

LAW FOUNDATION ACT, 1979, No. 32

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 32, 1979.

An Act to incorporate the Law Foundation of New South Wales;
to define its objects and powers; and for other purposes.
[Assented to, 27th April, 1979.]

See also Legal Practitioners (Law Foundation) Amendment Act, 1979.

Law Foundation.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Law Foundation Act, 1979"

Commencement.

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

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Board" means the Board of Governors of the Foundation established by section 7;

"Chairman" means the Chairman of the Board for the time being holding office under clause 5 of Schedule 1;

"Director" means the Director of the Foundation for the time being holding office under section 8;

"former Board of Governors" means the Board of Governors of the former Foundation;

"former Foundation" means the Law Foundation as constituted under section 44B (1) of the Legal Practitioners Act, 1898, immediately before the day appointed and notified under section 2 (2);

"Foundation" means the Law Foundation of New South Wales constituted by section 4;

"function" includes power, authority and duty;

"Fund" means the Law Foundation Fund established by section 16;

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“member” means a member of the Board;

“perform”, in relation to a function that is a power or an authority, means exercise the power or authority and, in relation to a duty, means discharge the duty;

“Society” means The Law Society of New South Wales;

“Statutory Interest Account” means the account referred to in section 44A (1) of the Legal Practitioners Act, 1898.

4. There is hereby constituted a body corporate under the corporate name of the “Law Foundation of New South Wales”. Constitution of Law Foundation of New South Wales.

5. The objects of the Foundation are—

- Objects of the Foundation.
- (a) to promote the advancement, improvement and extension of the legal education of members of the community, whether or not they have, or are in the process of obtaining, qualifications relating to the practice of law;
 - (b) to conduct and sponsor research into the law, the legal system, law reform and the legal profession or any branch or section thereof and into their impact on the community;
 - (c) to further law reform;
 - (d) to contribute to the establishment and improvement of law libraries and to investigate and implement ways of expanding the community’s access to legal information;
 - (e) to collect, assess and disseminate, and to promote and assist in the collection, assessment and dissemination of, information relating to legal education, the law, the legal system, law reform, the legal profession and legal services;
 - (f) to encourage, support or sponsor projects aimed at facilitating access to legal information and legal services;
- and

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- (g) to do anything incidental or conducive to the carrying out of any of the foregoing objects.

Powers
of the
Foundation.

6. Without limiting the operation of section 38 (1) of the Interpretation Act, 1897, the Foundation may—

- (a) accept gifts, devises and bequests made to the Foundation, whether on trust or otherwise, and act as trustee of money or other property vested in the Foundation upon trust;
- (b) arrange for the printing, publication and distribution of information obtained as a result of the performance of the objects of the Foundation;
- (c) borrow money in such manner and upon such security, if any, as the Board may determine; and
- (d) provide funds and make grants for the performance of any of the objects of the Foundation.

Establish-
ment of
Board of
Governors.

7. (1) There shall be a board to be called the “Board of Governors of the Law Foundation of New South Wales” which, subject to section 9, shall determine policies for the implementation of its objects, conduct and manage the affairs of the Foundation and perform any other functions conferred or imposed on it by this Act.

(2) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Director.

8. (1) The Board shall from time to time appoint a person to be the Director of the Foundation.

(2) The person who immediately before the day appointed and notified under section 2 (2) held office as the Executive Director of the former Foundation shall, upon that day, be deemed to have been appointed as the Director to hold office for a period of 7 years commencing on that day.

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9. The Director shall conduct and manage the affairs of the Foundation in accordance with any directions of the Board and any delegation made to him under section 15. Duties of Director.

10. (1) The Director shall hold office, and is eligible to be re-appointed to hold office, for such term, not exceeding 7 years, as the Board specifies in the instrument of his appointment or re-appointment. Appointment and term of office.

(2) A person who is of or above the age of 65 years shall not be appointed or re-appointed as Director.

11. The Director shall be paid such remuneration (including travelling and subsistence allowances), and be entitled to such superannuation benefits on such conditions, as the Board may from time to time determine in respect of him. Remuneration of Director.

12. (1) The Board may remove the Director from office on the grounds of misbehaviour or incompetence. Termination of appointment of Director.

(2) Without limiting subsection (1), the Director is guilty of misbehaviour if he contravenes clause 15 or 16 of Schedule 1.

13. The Director shall be deemed to have vacated his office— Vacation of office of Director.

- (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Board;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

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- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (f) if he, without the approval of the Board, engages in paid employment outside the duties of his office;
- (g) if he is removed from office under section 12 (1); or
- (h) upon his attaining the age of 65 years.

Acting
Director.

14. (1) The Board may appoint a person to act in the office of Director whenever the Director is absent from his office through illness or other cause or while the office of the Director is vacant, and the person so appointed, while so acting, shall be deemed to be the Director and have the immunities and functions of the Director (including the functions of the Director as a member).

(2) Subject to subsection (3), a person appointed under subsection (1) shall hold office, and is eligible to be re-appointed to hold office, for such term, not exceeding 12 months, as the Board specifies in the instrument of his appointment or re-appointment.

(3) The Board may—

- (a) determine the terms and conditions of appointment of a person as acting Director; and
- (b) at any time terminate such an appointment.

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(4) The validity of any act done by a person appointed, or purporting to be appointed, as acting Director, including the attendance and voting by that person at a meeting of the Board, shall not be questioned in any proceeding on the ground that the occasion for his appointment had not arisen.

15. (1) Subject to this section, the Board may, by instrument in writing, delegate to the Director the performance of such of the functions (other than this power of delegation) of the Board as are specified in the instrument of delegation and may in like manner revoke any such delegation wholly or in part. Delegation by Board.

(2) A delegation under this section may be made subject to such conditions or such limitations as to the performance of any of the specified functions, or as to time or circumstances, as are specified in the instrument of delegation.

(3) Where a specified function is performed by the Director and the performance of the function is evidenced in writing signed by the Director in his own name on behalf of the Board, the function shall be deemed to have been performed by the Board, whether or not an instrument delegating the performance of the function to the Director was in force when the function was performed and whether or not any conditions or limitations referred to in subsection (2) were observed by the Director when performing the function.

(4) Notwithstanding a delegation made under this section, the Board may continue to perform the function delegated.

16. (1) There shall be a fund to be called the "Law Foundation Fund". Establishment of the Law Foundation Fund.

(2) The Fund shall be the property of the Foundation and shall be maintained by the Foundation.

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Composition
of the
Fund.

17. The Fund shall consist of—

- (a) all money standing to the credit of, and all investments and other property forming part of, the former Foundation;
- (b) all money paid by the Society to the Foundation out of the Statutory Interest Account;
- (c) all money borrowed by the Foundation under this Act;
- (d) all investments made under section 19;
- (e) the proceeds of any investments made under section 19;
and
- (f) any other money or other property received from any source by the Foundation.

Payments
out of
the Fund.

18. (1) There may be paid out of the Fund—

- (a) all charges, costs and expenses incurred by the Board or the Director in the administration of the Foundation;
- (b) all charges, costs and expenses otherwise incurred in the administration of this Act; and
- (c) grants or payments for carrying out the objects of the Foundation.

(2) Subsection (1) has effect subject to any trust under which the Foundation is the trustee.

Investment.

19. The Board may invest money held by the Foundation in any securities authorised by section 14 (2) of the Trustee Act, 1925, or, in the case of money held on trust, in any manner authorised by the instrument creating the trust.

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20. The Foundation shall cause to be kept proper accounts and records in relation to all of its operations and shall do all things necessary to ensure that all payments are correctly made and properly authorised and that adequate control is maintained over the assets of or in the custody of the Foundation and over the incurring of liabilities by the Foundation. Accounts.

21. The Foundation shall cause the accounts of the Foundation to be audited annually by a registered public accountant. Audit.

22. (1) As soon as practicable after 30th June in each year, the Foundation shall cause to be prepared an annual report, exhibiting a true and correct view of the financial position as at that date and the transactions of the Foundation with respect to the period of 12 months ending on that date. Annual report.

(2) The annual report referred to in subsection (1) shall be submitted to the Board by 1st December in each year and shall be made available for inspection at the office of the Foundation at all reasonable hours by any member of the public.

(3) The Attorney General shall lay the annual report referred to in subsection (1), or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the report.

23. As from the day appointed and notified under section 2 (2)— Transfer of assets, debts and liabilities.

(a) all money, books of account, registers, records and all documents and things relating to, or connected with, the operation of the former Foundation, shall become the property of the Foundation;

(b) all money that was and liquidated and unliquidated claims that were, immediately before that day, payable to or recoverable by the Society in relation to or in

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connection with the former Foundation shall be money and liquidated and unliquidated claims payable to or recoverable by the Foundation;

- (c) all proceedings pending immediately before that day at the suit of the Society in relation to or in connection with the former Foundation, shall be deemed to be proceedings pending at the suit of the Foundation and all proceedings so pending at the suit of any person against the Society in relation to or in connection with the former Foundation or the former Board of Governors or against the former Foundation or the former Board of Governors shall be deemed to be proceedings pending at the suit of that person against the Foundation;
- (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the former Foundation or the former Board of Governors and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with, and securities given to or by, the Foundation;
- (e) the Foundation may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this section, and for the prosecution of proceedings so referred to, as the Society might have done but for this Act;
- (f) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the Society in relation to or in connection with the former Foundation or the former Board of Governors shall be debts due, money payable by and claims recoverable against the Foundation;
- (g) all liquidated and unliquidated claims in relation to or in connection with the former Foundation or the former Board of Governors for which the Society would, but for this Act, have been liable shall be liquidated and unliquidated claims for which the Foundation shall be liable; and

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- (h) all acts, matters and things done or omitted by, or done or suffered in relation to, the former Board of Governors, being acts, matters and things not referred to in the foregoing provisions of this section, shall have the same force and effect as if they had been done or omitted by, or done or suffered in relation to, the Foundation.

SCHEDULE 1.

Sec. 7 (2).

CONSTITUTION AND PROCEDURE OF BOARD OF GOVERNORS.

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires, "appointed member" means a member appointed under clause 2 (2). Interpre-
tation.

2. (1) The Board shall consist of 11 members referred to in subclauses (2) and (3) of this clause. Composi-
tion of
the Board.

(2) Nine of the members shall be appointed by the Attorney General and of them—

- (a) 5, of whom not more than 1 may be a barrister or solicitor, shall be persons who, in the opinion of the Attorney General, have special knowledge, experience or interest in relation to any of the objects of the Foundation;
- (b) 2, who shall be solicitors, shall be nominated by the Council of the Society;
- (c) 1, who shall be a barrister, shall be nominated by the New South Wales Bar Association; and
- (d) 1, who shall be a member of the Legislative Council or the Legislative Assembly, shall be nominated by the Leader of the Opposition in the Legislative Assembly.

(3) The other 2 members shall be—

- (a) the Attorney General or a person from time to time nominated by him; and
- (b) the person for the time being holding office as Director.

(4) Where nominations for the purposes of subclause (2) (b) or (c) of this clause are not submitted within the time or in the manner specified by the Attorney General in a notice in writing given to the body entitled to submit nominations, the Attorney General may appoint a person to be

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SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF BOARD OF GOVERNORS—*continued.*

a member instead of the member required to be appointed, being a person possessing the same qualification for appointment as the member required to be appointed.

(5) The Attorney General shall before making an appointment under subclause (2) (a) of this clause—

- (a) cause to be published such advertisements, inviting applications from persons to apply to become members, in such form and manner as the Attorney General directs; and
- (b) take into consideration any such applications received by him.

Age of
appointed
members.

3. A person who is of or above the age of 70 years shall not be appointed as a member under clause 2 (2), other than clause 2 (2) (d).

Terms of
office of
appointed
members.

4. (1) An appointed member (other than the member appointed under clause 2 (2) (d)) shall, subject to this Act, hold office for a period of 3 years and shall, if otherwise qualified, be eligible for re-appointment as a member.

(2) The member appointed under clause 2 (2) (d) shall, subject to this Act, hold office until his successor is appointed.

(3) The Leader of the Opposition in the Legislative Assembly may at any time while a person appointed under clause 2 (2) (d) holds office nominate another person who is a member of the Legislative Council or the Legislative Assembly to be the member of the Foundation appointed pursuant to clause 2 (2) (d).

Chairman.

5. The Attorney General shall as often as occasion requires appoint 1 of the members to be the Chairman of the Board.

Provisions
relating to
appointed
members.

6. (1) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, that provision does not operate to disqualify him from holding that office and also the office of an appointed member or from accepting and retaining any travelling and subsistence allowances payable to an appointed member under clause 7.

(2) The office of an appointed member shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

Travelling
and sub-
sistence
allowances.

7. A member other than the Director is entitled to be paid such travelling and subsistence allowances as the Board may from time to time determine in respect of him.

*Law Foundation.*SCHEDULE 1—*continued.*CONSTITUTION AND PROCEDURE OF BOARD OF GOVERNORS—*continued.*

8. An appointed member shall be deemed to have vacated his office—
- (a) if he dies;
 - (b) if he resigns his office by writing under his hand addressed to the Attorney General;
 - (c) if he is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to him, unless on leave granted to him by the Board;
 - (d) if, except in the case of the member appointed under clause 2 (2) (d), he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (e) if, except in the case of the member appointed under clause 2 (2) (d), he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
 - (f) if, except in the case of the member appointed under clause 2 (2) (d), he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
 - (g) if he ceases to hold the qualification by virtue of which he was nominated for appointment;
 - (h) in the case of the member appointed under clause 2 (2) (d), upon the appointment of his successor;
 - (i) if his membership of the Board is terminated under clause 17; or
 - (j) except in the case of the member appointed under clause 2 (2) (d), upon his attaining the age of 70 years.
9. (1) On the occurrence of a vacancy in the office of an appointed member, the Attorney General may appoint a person to the vacant office for the balance of his predecessor's term of office, being a person qualified and nominated under the same paragraph of clause 2 (2) as his predecessor.
- (2) Where the vacant office is the office of a person appointed under clause 2 (2) (a) or of a person appointed under subclause (1) of this clause to fill the vacant office of a person appointed under clause 2 (2) (a),

Vacation
of office
of
appointed
member.

Filling
of casual
vacancies.

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SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF BOARD OF GOVERNORS—*continued.*

clause 2 (5) applies to the appointment under subclause (1) of this clause of a person to fill the vacant office in the same way as it applies to the appointment of a person under clause 2 (2) (a).

- Quorum. 10. A quorum at any meeting of the Board shall consist of 5 members.
- Meetings. 11. (1) A duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.
- (2) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.
- (3) The Chairman shall preside at all meetings of the Board at which he is present and, if he is absent from any meeting, the members shall appoint 1 of their number to preside at that meeting.
- (4) The Chairman or other member presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- Minutes. 12. The Board shall cause full and accurate minutes to be kept of its proceedings at meetings.
- General procedure. 13. (1) Subject to subclause (2) of this clause, the procedure for the calling of, and for the conduct of business at, meetings of the Board shall be as determined by the Board.
- (2) The Attorney General shall call the first meeting of the Board in such manner as he thinks fit.
- Protection from liability. 14. No matter or thing done, and no contract entered into, by the Board, and no matter or thing done by a member, shall, if the matter or thing was done, or the contract was entered into, in good faith for the purposes of executing this Act, subject a member personally to any action, liability, claim or demand.
- Member not to vote in respect of certain contracts. 15. A member shall not vote in respect of any contract or proposed contract with the Foundation in which he is directly or indirectly interested, or any matter arising thereout, and if he does so vote his vote shall not be counted.

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SCHEDULE 1—*continued.*

CONSTITUTION AND PROCEDURE OF BOARD OF GOVERNORS—*continued.*

16. Where a member is or becomes directly or indirectly interested in any contract or proposed contract with the Foundation, or any matter arising thereout, he shall, as soon as practicable, disclose the nature of his interest at a meeting of the Board.

Member to disclose interest in certain contracts.

17. Where an appointed member contravenes clause 15 or 16, the Attorney General may terminate his membership.

Termination of membership in the event of non-disclosure, etc., of interest.