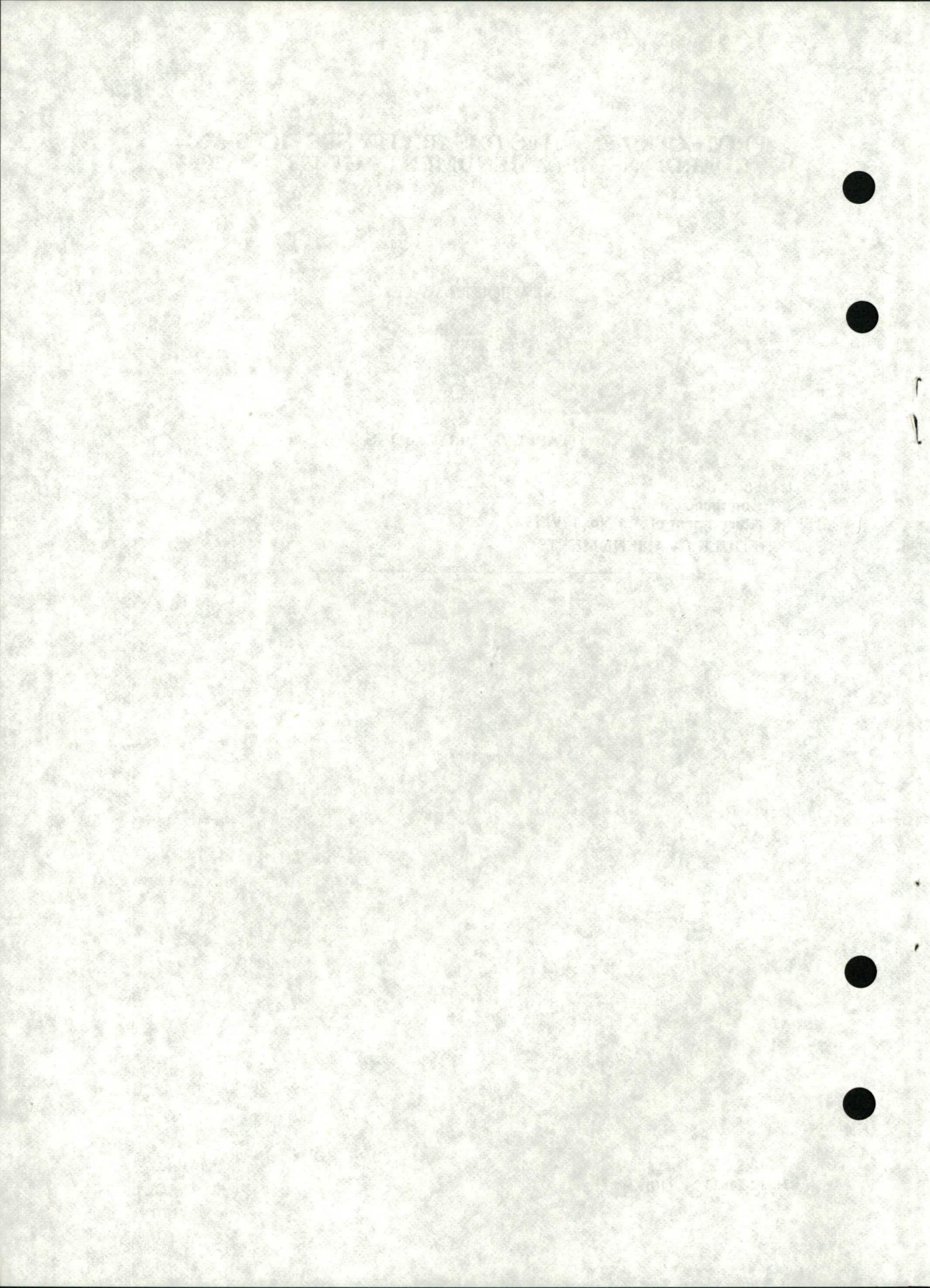
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 179, 1983

SCHEDULE 1—AMENDMENTS



**PROTECTED ESTATES (DISABILITY SERVICES AND
GUARDIANSHIP) AMENDMENT ACT 1987 No. 261**

NEW SOUTH WALES



Act No. 261, 1987

An Act to amend the Protected Estates Act 1983 so as to enable the Guardianship Board to make orders committing the estates of persons under guardianship to the management of the Protective Commissioner; and for other purposes. [Assented to 16 December 1987]

Protected Estates (Disability Services and Guardianship) Amendment 1987

The Legislature of New South Wales enacts:

Short title

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

Commencement

2. This Act shall commence on the commencement of Part 3 of the Disability Services and Guardianship Act 1987.

Amendment of Act No. 179, 1983

3. The Protected Estates Act 1983 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (Definitions)—

Section 4 (1)—

Insert, in appropriate alphabetical order, the following definitions:

“Board” means the Guardianship Board constituted under the Disability Services and Guardianship Act 1987;

“person under guardianship” has the same meaning as it has in Part 3 of the Disability Services and Guardianship Act 1987;

(2) Section 6 (Inquiries may be referred to the Protective Commissioner)—

Section 6 (2)—

At the end of section 6, insert:

(2) The Board may, in relation to any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987, request the Protective Commissioner to conduct such inquiry as it may specify concerning—

- (a) a person to whom an application under that Part relates;
- (b) a person under guardianship; or
- (c) the estate of any such person,

and to report to the Board the result of the inquiry.

Protected Estates (Disability Services and Guardianship) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 17A—

After section 17, insert:

Consideration of capability of persons under guardianship to manage affairs

17A. (1) Where the Board makes a guardianship order under Part 3 of the Disability Services and Guardianship Act 1987 in respect of a person, it may consider the person's capability to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the estate of the person be subject to management under this Act.

(2) Where, in any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987, the Board decides not to make a guardianship order in respect of a person, it may nevertheless consider the person's capability to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the estate of the person be subject to management under this Act.

(4) Section 19 (**Subsequent applications**)—

Section 19 (3), (4)—

After section 19 (2), insert:

(3) The Board may, on the application of any person having, in the opinion of the Board, a sufficient interest in the matter and whether or not it has previously considered the question, consider the capability of a person under guardianship to manage his or her affairs and, if satisfied that the person is not capable of managing his or her affairs, may order that the person's estate be subject to management under this Act.

(4) On an application under subsection (3) in relation to a person under guardianship, the Board may make an order that the estate of the person be subject to management under this Act even though there may have been no change in the person's capability to manage his or her affairs since that capability was last considered by the Board.

(5) Section 20 (**Interim orders**)—

(a) Section 20 (1A)—

After section 20 (1), insert:

(1A) The Board may, in relation to any proceedings before the Board under Part 3 of the Disability Services and Guardianship Act 1987 and if it appears to the Board necessary or convenient to do so, make an interim order under this Division for a specified period in respect of—

Protected Estates (Disability Services and Guardianship) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (a) a person to whom an application under that Part relates;
or
- (b) a person under guardianship,
pending further consideration of the person's capability to manage
his or her affairs.
- (b) Section 20 (2)—
Omit "in respect of a patient".
- (c) Section 20 (2)—
Omit "in respect of the patient".
- (6) Section 21 (**Appeals against orders**)—
 - (a) Section 21 (1)—
After "Where", insert "the Board,".
 - (b) Section 21 (4)—
Omit "The Tribunal and any member of the Tribunal shall not",
insert instead "Neither the Board or any member of the Board,
nor the Tribunal or any member of the Tribunal, shall".
 - (c) Section 21 (4)—
After "order of", insert "the Board or".
- (7) Section 22A—
After section 22, insert:

**Management of estates of protected persons who are persons under
guardianship etc.**

 22A. The Board may, by order, appoint a suitable person as
manager of the estate of a protected person in respect of whom it
has made an order under this Part or may, by such an order,
commit the management of the estate of any such protected
person to the Protective Commissioner.
- (8) Section 30 (**Functions of Protective Commissioner under this
Division**)—
Section 30 (3)—
After section 30 (2), insert:

*Protected Estates (Disability Services and Guardianship) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(3) The Protective Commissioner may exercise the jurisdiction and powers of the Court, as referred to in subsection (1), in respect of an estate for which a manager has been appointed by the Board under section 22A in the same way as the Protective Commissioner may exercise that jurisdiction and those powers in respect of an estate for which a manager has been appointed by the Court under section 22.

(9) Section 31 (**Security in respect of management**)—

(a) Section 31 (1)—

After “Court”, insert “or the Board”.

(b) Section 31 (1)—

After “security”, insert “to the Protective Commissioner”.

(10) Section 34 (**Termination of management**)—

Section 34 (1) (b)—

Before “a patient”, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

(11) Section 35 (**Orders where person no longer incapable**)—

Section 35 (1)—

After “while”, insert “a person under guardianship or”.

(12) Section 35A—

After section 35, insert:

Revocation of order by the Board

35A. Where, on application to it—

- (a) by a protected person whose estate is subject to management under this Act by virtue of an order made by the Board;
- (b) by the Protective Commissioner in respect of such a person; or
- (c) by the manager of the estate of such a person,

the Board is satisfied that the protected person is capable of managing his or her affairs, it may revoke the order that the estate of the person be subject to management under this Act.

Protected Estates (Disability Services and Guardianship) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(13) Section 38 (**Discharge of patient from hospital etc.**)—

(a) Section 38 (1)—

Before “a patient” where firstly occurring, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

(b) Section 38 (1)—

Before “a patient” where secondly occurring, insert “such a person under guardianship or”.

(14) Section 41 (**Continuation of management after discharge etc.**)—

(a) Section 41 (1) (a)—

Before “a patient” where firstly occurring, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

(b) Section 41 (1) (a)—

Before “a patient” where secondly occurring, insert “such a person under guardianship or”.

(c) Section 41 (1)—

Before “the Tribunal”, insert “the Board,”.

(d) Section 41 (1)—

After “Court”, insert “, as the case may be,”.

(e) Section 41 (2)—

Before “a patient” where firstly occurring, insert “a person under guardianship (being a person the management of whose estate is committed to the Protective Commissioner) or”.

(f) Section 41 (2)—

Before “a patient” where secondly occurring, insert “such a person under guardianship or”.

(15) Section 57 (**Surplus income from common fund**)—

After “Commissioner” where lastly occurring, insert “, including the functions conferred or imposed on the Protective Commissioner in his or her capacity as the Public Guardian under the Disability Services and Guardianship Act 1987”.

(16) Section 81 (**Regulations**)—

Section 81 (1A)—

Protected Estates (Disability Services and Guardianship) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

After section 81 (1), insert:

(1A) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to the exercise by the Board of the functions conferred or imposed on it by this Act.

