

Community Welfare Act 1987 No 52

[1987-52]



New South Wales

Status Information

Currency of version

Historical version for 1 January 2013 to 2 December 2014 (accessed 25 November 2024 at 6:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
 - Disability Inclusion Act 2014 No 41* (not commenced — to commence on 3.12.2014)
 - Statute Law (Miscellaneous Provisions) Act (No 2) 2014 No 88* (not commenced — to commence on 8.1.2015)

Authorisation

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File last modified 28 November 2014

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New South Wales

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Community Welfare Act 1987 No 52



New South Wales

An Act with respect to community welfare.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Community Welfare Act 1987*.

2 Commencement

- (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.
- (2) Sections 14, 15 and 16 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) Part 6 shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

approved non-Government organisation means a corporation, society, association or other body of persons, not being the Crown, approved by the Minister for the purposes of this Act.

child means a person who is under the age of 18 years.

committee means an advisory committee referred to in section 17.

Community Disaster Relief Fund means the fund referred to in section 39.

Community Welfare Fund means the fund referred to in section 12.

community welfare legislation means:

- (a) this Act and any other Act administered by the Minister within the Department,

and

(b) any instrument under this Act or any other such Act,

council means the Disability Council.

Department means the Department of Youth and Community Services.

Director-General means the person for the time being holding office or acting as the Director-General of the Department.

Disability Council means the council referred to in section 16.

disabled person means an intellectually disabled person or a physically disabled person.

facility, in relation to any provision of the community welfare legislation, means any premises the subject of an order in force under section 3A (1) in respect of that provision.

intellectual impairment, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person's brain, whether arising from a condition subsisting at birth or from illness or injury.

intellectually disabled person includes a person who, as a result of disabilities arising from intellectual impairment, is substantially limited in one or more major life activities.

officer means an officer or temporary employee, within the meaning of the [Public Sector Management Act 1988](#), employed in the Department.

physical impairment, in relation to a person, means any defect or disturbance in the normal structure and functioning of the person's body, whether arising from a condition subsisting at birth or from illness or injury, but does not include intellectual impairment.

physically disabled person includes a person who, as a result of having a physical impairment to his or her body, and having regard to any community attitudes relating to persons having the same physical impairment as that person and to the physical environment, is limited in his or her opportunities to enjoy a full and active life.

regulation means a regulation made under 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.

3A Facilities

- (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility:
 - (a) for the purposes of the community welfare legislation generally, or
 - (b) for the purposes of any specified provision of the community welfare legislation.

Editorial note—

Order published in Gazette No 8 of 15.1.1988, p 223 and amended in Gazette No 78 of 23.6.1989, p 3653.

- (2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.
- (3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.
- (4) An order under subsection (1) shall not be made in relation to premises under the control of a person (other than the Crown or a person acting on behalf of the Crown) except with the consent in writing of the firstmentioned person.
- (5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister (other than the Minister administering this Act) except with the consent in writing of that other Minister.
- (6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to the community welfare legislation.

3B (Repealed)

4 Objects of community welfare legislation

- (1) The objects of the community welfare legislation are:
 - (a) to promote, protect, develop, maintain and improve the well-being of the people of New South Wales to the maximum extent possible,
 - (b) to promote the welfare of the family as the basis of community well-being,
 - (c) to ensure the provision, to the maximum extent possible, of services for, and assistance to, persons disadvantaged because of:
 - (i) lack of adequate family or social support,
 - (ii) personal or family problems that inhibit adequate social functioning,
 - (iii) the breakdown of the family as a social unit,

- (iv) lack of adequate food, shelter or other basic necessities,
 - (v) physical or intellectual impairment,
 - (vi) their being members of an ethnic group which has inadequate access to services or resources available in the community,
 - (vii) age, whether young, advanced or other,
 - (viii) lack of information about or access to services or resources available in the community, or
 - (ix) their residing in places which lack basic services essential to the proper functioning of those persons,
- (d) to promote the welfare of Aborigines on the basis of a recognition of:
- (i) Aboriginal culture and identity,
 - (ii) Aboriginal community structures,
 - (iii) Aboriginal community standards,
 - (iv) the rights of Aborigines to raise and protect their own children, and
 - (v) the rights of Aborigines to be involved in the decision-making processes that affect them and their children,
- (e) to encourage the establishment of community welfare and other services necessary to promote, protect, develop, maintain and improve the well-being of persons,
- (f) to assist and encourage collaboration among persons and organisations engaged in the promotion of community welfare or the provision of community welfare services,
- (g) to promote and encourage research, education, instruction and training in matters relating to community welfare,
- (h) to promote and facilitate the provision by persons and organisations of services to complement any community welfare service,
- (i) to promote the involvement of the community in the provision of community welfare services and in the social development of the community, and
- (j) to co-ordinate the allocation of funds for community welfare services.
- (2) The provisions of any paragraph of subsection (1) shall not be construed as limiting or being limited by the operation of any other provision of the community welfare

legislation.

- (3) In making any appointment under the community welfare legislation, the Minister shall have regard to the objects specified in subsection (1).

5 Delegation

- (1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under the community welfare legislation, other than this power of delegation.
- (2) The Director-General may delegate to any person the exercise of:
- (a) any of the functions delegated to the Director-General by the Minister, or
 - (b) any of the other functions of the Director-General under the community welfare legislation, other than this power of delegation.
- (3) In this section, a reference to the community welfare legislation includes a reference to each of the following Acts (and to any instrument under the Act) even though the Act may not be administered by the Minister within the Department:

Children (Criminal Proceedings) Act 1987

Children (Protection and Parental Responsibility) Act 1997

- (4) However, a reference to community welfare legislation in this section does not include a reference to the *Boarding Houses Act 2012* even if it is wholly or partly administered by the Minister.
- (5)-(7) (Repealed)

Part 2 Community welfare and social development

Division 1 Functions of Minister and Director-General

6 Power of Minister in relation to community welfare and social development

- (1) The Minister may:
- (a) conduct research into community welfare and social development and the adequacy and efficacy of the community welfare legislation, and of the administration of the community welfare legislation, and evaluate the information gained from any such research,
 - (b) without limiting paragraph (a), conduct research to identify groups of persons who are or who are likely to become disadvantaged, as referred to in section 4 (1) (c),
 - (c) review, monitor and evaluate programmes for the provision of community welfare

services and social development programmes that are carried out under the community welfare legislation or that are financed, wholly or partly, out of funds provided by Parliament for the administration of the community welfare legislation,

- (d) grant to such persons or organisations concerned in community welfare or social development as the Minister thinks fit such access to publications and information in the possession of the Department (including the results of any research or evaluation) as the Minister thinks fit and in such manner as the Minister considers would preserve any necessary confidentiality and the privacy of persons,
 - (e) develop and carry out, or provide assistance and support for the development and carrying out by persons or organisations of, programmes for the provision of community welfare services and social development programmes the objectives of which are consistent with any of the objects of the community welfare legislation, and
 - (f) with respect to any kind of assistance that may be granted under the community welfare legislation, cause to be published guidelines specifying the circumstances in which that assistance may be granted.
- (2) Any assistance or support referred to in subsection (1) (e) may be provided on such conditions as are agreed upon by the Minister and the person or organisation to whom or to which the assistance or support is to be provided.
- (3) In the exercise of any function under subsection (1) (e), the Minister shall have regard to the desirability of exercising that function with respect to programmes that:
- (a) develop and strengthen local neighbourhood and community interests,
 - (b) are based on the principle of self-help or the transfer of skills and knowledge, or
 - (c) take into consideration the multi-cultural nature of the community.
- (4) The provisions of any paragraph of subsection (1) shall not be construed as limiting or being limited by the operation of any other provision of this Act.

7 Assistance funds for community welfare and social development programs

- (1) The Minister may establish and maintain funds (in this section referred to as **assistance funds**) for the purpose of providing assistance and support for any programmes, as referred to in section 6 (1) (e), being carried out or to be carried out by any persons, other than the Minister, or by any organisations.
- (2) An assistance fund shall consist of:
- (a) such money as may be provided from time to time by Parliament for the purpose of the carrying out of the programmes for which the assistance fund is established

and maintained, and

(b) such other money as may be allocated to the assistance fund from time to time from the Community Welfare Fund.

(3) Payments out of an assistance fund may be made for the purpose of carrying out the programmes for which the assistance fund is established and maintained and may be so made only with the approval of the Minister.

(3A) Division 2 of Part 2 of the *Disability Services Act 1993* applies to payments out of an assistance fund in the same way as it applies to financial assistance provided under that Act if the payments are to persons or organisations for whom financial assistance may be provided under that Act.

(4) The Minister shall, before giving any such approval, take into consideration any recommendation made by any committee having functions to advise the Minister with respect to those programmes.

8 Honorary welfare officers

(1) The Minister may appoint honorary welfare officers to carry out such duties under the community welfare legislation as may be prescribed by the regulations.

(2) The Director-General shall issue each honorary welfare officer with an identity card evidencing the officer's appointment.

(3) The Director-General may provide such training and support for honorary welfare officers as the Director-General thinks fit.

9 Preparation of policies and programmes by the Director-General

(1) The Director-General shall, when given directions by the Minister to do so, cause to be prepared statements of proposed policies with respect to community welfare and social development and proposed programmes for the implementation of those policies.

(2) If the Minister so approves, the Director-General may:

(a) invite participation by such persons and organisations concerned in community welfare or social development as the Director-General thinks fit in the preparation of any such statements or programmes,

(b) cause drafts of any such statements or programmes to be made available for public comment before their submission, with or without amendment, to the Minister, and

(c) cause any such statements or programmes, and any documents or matter used in their preparation, to be published and made available to the public.

10 Assessment of community welfare and social development programmes by the Director-General

The Director-General shall, when given directions by the Minister to do so:

- (a) examine any proposed community welfare or social development programmes specified in those directions,
- (b) review, monitor and evaluate any community welfare or social development programmes that are:
 - (i) carried out under the community welfare legislation, or
 - (ii) financed, wholly or partly, out of funds provided by Parliament for the administration of the community welfare legislation,for the purpose of determining whether they fulfil their objectives and whether their objectives are of value to the community, and
- (c) furnish to the Minister a report of any thing done pursuant to paragraph (a) or (b), being a report that contains submissions with respect to:
 - (i) the priorities that should be accorded to the implementation or improvement of any of the programmes the subject of any such report, and
 - (ii) the resources necessary for the implementation or improvement of any such programmes.

11 Arrangements to use services

- (1) For the purpose of the exercise of any of the Minister's functions under the community welfare legislation, the Minister may enter into an arrangement (either in consideration of the payment of a fee or without charge to the Minister) to use the services of any person or organisation.
- (2) For the purpose of the exercise of any of the Director-General's functions, or any of an officer's functions, under the community welfare legislation, the Director-General may, with the approval of the Minister, enter into an arrangement (either in consideration of a fee or without charge to the Director-General) to use the services of any person or organisation.
- (3) For the purpose of the promoting of any of the objects of the community welfare legislation, the Minister, or the Director-General with the approval of the Minister, may enter into an arrangement (either in consideration of the payment of a fee or without charge to the Minister or the Director-General) to use the services of any person or organisation.
- (4) This section does not extend to authorising the Minister or the Director-General to enter into a contract of employment, other than a contract of employment on a

temporary or casual basis.

- (5) A contract of employment on a temporary or casual basis may be entered into only on such conditions as the Public Service Board may approve.

12 Community Welfare Fund

- (1) There shall be established in the Special Deposits Account in the Treasury a fund to be called the "Community Welfare Fund".
- (2) The Community Welfare Fund shall consist of such money as may be provided by Parliament for payment into that fund together with any money paid by any person to the Minister or the Director-General for the purpose of providing community welfare services generally or of a specified kind.

13 Application of Community Welfare Fund

- (1) The Community Welfare Fund may be applied by the Director-General, with the written approval of the Minister, for the purpose of:
 - (a) except as provided by paragraph (b)—providing community welfare services generally, or
 - (b) to the extent to which the fund represents money paid for the purpose of providing community welfare services of a kind specified by the person who made the payment—providing community welfare services of that kind.
- (2) Any payments from the Community Welfare Fund may be made directly to persons in need of community welfare services or to approved non-Government organisations for the relief of those persons.

13A Acquisition and disposal of land

- (1) The Minister may, for the purposes of the community welfare legislation, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [*Land Acquisition \(Just Terms Compensation\) Act 1991*](#).
- (2) The Minister may, for the purposes of the community welfare legislation, acquire land or other property by gift, devise or bequest.
- (3) The Minister may agree to a condition of any such gift, devise or bequest, and the rule of law against remoteness of vesting does not apply to any such condition.
- (4) The Minister may expend money:
 - (a) on the improvement of any land acquired under this section, or
 - (b) on the improvement, for the purposes of the community welfare legislation, of any other land,

even though the improvement or the land may not be used solely for the purposes of the community welfare legislation.

(5) The Minister may:

- (a) for the purposes of the community welfare legislation, grant a lease or licence of any land acquired under this section, and
- (b) in the case of land that is no longer required for the purpose for which it was acquired, grant a lease or licence of the land or sell or otherwise dispose of the land.

(6) The Minister may make commercial use of land acquired under this section if that use is associated with a purpose for which land may be so acquired.

13B, 13C (Repealed)

Division 2 Council and committees

14, 15 (Repealed)

16 Disability Council of New South Wales

(1) There shall be a Disability Council of New South Wales.

(2) The functions of the Disability Council are:

- (a) to monitor the implementation of Government policy in relation to disabled persons and their families,
- (b) to advise the Government on the effect and relevance of services provided to disabled persons and their families,
- (c) to advise the Government on priorities to be accorded to services provided to disabled persons and their families,
- (d) to advise the Government on the role of voluntary organisations in relation to services provided to disabled persons and their families,
- (e) to promote the integration of disabled persons into the community,
- (f) to promote community awareness of matters concerning the welfare of disabled persons and their families,
- (g) to consult and co-operate with the Disability Advisory Council of Australia and other similar bodies, and
- (h) to exercise such other functions as may be prescribed by the regulations.

(3) In the exercise of its functions, the Disability Council shall report to the Minister and,

where appropriate, through the Minister to other Ministers and to Department Heads, within the meaning of the *Public Service Act 1979*.

- (4) A report may contain such information or advice as the Disability Council considers appropriate to include in the report.
- (5) For the purpose of exercising any of its functions, the Disability Council may request information or advice from any public or local authority.
- (6) A public or local authority to which such a request is made is empowered to comply with the request.
- (7) It is the responsibility of the Minister to co-ordinate and convey to the Disability Council any responses made by the Minister, by any other Ministers and by any Department Heads, within the meaning of the *Public Service Act 1979*, to any report referred to in subsection (3).
- (8) Schedules 1 and 2 apply to the Disability Council.

17 Committees

- (1) The Minister may, by order in writing, establish such regional, local, special or other advisory committees as the Minister thinks fit.
- (2) The functions of a committee are to exercise the functions specified in respect of it in the instrument establishing it, or in a subsequent instrument executed by the Minister, and to advise the Minister on such matters as may be referred to it by the Minister.
- (3) The Minister shall appoint one of the members of a committee to be the chairperson of the committee.
- (4) The chairperson of a committee may be referred to as the chairman or chairwoman, as the case may require.
- (5) A member of a committee (other than a public servant) 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.
- (6) Schedule 2 applies to a committee.

18 Assistance to council and committees

- (1) The Minister may provide assistance (including financial assistance) for the proper functioning of the council or any committee.
- (2) Without limiting the Minister's powers under any other provision of this Act, the Minister may make payments out of money provided by Parliament for the purpose of providing the assistance referred to in subsection (1).

19 Reports

- (1) The council and each committee shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of the council or committee.
- (2) A report shall deal with such matters as the Minister directs and with such other matters as the council or committee considers appropriate to include in the report.

Part 3

20-34 (Repealed)

Part 4 General welfare assistance

35 Objects of Part

The objects of this Part are as follows:

- (a) to ensure, to the maximum extent possible, that assistance and supportive services are provided to persons in need or distress,
- (b) to ensure that, whenever relevant, assistance and supportive services are aimed at preventing the breakdown of the family as a social unit.

36 General assistance

- (1) The Minister may:
 - (a) provide assistance (including financial assistance) for the relief of persons in need or distress,
 - (b) provide home support services (that is, assistance in the carrying out of work of a domestic or home-maintenance nature) to persons unable to carry out that work,
 - (c) provide homemaker services (that is, services to assist families in the management of their homes) with the object of preventing the breakdown of the family as a social unit,
 - (d) provide services designed to meet the needs of children,
 - (e) provide services designed to meet the needs of persons who are disadvantaged as referred to in section 4 (1) (c), and
 - (f) provide assistance (including financial assistance) to approved non-Government organisations whose objects are or include the provision of assistance or services referred to in this subsection.
- (2) Without limiting the Minister's powers under any other provision of this Act, the Minister may make payments out of money provided by Parliament for the purpose of

providing assistance referred to in subsection (1) (a) or (f).

Part 5 Disaster welfare assistance

37 Definitions

(1) In this Part:

disaster means an occurrence, whether or not due to natural causes, that causes loss of life, injury, distress or danger to persons or loss of, or damage to, property.

disaster victim means a person who is in need or distress, or whose property is lost or damaged, as a result of a disaster.

private disaster relief fund means a fund raised by or resulting from an appeal for support for the purpose of assisting persons who are or may become disaster victims and includes any investments made out of money in such a fund, but does not include the Community Disaster Relief Fund.

(2) A reference in this Part to a particular disaster includes a reference to a particular kind of disaster.

(3) (Repealed)

37A Declaration of disasters

(1) The Minister may, by order in writing, declare a disaster to be a disaster to which section 38 applies.

(2) The Minister shall not make such an order unless satisfied that the disaster is of such a nature as to warrant its being treated as a disaster to which section 38 applies.

(3) The Minister shall, as soon as practicable after making such an order, cause a copy of the order to be published in the Gazette.

38 Co-ordination of welfare services for victims of declared disasters

(1) The Director-General may, in accordance with any directions given by the Minister, take such steps as the Director-General thinks fit for the purpose of co-ordinating the provision of community welfare services for disaster victims of a disaster declared under section 37A.

(2) The Director-General shall not exercise any functions under subsection (1) in a manner inconsistent with any of the provisions of the [State Emergency and Rescue Management Act 1989](#).

38A Financial and other assistance to disaster victims

(1) The Director-General may, in accordance with any directions given by the Minister,

provide assistance (including financial assistance out of money to be provided by Parliament) to:

- (a) disaster victims, and
- (b) approved non-Government organisations whose objects are or include the provision of assistance to disaster victims.

(2) Nothing in this section limits the operation of Part 4.

39 Community Disaster Relief Fund

(1) There shall be established by the Director-General a fund to be called the “Community Disaster Relief Fund”.

(2) The Community Disaster Relief Fund shall consist of:

- (a) any money paid to the Director-General by any person for the relief of disaster victims generally or disaster victims of a particular disaster specified by the person making the payment, and
- (b) any fund transferred to or vested in the Director-General under section 41.

40 Application of Community Disaster Relief Fund

(1) The Community Disaster Relief Fund:

(a) to the extent to which it represents:

- (i) money paid to the Director-General under section 39 (2) (a) for the relief of disaster victims of a particular disaster, or
- (ii) a private disaster relief fund raised by or resulting from an appeal for support for the purpose of assisting persons who are or may become disaster victims as a result of a particular disaster,

shall, so far as it is practicable in the opinion of the Director-General to do so, be applied for the purpose of assisting disaster victims of that disaster, or

(b) except as provided by paragraph (a), shall be applied:

- (i) for the purpose of assisting disaster victims of any disaster,
- (ii) for the purpose of acquiring stores and equipment to be used for the purpose of assisting victims of future disasters, or
- (iii) for the purpose of planning, and training persons, to cope with the effects of disasters.

(2) Any payments from the Community Disaster Relief Fund may be made directly for any

purpose referred to in subsection (1) or to approved non-Government organisations for any such purpose.

41 Transfer of private disaster relief funds to Community Disaster Relief Fund

- (1) Any person in whom a private disaster relief fund is vested may transfer that fund to the Director-General to form part of the Community Disaster Relief Fund.
- (2) Where the Governor is satisfied that:
 - (a) a fund is a private disaster relief fund established in respect of a particular disaster,
 - (b) no payment has been made from the fund for a period of one year or more to a disaster victim of that disaster, and
 - (c) the fund is not likely to be applied for making payments to disaster victims of that disaster,

the Governor may, by order published in the Gazette, vest the fund in the Director-General to form part of the Community Disaster Relief Fund.

- (3) A fund may be transferred to the Director-General under subsection (1) notwithstanding any trust on which it is held.
- (4) A fund transferred to the Director-General under subsection (1), or vested in the Director-General under subsection (2), shall be held by the Director-General freed and discharged from any trust to which it was subject immediately before the transfer or vesting.

42 Investment of Community Disaster Relief Fund

- (1) Money in the Community Disaster Relief Fund may be invested in any investment authorised for the time being by the [Trustee Act 1925](#).
- (2) The Director-General may make arrangements with the NSW Trustee and Guardian for the management of the Community Disaster Relief Fund.

Part 6

43-74B (Repealed)

Part 7 Miscellaneous

75 Limitation of personal liability

No matter or thing done by the Minister, the Director-General, an officer or any other person shall, if the matter or thing was done in good faith and with reasonable care for the purposes of executing the community welfare legislation, subject the Minister, the

Director-General, the officer or that other person personally to any action, liability, claim or demand.

76 Disclosure of information

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,
- (b) in connection with the administration or execution of this Act,
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

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

76A Obstruction etc of officers

A person who wilfully hinders, obstructs, delays, assaults or threatens with violence another person in the exercise of that other person's functions under this Act is guilty of an offence.

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

76B Person falsely representing as an officer

A person, not being an officer, who:

- (a) assumes or uses the designation of officer or falsely represents himself or herself to be officially associated in any capacity with the Department, or
- (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,

is guilty of an offence.

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

76C False or misleading statements

A person must not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application:

- (a) make a statement, or
- (b) furnish information,

that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

77 Proceedings for offences

Proceedings for an offence against this Act shall be dealt with summarily before the Local Court.

78 Regulations

(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 and, in particular, for or with respect to:

(a) the council or any committee and its members and functions,

(a1) (Repealed)

(b) the Community Welfare Fund, and

(c) (Repealed)

(d) the Community Disaster Relief Fund.

(e) (Repealed)

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

79 Savings, transitional and other provisions

Schedule 4 has effect.

Schedule 1 Constitution of council

(Sections 14, 15, 16)

1 Definition

In this Schedule, a reference to a member of the council includes, subject to the regulations, a reference to the member's alternative appointed and acting in accordance with the regulations made for the purposes of clause 9 of Schedule 2.

2, 3 (Repealed)

4 Disability Council

(1) The Disability Council shall consist of such number of persons, appointed by the Governor, as the Governor thinks fit.

- (2) The members of the Disability Council shall include:
- (a) members of, or persons employed by, organisations concerned especially in the welfare of disabled persons,
 - (b) officers of Government departments concerned especially in the welfare of disabled persons, and
 - (c) persons otherwise experienced in the welfare of disabled persons.
- (3) Of the members of the Disability Council, the majority shall consist of disabled persons.

5 (Repealed)

6 Chairperson

- (1) One of the members of the council shall, by the relevant instrument of appointment or by a subsequent instrument executed by the Governor, be appointed as chairperson of the council.
- (2) The chairperson of the council may be referred to as the chairman or chairwoman, as the case may require.

7 Term of office

A member of the council shall, subject to this Schedule and the regulations, hold office for such term, not exceeding 4 years, as is specified in the relevant instrument of appointment and is, if otherwise qualified, eligible for reappointment.

8 Remuneration

A member of the council (other than a public servant) 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.

9 Filling of vacancy in office of member

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

10 Removal from office

The Governor may, for any cause that seems sufficient, remove a member of the council from office.

11 Casual vacancy

A member of the council shall be deemed to have vacated office if the member:

- (a) dies,
- (b) resigns office by instrument in writing addressed to the Minister,
- (c) absents himself or herself from 4 consecutive meetings of the council without leave of the council,
- (d) becomes a mentally incapacitated person, or
- (e) is removed from office by the Governor.
- (f), (g) (Repealed)

12 Public Service Act 1979 not to apply

The *Public Service Act 1979* does not apply to or in respect of the appointment of a person as a member of the council, and a member of the council is not, as a member, subject to that Act.

Schedule 2 Procedure of council and committees

(Sections 14, 15, 16, 17)

1 Definition

In this Schedule, a reference to a member of the council or a committee includes, subject to the regulations, a reference to the member's alternative appointed and acting in accordance with the regulations made for the purposes of clause 9.

2 Quorum

The quorum for a meeting of the council or committee shall consist of a majority of the members of the council or committee.

3 Temporary chairperson

In the absence of the chairperson from any meeting of the council or committee, the members present shall appoint one of their number to preside at that meeting.

4 Casting vote of chairperson

The chairperson or member presiding at a meeting of the council or committee shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

5 Voting

A decision supported by a majority of votes cast at a meeting of the council or committee at which a quorum is present shall be the decision of the council or committee.

6 (Repealed)

7 Meetings

- (1) The frequency of meetings of the council or committee and the procedures for the conduct of business at those meetings shall, subject to subclause (2) and any directions by the Minister, be as determined by the council or committee.
- (2) (Repealed)

8 Minutes

The chairperson of the council or committee shall cause minutes of the proceedings and decisions at each meeting of the council or committee to be kept, and shall furnish the Director-General with a copy of those minutes as soon as practicable after each meeting.

9 Alternative members

The regulations may make provision for or with respect to the appointment of alternative members for members of the council or committee and the exercise by them of the functions of those members.

10 Subcommittees

- (1) The council or committee may establish subcommittees (whether or not consisting of members of the council or committee) for the purpose of advising the council or committee upon such matters within the scope of the council's or committee's functions as may be referred to the subcommittees by the council or committee.
- (2) The convenor of a subcommittee shall be a member of the council or committee by which it is established.

11 Representatives of departments and authorities

The council or committee may invite representatives of other organisations (including State or Commonwealth Government departments and public or local authorities) to participate, but not vote, in the proceedings and deliberations of the council or committee.

12 Secretary

The secretary of the council or committee shall be an officer designated by the Director-General.

13 Application of Schedule to subcommittee

The provisions of this Schedule apply to a subcommittee of the council or committee in the same way as they apply to the council or committee.

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 79)

Part 1 Regulations

1 Regulations

- (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**

2 Definitions

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*.

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

3 Dissolution of Corporation

On the appointed day, the Corporation is dissolved.

4 References to Corporation or its staff

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.

5 Transfer of assets, liabilities etc of Corporation

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.

6 Actions etc of Corporation

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.

7 Transfer of employees of Corporation to Department of Community Services

- (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 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*.

8 Salary, wages and allowances of transferred persons

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.

9 Other conditions of employment of transferred persons

- (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 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.

10 Preservation of rights of transferred persons

- (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.

11 Conditions of employment for new staff

- (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.
- (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.

12 Previous agreement for transfer of staff to Corporation

- (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.
- (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.