

New South Wales Cancer Council Act 1995 No 43

[1995-43]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Corporations \(Consequential Amendments\) Bill 2001](#)

Authorisation

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
Part 2 The New South Wales Cancer Council, the Board, Committees and Staff	4
4 Constitution of the Council	4
5 Objects of the Council	5
6 The Board of the Council	6
7 Committees	7
8 Staff of the Council	8
Part 3 Property of the Council	8
9 New South Wales Cancer Council Account	8
10 Property to be held in trust	9
11 Power to accept gifts	9
12 Cancer institutes	9
Part 4 Miscellaneous	10

13 Seal of the Council.....	10
14 Personal liability of members of the Board and certain other persons	10
15 Proceedings for offences	10
16 By-laws	10
17 Repeal of New South Wales State Cancer Council Act 1955 No 25.....	11
18 Savings and transitional provisions	11
19 (Repealed)	11
20 Review of Act.....	11
Schedule 1 Provisions relating to members of the Board.....	11
Schedule 2 Provisions relating to procedure of the Board.....	16
Schedule 3 Savings and transitional provisions	17

New South Wales Cancer Council Act 1995 No 43



New South Wales

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.

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:
- (a) 14 part-time members appointed by the Governor, and
 - (b) the chief executive officer of the Council.
- (2) The appointed part-time members of the Board are to comprise the following:
- (a) a person who has expertise and experience in conducting medical research with relevance to cancer and who is nominated by the Australian Society for Medical Research,
 - (b) two persons who have expertise and experience in the care of cancer patients, one of whom is nominated by the Clinical Oncological Society of Australia and the other nominated by the Australian Medical Association,
 - (c) a person who has expertise and experience in disease prevention, health promotion or public education and who is nominated by the Public Health Association of Australia,
 - (d) three persons who have expertise and experience in the training of undergraduate and postgraduate students in cancer control, one of whom is nominated by the Vice-Chancellor of the University of Newcastle, another nominated by the Vice-Chancellor of the University of New South Wales, and the other nominated by the Vice-Chancellor of the University of Sydney,
 - (e) two persons who have knowledge of the needs of cancer patients or other users of health services (at least one of whom has a knowledge of those needs in the rural community) and who are nominated by the Australian Consumers Association or the Consumer's Health Forum (or by both of them),
 - (f) a person who is a legal practitioner and who is nominated by the Law Society of New South Wales or the New South Wales Bar Association (or by both of them),
 - (g) a person who is a prominent member of the business community or who has expertise and experience in business management,
 - (h) a person who has expertise and experience in the practice of accountancy,
 - (i) an elected staff member (elected in accordance with clause 1A of Schedule 1),
 - (j) a person nominated by the Minister.

- (3) At least 2 of the members of the Board must be medical practitioners.
- (3A) The Minister may seek nominations of persons for appointment as a member referred to in subsection (2) (g) or (h) from any relevant person or body, including:
 - (a) in the case of a member referred to in subsection (2) (g)—the State Chamber of Commerce (New South Wales), the Australian Institute of Company Directors (NSW Division) or the Business Council of Australia, or
 - (b) in the case of a member referred to in subsection (2) (h)—the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants.
- (3B) If a body that is authorised by this section to nominate a person for appointment to the Board fails to nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Minister may instead nominate a person for that appointment.
- (3C) If a body that is authorised by this section to nominate a person for appointment to the Board ceases to exist, this section has effect as if the reference to that body were a reference instead to a body or person prescribed by the regulations.
- (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 a chief executive officer of the Council and such other 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 governing body of a public health organisation within the meaning of the *Health Services Act 1997* is subject to the control and direction of the Council in governing, managing and controlling any cancer institute if:
- (a) the institute is situated on land vested in, or under the control of, the organisation, and
 - (b) the cost of constructing the institute was met out of money provided by Parliament, a Government department or the Council.

- (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 *Health Services Act 1997*.

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 particular, for 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 (Repealed)

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:

appointed member means a member of the Board other than the chief executive officer of the Council.

Chairperson means the Chairperson of the Board.

elected staff member means the member of the Board referred to in section 6 (2) (i).

member means a member of the Board, including the chief executive officer of the Council and the Chairperson of the Board.

1A Elected staff member

- (1) The elected staff member is to be a member of the staff of the Council who is elected by the staff of the Council in accordance with this clause.
- (2) Regulations may be made for or with respect to the election of a person to hold office as the elected staff member. The Board may, subject to this clause and any such regulations, determine the manner in which an election is to be conducted.
- (3) A person appointed by the Board:

- (a) is to be the returning officer for an election, and
- (b) has the functions conferred or imposed on the returning officer under this clause in relation to the election.

The Board may (but need not) appoint as the returning officer the Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner.

- (4) The members of the staff of the Council are entitled to vote at an election for the elected staff member in accordance with this clause.
- (5) A person's nomination as a candidate for election as the elected staff member is invalid if:
 - (a) the nomination is not made by at least 2 persons who are entitled to vote in the election, or
 - (b) the person is not, at the time of nomination, a member of the staff of the Council.
- (6) A person may be, at the same time, both the elected staff member and a member of the staff of the Council.
- (7) Nothing in any law, rule, direction or other requirement that:
 - (a) is applicable to the elected staff member in his or her capacity as a member of the staff of the Council, and
 - (b) would not be so applicable if the elected staff member were not such a member of that staff,operates so as to prevent or restrict the exercise by the elected staff member of any of the functions of an elected staff member.
- (8) If no person is nominated at an election, or if for any other reason an election fails:
 - (a) the Minister may nominate a person eligible for election to be appointed under this Act as the elected staff member, and
 - (b) that person is, on being appointed by the Governor, taken to be a person elected in accordance with this clause.
- (9) If a vacancy occurs in the office of elected staff member otherwise than by reason of the expiration of the period for which the elected staff member was appointed:
 - (a) the Governor may, pending a further election, appoint a person eligible for election to hold, subject to this Schedule, the office of elected staff member for the balance of the term of the elected staff member or until a successor is elected (whichever first occurs), and

(b) the person is, on being so appointed, taken to be a person elected in accordance with this clause.

(10) In this clause:

staff of the Council means the persons employed by the Council under section 8, other than the chief executive officer of the Council.

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.

(1A) The chief executive officer and the elected staff member are not eligible to be the Chairperson or Deputy Chairperson.

(1B) The Chairperson or Deputy Chairperson holds that office, subject to this clause, for a term specified by the Board (being a term that expires on the next expiry of the term of office of any members of the Board), but is eligible for re-appointment if otherwise qualified.

(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

(b1) completes a term of office as Chairperson or Deputy Chairperson and is not re-appointed, or

(c) ceases to be a member.

3 Term of office of members

(1) Subject to this Schedule and Schedule 3:

(a) an appointed member (other than an elected staff member) holds office for such period (not exceeding 4 years), and

(b) an elected staff member holds office for such period (not exceeding 2 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) an appointed member (other than an elected staff member) for consecutive terms of office totalling more than 8 years, or
- (b) as an elected staff member for consecutive terms of office totalling more than 4 years.

4 Remuneration

An appointed 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 an appointed 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
 - (d1) being the elected staff member—ceases to be a member of the staff of the Council, 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 that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may, on the recommendation of the Minister, remove an appointed member from office for misbehaviour, incompetence or incapacity.
- (3) Without limiting subclause (2), the Governor, on the recommendation of the Minister, may remove an appointed 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 appointed 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 an appointed 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 an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.
- (3) The office of an appointed 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 8 members (at least 3 being members referred to in section 6 (2) (a)-(d) and at least 3 being other members of the Board).

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

New South Wales Cancer Council Amendment Act 1997

- (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.

Part 3 Provisions consequent on enactment of [New South Wales Cancer Council Amendment Act 1997](#)

9 Definition of “amending Act”

In this Schedule:

amending Act means the [New South Wales Cancer Council Amendment Act 1997](#).

10 Members of existing Board

- (1) A person who, immediately before the commencement of the amending Act, held office as a member of the Board of the 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.

11 Terms of office of first members appointed after commencement of amending Act

- (1) The term of office of 7 of the first part-time members of the Board appointed immediately after the commencement of the amending Act (other than the elected staff member) is to be such period (not exceeding 2 years) as is specified in their instruments of appointment.
- (2) Those 7 members are to be chosen by lot in accordance with arrangements made by the Minister.

12 Temporary appointment of person as elected staff member pending election

The Governor may, pending the election of the first elected staff member of the Board after the commencement of the amending Act:

- (a) appoint a person as the elected staff member to hold, subject to this Act, the office of elected staff member until the election of that member and the person is, on being so appointed, taken to be a person elected in accordance with clause 1A of Schedule 1, or

- (b) appoint the other part-time members of the Board and leave the office of elected staff member vacant pending the election of that member.