



New South Wales

New South Wales Cancer Council Act 1995 No 43

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New South Wales

New South Wales Cancer Council Act 1995 No 43

Act No 43, 1995

An Act relating to the constitution, objects and functions of the New South Wales Cancer Council; to repeal the *New South Wales State Cancer Council Act 1955*; and for related purposes. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *New South Wales Cancer Council Act 1995*.

2 Commencement

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

3 Definitions

In this Act:

Board means the Board of the Council.

Council means the New South Wales Cancer Council.

exercise a function includes perform a duty.

function includes a power, authority or duty.

Part 2 The New South Wales Cancer Council, the Board, Committees and Staff

4 Constitution of the Council

- (1) There is constituted by this Act a body corporate to be called the New South Wales Cancer Council.
- (2) The Council is a continuation of, and the same legal entity as, the New South Wales State Cancer Council constituted under the *New South Wales State Cancer Council Act 1955*.
- (3) The Council is not and does not represent the Crown.

5 Objects of the Council

- (1) The Council has the following objects:
 - (a) to assist and foster research and investigation into the causation, prevention, diagnosis and treatment of cancer,
 - (b) to assist and foster postgraduate and undergraduate education and training, and education of the public, in relation to cancer,
 - (c) to assist in providing training and instruction in technical matters relating to the diagnosis and treatment of cancer,
 - (d) to co-ordinate, so far as is practicable, the activities of all institutions, hospitals and other bodies engaged in research and investigation into the causation, prevention, diagnosis and treatment of cancer,
 - (e) to collect, process, maintain and disseminate information relating to cancer and its causes, incidence, and treatment,
 - (f) to provide relief for cancer patients and their families, including palliative care, rehabilitation and support and advocacy services, and to engage in other benevolent activities relating to cancer,
 - (g) to engage in fundraising activities (including by means of public appeals or the sale of articles to the public) and to co-ordinate, so far as is practicable and with the agreement of the bodies involved, such activities conducted by other bodies,

- (h) to carry out the above objects in association or jointly with any organisations, societies or other bodies, whether in Australia or elsewhere, which have objects similar to the objects of the Council,
 - (i) in consultation with the Director-General of the Department of Health, to advise the Minister on problems relating to:
 - (i) the provision of hospital accommodation for the treatment of persons suffering from cancer,
 - (ii) the provision of facilities for research and investigation into the causation, prevention, diagnosis and treatment of cancer,
 - (iii) the establishment of a cancer institute,
 - (j) to advise the Minister on such other matters relating to cancer as the Minister may from time to time require,
 - (k) to initiate and refer to the Minister recommendations on any matter relating to cancer.
- (2) The Council may do and perform all acts and things that are necessary or convenient for giving effect to its objects.

6 The Board of the Council

- (1) The Council is to have a Board consisting of 10 part-time members appointed by the Governor on the recommendation of the Minister.
- (2) Nine members of the Board are to be appointed from among persons in all or any of the following categories, but at least 2 of the members must be appointed from the category in paragraph (d) and at least 4 of the members must be women:
 - (a) scientists with experience in conducting medical research,
 - (b) the legal profession,
 - (c) the business community,
 - (d) medical practitioners with experience in cancer therapies or treatments,
 - (e) persons with expertise or experience in education, advertising or communications,

- (f) persons with expertise or experience in disease prevention, health promotion or patient advocacy,
 - (g) the rural community,
 - (h) consumers,
 - (i) the trade unions.
- (3) One member of the Board is to be a resident of New South Wales nominated by the Consumers Health Forum. If the Consumers Health Forum does not nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the Forum, the Minister may instead recommend for appointment as a member any person chosen by the Minister.
- (4) The Board has the control of the affairs of the Council and has such other functions as may be conferred or imposed on the Board by or under this or any other Act.
- (5) Any act, matter or thing done in the name of, or on behalf of, the Council by the Board is taken to have been done by the Council.
- (6) Schedule 1 has effect with respect to the members of the Board.
- (7) Schedule 2 has effect with respect to the procedure of the Board.

7 Committees

- (1) The Council may establish committees for the purpose of advising the Council on matters relating to:
- (a) postgraduate and undergraduate education and training, and education of the public, with respect to cancer, and
 - (b) cancer research, and
 - (c) such other matters as the Council may from time to time consider necessary.
- (2) Each committee is to consist of such persons, whether members of the Council or not, as the Council appoints.

8 Staff of the Council

- (1) The Council may employ such staff as may be necessary to enable the Council to exercise its functions. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (2) For the purposes of this Act, a person who is employed under subsection (1) is an officer of the Council.

Part 3 Property of the Council

9 New South Wales Cancer Council Account

- (1) The Council is to maintain an account called the “New South Wales Cancer Council Account”.
- (2) There is to be paid into the account:
 - (a) any money appropriated by Parliament for the purposes of this Act, and
 - (b) any money received by the Council from any other source for, or for the encouragement of, research or investigation with respect to the causation, prevention, diagnosis or treatment of cancer, and
 - (c) any money received by the Council for, or for the encouragement of, postgraduate or undergraduate education or training, or education of the public, with regard to cancer, and
 - (d) any money received by the Council for any other purpose of this Act.
- (3) The money in the account may, subject to the terms of any trust or condition affecting that money or any part of it, be applied for any or all of the following purposes:
 - (a) carrying out or giving effect to all or any of the Council’s objects,
 - (b) without limiting the generality of paragraph (a), making grants:
 - (i) to institutions, hospitals, departments or other bodies or to individuals for, or for the encouragement of, research or investigation with respect to the causation, prevention, diagnosis or treatment of cancer,
 - (ii) to institutions, hospitals, departments or other bodies for, or for the encouragement of, postgraduate or undergraduate education or training, or education-of the public, with regard to cancer,

- (c) meeting costs of membership of the Board in or affiliating with any organisations, societies or other bodies, whether in Australia or elsewhere, which have objects similar to those set out in section 5 (1) (a)–(g),
 - (d) meeting the costs of administration of this Act.
- (4) Any money in the account that is not immediately required for the purposes of this Act may be invested in any manner in which trustees are for the time being authorised to invest trust funds.

10 Property to be held in trust

The Council is, subject to section 9, to hold all property acquired by it on trust to apply the property for the purpose of carrying out or giving effect to all or any of its objects but subject to the terms of any trust or condition affecting that property.

11 Power to accept gifts

- (1) The Council has power to acquire by gift, bequest or devise any property for any of the purposes of this Act and to agree to and carry out the conditions of the gift, bequest or devise.
- (2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Council has agreed.
- (3) Despite section 9 (4), if the Council accepts a gift or bequest of securities which are comprised of debentures, debenture stock, preference or ordinary stock or preference or ordinary shares, of a company under the *Corporations Law*, and the securities are not subject to any liability for calls or other payments other than a call or calls within a limited period, the Council may:
 - (a) retain the securities, and
 - (b) pay any calls or other payment in respect of the securities, and
 - (c) exercise any rights to participate in an issue of securities accruing to the Council as the holder of the securities retained.

- (4) The *Stamp Duties Act 1920* does not apply to or in respect of any gift to, or bequest or devise in favour of, the Council and taking effect after the commencement of the *New South Wales State Cancer Council Act 1955*.

12 Cancer institutes

- (1) The board of directors or other governing authority of any separate institution or hospital, within the meaning of the *Public Hospitals Act 1929*, is to be subject to the control and direction of the Council in governing, managing or controlling any cancer institute if:
- (a) the cost of constructing the institute was met by money provided by Parliament, a government department or the Council, and
 - (b) the institute is situated on land vested in the institution or hospital.
- (2) This section does not apply to a cancer institute situated on land vested in, or under the control of, an area health service constituted under the *Area Health Services Act 1986*.

Part 4 Miscellaneous

13 Seal of the Council

- (1) The seal of the Council is to be kept by the Chairperson of the Board and is to be affixed to a document only:
 - (a) in the presence of at least 2 members of the Board, and
 - (b) with an attestation by the signatures of those members of the fact of the affixing of the seal.
- (2) Every document requiring authentication by the Council may be sufficiently authenticated without the seal of the Council if it is signed by the Chairperson of the Board or by any member of the Board or the staff of the Council authorised to do so by the Chairperson.

14 Personal liability of members of the Board and certain other persons

A matter or thing done or omitted to be done by the Council, the Board, a committee of the Board, a member of the Board or of a committee of the Board or any person acting under the direction of the Board or of a committee of the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

15 Proceedings for offences

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

16 By-laws

- (1) The Council may make by-laws, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular⁹for or with respect to:

- (a) regulating the conduct of business at meetings of the Board, including the times and places of meetings, and
- (b) prescribing the circumstances in which, and the terms and conditions on which, any property vested in the Council may be applied for any purpose for which it may be applied in accordance with this Act.

(2) A by-law has no effect unless approved by the Governor.

17 Repeal of New South Wales State Cancer Council Act 1955 No 25

The *New South Wales State Cancer Council Act 1955* is repealed.

18 Savings and transitional provisions

Schedule 3 has effect.

19 Amendment of Public Finance and Audit Act 1983 No 152

The *Public Finance and Audit Act 1983* is amended by omitting from Schedule 2 the words “New South Wales State Cancer Council” and by inserting instead the words “New South Wales Cancer Council”.

20 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions relating to members of the Board

(Section 6)

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Board.

member means a member of the Board, including the Chairperson.

2 Chairperson and Deputy Chairperson of the Board

- (1) The Board is to elect one of its members to be Chairperson of the Board and another of its members to be Deputy Chairperson of the Board.
- (2) The Board may at any time remove a member from the office of Chairperson or Deputy Chairperson.
- (3) A person who is appointed as Chairperson or Deputy Chairperson vacates that office if the person:
 - (a) is removed from that office by the Board, or
 - (b) resigns that office by instrument in writing addressed to the Board, or
 - (c) ceases to be a member.

3 Terms of office of members

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold office as a member for consecutive terms of office totalling more than 9 years.

4 Remuneration

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.

5 Vacancy in office of member

- (1) The office of a member 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 or under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may, on the recommendation of the Minister, remove a member from office for misbehaviour, incompetence or incapacity.

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- (3) Without limiting subclause (2), the Governor, on the recommendation of the Minister, may remove a member from office for a contravention of clause 6.

6 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

7 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any 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 member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Provisions relating to procedure of the Board

(Section 6)

1 Definition

In this Schedule:

Chairperson means the Chairperson of the Board.

member means a member of the Board, including the Chairperson.

2 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Board.

3 Quorum

The quorum for a meeting of the Board is 6 members.

4 Presiding member

- (1) The Chairperson, or in the Chairperson's absence the Deputy Chairperson, is to preside at a meeting of the Board.
- (2) If both the Chairperson and Deputy Chairperson are absent from any meeting, the members present are to elect one of their number to preside at that meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

5 Voting

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.

Schedule 3 Savings and transitional provisions

(Section 18)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect on 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 that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of that publication.

Part 2 Provisions consequent on the enactment of this Act

2 Definition

In this Schedule *the 1955 Act* means the *New South Wales State Cancer Council Act 1955*.

3 The Council

- (1) A person who, immediately before the repeal of the 1955 Act, held office as a member of the New South Wales State Cancer Council:

- (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the Board under this Act.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

4 Cancer Investigation Committees

- (1) Any investigation being carried out immediately before the repeal of section 10A of the 1955 Act by a Cancer Investigation Committee established under that section may be continued and completed as if that section had not been repealed.
- (2) The money in the account referred to in section 9 may, subject to the terms of any trust or condition affecting that money or any part of it, be applied for the purpose of meeting the costs of an investigation referred to in subclause (1).
- (3) A person who, immediately before the repeal of section 10A of the 1955 Act, held office as a member of a Cancer Investigation Committee established under that section ceases to hold that office:
- (a) if an investigation of the Committee is being continued under subclause (1), on the completion of the investigation, or
 - (b) if no such investigation is being continued, on the repeal of that section.
- (4) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

5 Members of staff

Any person who was a member of staff of the Council employed under the 1955 Act immediately before its repeal continues to be a member of staff of the Council.

6 New South Wales Cancer Council Account

The account referred to in section 9 of this Act is a continuation of the New South Wales State Cancer Council Account established under section 11 of the 1955 Act.

7 Gifts and other property

- (1) Any property held by the Council on trust to be applied as provided by section 12 of the 1955 Act is taken to be held on trust to be applied as provided by section 10 of this Act.
- (2) Any property acquired by the Council for the purposes of the 1955 Act is taken to have been acquired for the purposes of this Act.

8 References to New South Wales State Cancer Council

On and from the repeal of the 1955 Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Council under the 1955 Act is to be read as a reference to the Council under this Act.

[Minister's second reading speech made in—
Legislative Assembly on 31 May 1995
Legislative Council on 11 October 1995]