

HOME CARE SERVICE ACT 1988 No. 6

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF THE BOARD

HOME CARE SERVICE ACT 1988 No. 6

NEW SOUTH WALES



Act No. 6, 1988

An Act relating to the constitution of the Home Care Service of New South Wales. [Assented to 16 June 1988]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Home Care Service Act 1988.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—
“Board” means the Home Care Service Advisory Board established by this Act;
“Department” means the Department of Family and Community Services;
“Director-General” means the Director-General of the Department;
“Service” means the Home Care Service of New South Wales constituted by this Act.
(2) In this Act—
 - (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—CONSTITUTION OF THE SERVICE**The Service**

4. (1) There is constituted by this Act a corporation under the corporate name of the Home Care Service of New South Wales.
(2) The affairs of the Service shall be managed by the Director-General.
(3) Any act, matter or thing done in the name of, or on behalf of, the Service by the Director-General, or with the authority of the Director-General, shall be deemed to have been done by the Service.
(4) In the exercise of its functions, the Service is subject to the control and direction of the Minister.

The Board

5. (1) There shall be a Home Care Service Advisory Board, consisting of—
 - (a) the Director-General; and
 - (b) the General Manager of the Service; and

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- (c) 7 part-time members appointed by the Governor.
- (2) The Board shall—
 - (a) furnish to the Service reports on matters relating to home care services; and
 - (b) advise the Service on such matters relating to home care services as are referred to it by the Director-General.
- (3) Schedule 1 has effect with respect to the constitution and procedure of the Board.

PART 3—OBJECTS AND FUNCTIONS OF THE SERVICE**Objects of the Service**

- 6. The objects of the Service are as follows:
 - (a) to provide home care services to persons—
 - (i) who are ill, disabled or otherwise incapacitated or who are affected by personal or family problems; and
 - (ii) who, as a result, are incapable of carrying out work of a domestic or home maintenance nature without assistance or are otherwise in need of assistance to manage their homes;
 - (b) to ensure that, as far as possible, those services are provided so that—
 - (i) the independence of the person being assisted is maintained; and
 - (ii) institutional care is avoided wherever appropriate; and
 - (iii) adequate standards are achieved and maintained; and
 - (iv) the rights of persons to make their own decisions about their affairs are respected; and
 - (v) priority is given to those most in need; and
 - (vi) fees are based on the assessed capacity of the individual client to pay; and
 - (vii) disadvantaged people, such as those referred to in section 4 (1) (c) of the Community Welfare Act 1987, have access to services; and
 - (viii) available resources are used efficiently and effectively; and
 - (ix) there is adequate planning to enable these objects to be achieved.

Functions of the Service

- 7. (1) The principal function of the Service is to provide home care services in accordance with its objects.
- (2) In addition, the Service—

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- (a) shall research, monitor and evaluate all aspects of its work and of the need for home support services; and
- (b) shall work in co-operation with programs and activities conducted by officers or bodies operating under the direction and control of the Minister; and
- (c) shall develop and administer training programs and liaise with other training institutions; and
- (d) may charge fees for any services it provides; and
- (e) may do all things necessary for, or incidental to, the achievement of its principal function; and
- (f) has and may exercise any function conferred or imposed on it by or under this or any other Act.

PART 4—MISCELLANEOUS**Staff of the Service**

8. (1) The Service may employ a General Manager and such other staff as may be necessary to enable the exercise by the Service of its functions.

(2) The Service may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a Government department, administrative office or public or local authority.

(3) Except in so far as provision is otherwise made by law, the conditions of employment (including salary, wages or other remuneration) of persons employed by the Service shall be such as are from time to time determined by the Service.

(4) The Public Service Act 1979 does not apply to the employment of staff under this section and a person is not, as a member of the staff of the Service, subject to that Act.

Service of documents

9. (1) A document may be served on the Service by leaving it at, or by sending it by post to, the office of the Service.

(2) This section does not affect the validity of any other method of service authorised by the rules of any court or otherwise provided by law.

Delegation by Service

10. The Service may delegate any of its functions (other than this power of delegation) to any officer of the Department of Family and Community Services or any person employed by the Service.

Power to accept gifts etc.

11. (1) The Service has power—

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- (a) to acquire by gift, bequest or devise any property for any of the purposes of the Service; and
- (b) to agree to any condition to which any such gift, bequest or devise is subject.

(2) The rule of law against remoteness of vesting does not apply to any condition to which the Service has agreed.

(3) The Stamp Duties Act 1920 does not apply to any real or personal property comprised in a gift, bequest or devise made or to be made to the Service.

Banking accounts

12. For the purposes of its operations, the Service shall open and maintain banking accounts with the State Bank or such other bank as the Treasurer may approve.

Investment of money

13. The Service may invest any of its funds—

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987 in respect of the Service; or
- (b) if that Act does not confer power to invest those funds—
 - (i) in such manner as is authorised by the Trustee Act 1925 for the investment of trust funds; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

Financial year

14. (1) The financial year of the service is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Disclosure of information

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

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

(e) with other lawful excuse.

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

Limitation of personal liability

16. No matter or thing done by the Service, by a member of the Board or by any employee or person acting under the direction of the Service shall, if the matter or thing was done in good faith and with reasonable care for the purpose of exercising the functions of the Service, subject such a member, employee or person so acting personally to any action, liability, claim or demand.

Proceedings for offences

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

Regulations

18. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the functions of the Service (including the conferring on the Service of additional functions); and
- (b) the use and custody of the seal of the Service; and
- (c) the fees to be charged by the Service.

(3) A regulation may create offences, in connection with—

- (a) the lodgement of applications for assistance from the Service; or
- (b) any prescribed matter,

and may provide that any such offence shall be punishable by a penalty not exceeding 5 penalty units.

Amendment of Community Welfare Act 1987 No. 52

19. The Community Welfare Act 1987 is amended—

- (a) by omitting the definition of “Home Care Service” from section 3 (1);
- (b) by omitting Part 3;
- (c) by omitting section 78 (c).

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Abolition of previous board of management

20. The board of management constituted by Part 3 of the Community Welfare Act 1987 is abolished.

Transitional provisions

21. (1) A person who, immediately before the commencement of this Act, held office as a member of the board of management referred to in section 20—

- (a) ceases to hold office as such on that commencement; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

(2) This Act does not affect the continuity of employment of any person employed by the Service immediately before the commencement of this Act.

(3) Subsection (2) does not affect any right of the Service to control, manage or dismiss its staff.

(4) The Service shall be taken for all purposes to be a continuation of, and to be the same legal entity as, the corporation constituted by Part 3 of the Community Welfare Act 1987, as in force immediately before the commencement of this Act.

(5) The lodgement at the office of the Corporate Affairs Commission of the constitution referred to in section 29 of the Community Welfare Act 1982, and any registration or other dealings or proceedings under any Act as a consequence of that lodgement, are of no continuing effect after the commencement of this Act.

SCHEDULE 1—PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF THE BOARD

(Sec. 5(3))

Acting members

1. (1) The Minister may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member.

(2) A person while so acting has all the functions of a member of the Board and shall be taken to be a member.

Terms of office

2. Subject to this Schedule, a part-time member of the Board shall hold office for such period not exceeding 3 years as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

3. A part-time member of the Board 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.

*Home Care Service 1988*SCHEDULE 1—PROVISIONS RELATING TO THE CONSTITUTION AND
PROCEDURE OF THE BOARD—*continued***Vacancy in office of Board member**

4. (1) The office of a part-time member of the Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause.

(2) The Governor may remove a member of the Board from office at any time.

Filling of vacancy in office of Board member

5. If the office of any part-time member of the Board becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

6. (1) The Public Service Act 1979 does not apply to the appointment of a part-time member of the Board and a part-time member is not, as a part-time member of the Board, subject to that Act.

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office.

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member of the Board or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

Presiding member

7. (1) The Director-General shall preside at Board meetings.

(2) In the absence of the Director-General, the members present shall elect one of their number to preside at the meeting.

Quorum

8. The quorum for a meeting of the Board is 5 members.

Voting

9. (1) A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

(2) At any meeting, the person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 1—PROVISIONS RELATING TO THE CONSTITUTION AND
PROCEDURE OF THE BOARD—*continued*

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board.
