

COMMUNITY WELFARE (AMENDMENT) ACT 1992 No. 105

NEW SOUTH WALES



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COMMUNITY WELFARE (AMENDMENT) ACT 1992 No. 105

NEW SOUTH WALES



Act No. 105, 1992

An Act to amend the Community Welfare Act 1987 relating to the staff of the Community Welfare Employment Corporation; to abolish that Corporation; and for other purposes. [Assented to 8 December 1992]

Community Welfare (Amendment) Act 1992 No. 105

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Community Welfare (Amendment) Act 1992.

Commencement

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

Amendment of Community Welfare Act 1987 No. 52

3. The Community Welfare Act 1987 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

**SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987**

(Sec. 3)

(1) Section 3 (**Definitions**):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B”.

(2) Section 13B (**Community Welfare Employment Corporation**):

Omit the section.

(3) Section 13C (**Regulations concerning employees of Community Welfare Employment Corporation**):

Omit the section.

(4) Section 78 (**Regulations**):

Omit section 78 (1) (a1).

(5) Section 79:

After section 78, insert:

Savings, transitional and other provisions

79. Schedule 4 has effect.

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SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1907—*continued*

(6) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4—SAVINGS TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 79)

PART 1—REGULATIONS

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Community Welfare (Amendment) Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
COMMUNITY WELFARE (AMENDMENT) ACT
1992**

Definitions

2. In this Part:

“**appointed day**” means the date of commencement of the Community Welfare (Amendment) Act 1992;

“**Corporation**” means the Community Welfare Employment Corporation constituted by section 13B before its repeal by the Community Welfare (Amendment) Act 1992;

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ACT 1987—*continued*

“**transferred person**” means a person who becomes a member of staff of the Department of Community Services because of clause 7.

Dissolution of Corporation

3. On the appointed day, the Corporation is dissolved.

References to Corporation or its staff

4. On and from the appointed day, and subject to the regulations, a reference in any other Act, or in any instrument made under any Act or in any other instrument of any kind:

- (a) to the Corporation is to be read as a reference to the Director-General; and
- (b) to officers or employees (however expressed) of the Corporation is to be read as a reference to officers of the Department.

Transfer of assets, liabilities etc. of Corporation

5. On the appointed day:

- (a) the assets and liabilities of the Corporation become assets and liabilities of the Crown; and
- (b) all proceedings by or against the Corporation pending immediately before the appointed day become proceedings pending by or against the Crown.

Actions etc. of Corporation

6. Any act, matter or thing done or omitted to be done by or in respect of the Corporation is (to the extent that the act, matter or thing had any force or effect immediately before the appointed day) taken to have been done or omitted to be done by or in respect of the Director-General.

Transfer of employees of Corporation to Department of Community Services

7. (1) On the appointed day, a person who was an employee of the Corporation immediately before that day is taken to be a member of the staff of the Department of Community Services employed under Part 2 of the Public Sector Management Act 1988 in the same capacity (whether

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ACT 1987—*continued*

temporary or otherwise) as that in which the person was employed by the Corporation immediately before that day. This subclause has effect subject to any order under subclause (3).

(2) Subclause (1) does not have the effect of appointing a person to a position under the Public Sector Management Act 1988.

(3) The Governor may, on the recommendation of the Minister, by order published in the Gazette, appoint a person who is a member of staff of the Department of Community Services by virtue of subclause (1) to a position under Part 2 of the Public Sector Management Act 1988 in the Department of Community Services.

(4) A person who is the subject of such an order is taken for all purposes to have been appointed to that position in accordance with the terms of the order and to have been so appointed in accordance with any relevant provision of the Public Sector Management Act 1988.

(5) This clause has effect despite anything in the Public Sector Management Act 1988.

Salary, wages and allowances of transferred persons

8. A transferred person is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the person as an employee of the Corporation immediately before the appointed day, until the salary, wages or allowances is or are varied or altered:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

Other conditions of employment of transferred persons

9. (1) This clause applies to any condition of employment of a transferred person (other than salary, wages or allowances) that was, immediately before the appointed day, regulated by an award or agreement (within the meaning of

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ACT 1987—*continued*

the Industrial Relations Act 1991) or a lawful determination applicable to the person as an employee of the Corporation.

(2) A condition to which this clause applies (so long as it does not conflict with any provision of the Public Sector Management Act 1988 or the regulations under that Act) is to continue to apply to the person until it is regulated:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

Preservation of rights of transferred persons

10. (1) A transferred person is to retain any rights (including any rights to deferred or extended leave and any payment, pension or gratuity) accrued as an employee of the Corporation.

(2) For the purposes of the accrual of any such rights after the appointed day, service as an employee of the Corporation is taken to be service as a public servant..

(3) This clause applies to and in respect of the preservation of rights of those transferred persons who, but for the operation of this clause, would not be entitled to retain those rights.

Conditions of employment for new staff

11. (1) The Director-General of the Department of Community Services may declare that a condition of employment (including salary, wages and allowances) that was regulated by an award, agreement (within the meaning of the Industrial Relations Act 1991) or lawful determination applicable to employees of the Corporation applies to a position:

- (a) that, in the Director-General's opinion, is comparable to a position governed by the award, determination or agreement; and
- (b) to which a person is appointed after the appointed day.

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ACT 1987—*continued*

(2) Such a condition applies only until it is varied, altered or regulated:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

(3) The Director-General is not to make a declaration under this clause in respect of a condition unless the award, agreement or determination that regulates it applies, at the time the declaration is made, to transferred persons.

(4) This clause does not apply to a condition that conflicts with any provision of the Public Sector Management Act 1988.

(5) A declaration under this clause is to be published in the Gazette.

Previous agreement for transfer of staff to Corporation

12. (1) This clause applies to the agreement (No. 2522 of 1989) dated 30 November 1989 and expressed to be between:

- (a) the Community Welfare Employment Corporation and the Public Employment Industrial Relations Authority; and
- (b) the Health and Research Employees' Association of New South Wales, the Hospital Officers' Association of New South Wales, the New South Wales Nurses' Association, the New South Wales Public Medical Officers' Association and the Public Service Association of New South Wales.

(2) The agreement is taken to have been valid and effective according to its terms with effect on and from 1 July 1989.

(3) In particular, the agreement is taken to have been effective to transfer the officers and employees referred to in the agreement to the employment of the Corporation in accordance with the terms of the agreement.

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**SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued***

(4) However, subclauses (2) and (3) do not apply in relation to persons who were officers of the Department of Health appointed and employed under Part 2 of the Public Sector Management Act 1988 immediately before 1 July 1989.

(5) If not previously terminated, the agreement is terminated on the appointed day, without prejudice to the other clauses of this Schedule.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS**

(Sec. 4)

Children (Detention Centres) Act 1987 No. 57

Section 3 (Definitions):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B of the Community Welfare Act 1987”.

Public Sector Management Act 1988 No. 33

Schedule 3 (Declared Authorities):

Omit “Community Welfare Employment Corporation”.

**State Authorities Non-contributory Superannuation Act 1987
No. 212**

Schedule 1 (Employers):

From Part 1, omit “Community Welfare Employment Corporation”.

State Authorities Superannuation Act 1987 No. 211

Schedule 1 (Employers):

From Part 1, omit “Community Welfare Employment Corporation”.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

Superannuation Act 1916 No. 28

Schedule 3 (**List of employers**):

From Part 1, omit “Community Welfare Employment Corporation”.

*[Minister’s second reading speech made in—
Legislative Assembly on 18 November 1992
Legislative Council on 27 November 1992]*