

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Suspension and revocation of licence or authority**

9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that—

- (a) the licensee under the licence has requested that the licence be suspended or revoked;
- (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre to which the licence relates;
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person;
- (d) in the case of a licence for a child care service—
 - (i) any premises on which the child care service is provided do not comply with any provision of this Act or the regulations, or of a condition of the licence, that applies to them; or
 - (ii) the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates; or
- (e) in the case of a licence for a residential child care centre—
 - (i) the premises of the centre do not comply with a provision of this Act or the regulations, or of a condition of the licence, that applies to them;
 - (ii) the premises of the centre are not being used as a residential child care centre;
 - (iii) the licensee (not being a person deemed to have been granted the licence under section 36 (2)) is not the proprietor of the premises of the centre; or
 - (iv) the licensed manager does not conduct the centre.

(2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a private fostering agency authority, are that—

- (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;
- (b) either the authorised private fostering agency or the principal officer under the authority is no longer a fit and proper person to be concerned in the carrying on of private fostering services; or
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that—

- (a) the holder of the authority has requested that the authority be suspended or revoked;
- (b) the holder of the authority is no longer a fit and proper person to hold the authority; or
- (c) the holder of the authority has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

(4) If the Director-General intends to suspend or revoke a licence or authority, the Director-General shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

(5) When 28 days have expired after notices have been served under subclause (4), the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) suspend the licence or authority to which the notices relate for the period (not exceeding 6 months) specified in the notices; or
- (b) revoke the licence or authority to which the notices relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

(6) Notwithstanding subclauses (4) and (5), if the licensee under a licence or the holder of an authority has requested that the licence or authority be suspended or revoked, the Director-General may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence or authority,

as the case may require

Children (Care and Protection) 1987

SCHEDULE 1—*continued*

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(7) A licence or authority shall be deemed not to be in force during any period for which it is suspended.

(8) If a licence or authority has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee under the licence or the holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or authority is restored.

Temporary authorised supervisors and licensed managers

10. (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to act as the approved person under a licence or private fostering agency authority for a period so specified that occurs during an absence (by reason of illness or otherwise) of the approved person under the licence or authority.

(2) While a person is authorised by an instrument referred to in subclause (1) to act as an approved person under a licence or authority—

- (a) that person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority; and
- (b) the conditions of the licence or authority that apply to the approved person under the licence or authority shall, for the purposes of section 31 (4), 34 (2) or 40 (4), as the case may require, be deemed to apply to the person so authorised as if that person were the approved person under the licence or authority.

(3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the approved person under a licence or authority, revoke the instrument on any ground that the Minister considers sufficient.

SCHEDULE 2

(Sec. 98)

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL

Age of members

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

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued***Term and vacation of office, etc.**

2. (1) A member 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 such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may, for any cause that seems sufficient, remove a member from office.

(3) A member 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) upon the member's reaching the age of 65 years;

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

(f) if being an officer when the member was appointed a member, the member ceases to be an officer.

Remuneration, etc.

3. (1) A member (other than a full-time President or a public servant) 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) A full-time President is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the full-time President.

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

President and Deputy President

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

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

(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 is entitled to exercise the President's functions, a reference in Part 7 and this Schedule to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President 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 to exercise the President's functions, and all acts or things done, or omitted to be done by the Deputy President when 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.

Delegation

5. (1) **The President** may delegate to the Deputy President the exercise of any of the President's functions.

(2) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause, subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

Preservation of rights of full-time President previously public servant, etc.

6. (1) **Subject to subclause (2) and to the terms of appointment, where the full-time President was, immediately before being appointed as full-time President—**

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as full-time President; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as full-time President and—

- (h) his or her service as full-time President shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Government shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the full-time President would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as full-time President or at any later time while holding office as full-time President) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Government in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the full-time President upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) The full-time President shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

(5) In this clause—

“statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule;

Children (Care and Protection) 1987

SCHEDULE 2—*continued*

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Full-time President entitled to reappointment to former employment in certain cases

7. (1) A person who—
- (a) ceases to be a full-time President because of the expiration of the period for which the person was appointed or by reason of resignation;
 - (b) was, immediately before being appointed as full-time President—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
 - (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as full-time President.

- (2) Where subclause (1) does not apply to a person who—
- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
 - (b) is after that appointment appointed as full-time President,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be full-time President, as are specified in the instrument of appointment as full-time President or as are agreed upon by the person and by or on behalf of the Government.

- (3) In this clause—

“statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

8. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Children (Care and Protection) 1987

SCHEDULE 3

(Sec. 103)

CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Age of members

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

Term and vacation of office, etc.

2. (1) A member 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 such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

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

(3) A member 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) upon 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 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 and a member is not, as a member, subject to that Act.

President and Deputy President

4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, 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

Children (Care and Protection) 1987

SCHEDULE 3—*continued*

CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

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

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 8 and this Schedule to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President 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 to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President when 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.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause, subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

SCHEDULE 4

(Sec. 103)

PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Composition of the Tribunal for the purpose of hearing proceedings

1. (1) The Tribunal shall, for the purpose of hearing proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

(2) A nomination may be made generally or for a particular case or class of cases.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(3) The President shall notify a nominated member of the member's nomination as soon as practicable after the nomination is made.

(4) If the nominated members do not include the President or the Deputy President, the President shall nominate one of the members so nominated as Chairperson of the Tribunal and shall, when notifying the member so nominated of the member's nomination, notify the member also of the member's nomination as Chairperson.

Sittings of the Tribunal

2. 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

3. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Schedule and any rules of the Tribunal made under clause 21, be as determined by the Tribunal.

Chairperson and votes of members

4. (1) At a sitting of the Tribunal—

- (a) if the President has nominated himself or herself as a member of the Tribunal—the President;
- (b) if the President has not nominated himself or herself, but has nominated the Deputy President, as a member of the Tribunal—the Deputy President; or
- (c) if the President has nominated a member as Chairperson as referred to in clause 1 (4)—the member,

shall preside as Chairperson of the Tribunal.

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

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

Preliminary conference

5. The Tribunal or, if the Tribunal so directs, a member may, before formally commencing to hear any proceedings with respect to any decision of the Minister or the Director-General, 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.

Adjournment

6. (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.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(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 under subclause (1).

Evidence

7. (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 of the Minister or the Director-General that is the subject of the proceedings.

Exclusion of the public

8. (1) 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 camera.

(2) The provisions of section 68 apply to proceedings before the Tribunal with respect to a child in the same way as they apply to proceedings referred to in those provisions.

Right of appearance

9. (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.

(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 subclause (3) (b).

Presentation of cases

10. 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 106;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (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.

Powers of the Chairperson of the Tribunal

11. (1) The member presiding as Chairperson 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 (including a document in the possession of or belonging to the Crown) 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 an oath referred to in paragraph (b).

(2) When a document is produced to the Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

Questions of a member

12. (1) A member may require a person (including an officer or employee of the Crown) 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 a question put to the person by a member 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 clause 13 (c) or proceedings in relation to a charge of perjury in respect of the answer.

Offences

13. A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of the person under clause 11 or 12 by a member to the extent to which the person is lawfully able to comply with the requirement;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (b) in purported compliance with a requirement made of the person under clause 11 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement that is false or misleading in a material particular when the person is appearing before the Tribunal.

Penalty: \$100.

Witnesses' expenses

14. 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.

Form of decisions of the Tribunal

15. (1) A decision of the Tribunal with respect to proceedings before it shall be in the form of an instrument in writing setting out the reasons for the decision and shall be signed by the member who presided as Chairperson 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

16. (1) The costs of any proceedings before the Tribunal shall be in the discretion of the Tribunal which may direct to and by whom, and in what manner, those costs or any part of those costs shall be paid.

(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 and containing a statement as to any matters relating to the award of costs under this clause is admissible in evidence and is prima facie evidence of those matters.

Records of proceedings

17. (1) The member presiding as Chairperson at a sitting of the Tribunal shall cause a record of the proceedings at the sitting to be made.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of such period as may be prescribed by the regulations.

Authentication of documents, etc.

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

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

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
*continued***Certain proceedings prohibited**

19. No proceedings lie against the Tribunal or a member 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 or member and purporting to be done, ordered, omitted or suffered, for the purpose of carrying out the provisions of this Act, if the Tribunal or member has acted in good faith and with reasonable care.

Application of the Defamation Act 1974

20. 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

21. (1) Five members nominated by the President (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) A provision of a rule may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) If there is an inconsistency between the rules and the regulations, the regulations shall prevail to the extent of the inconsistency.

(4) A rule shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the rule; and
- (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

(5) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(6) For the purposes of subclauses (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

Children (Care and Protection) 1987

SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (7) Judicial notice shall be taken—
- (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
 - (b) of the date of its publication.
- (8) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

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