

# Cancer Institute (NSW) Act 2003 No 14

[2003-14]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#) (not commenced — to commence on 15.1.2016)

### Authorisation

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New South Wales

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# Cancer Institute (NSW) Act 2003 No 14



New South Wales

An Act relating to the constitution, objectives and functions of the Cancer Institute (NSW); to provide for the registration of the New South Wales Cancer Council as a company limited by guarantee and for the repeal of the *New South Wales Cancer Council Act 1995*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Cancer Institute (NSW) Act 2003*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Board** means the Board of the Cancer Institute established under section 7.

**cancer control** includes any cancer-related activity in the field of human health such as research, the practical application of research, innovation, treatment and care (including palliative care, supportive care and complementary health therapies), prevention, screening, diagnosis, provision of information, training and education.

**Cancer Institute** means the Cancer Institute (NSW) constituted by this Act.

**Chief Cancer Officer** means the Chief Cancer Officer appointed under section 10.

**Director-General** means the Director-General of the Department of Health.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**public health organisation** and **public health system** have the same meanings as in the *Health Services Act 1997*.

(2) Notes included in this Act do not form part of this Act.

## **Part 2 Cancer Institute (NSW)**

### **4 Constitution of Cancer Institute**

- (1) There is constituted by this Act a corporation with the corporate name of the Cancer Institute (NSW).
- (2) The Cancer Institute is not and does not represent the Crown.

### **5 Objectives of Cancer Institute**

The objectives of the Cancer Institute are as follows:

- (a) to increase the survival rate for cancer patients,
- (b) to reduce the incidence of cancer in the community,
- (c) to improve the quality of life of cancer patients and their carers,
- (d) to operate as a source of expertise on cancer control for the government, health service providers, medical researchers and the general community.

### **6 Guiding principles**

In exercising its functions under this Act, the Cancer Institute is to have regard to the following principles:

- (a) effective cancer control requires partnership between the public sector, the private sector and the general community,
- (b) resources available for cancer control should be applied so as to maximise the benefit of those resources to the greatest number of people in the most expeditious, efficient and effective manner,
- (c) there should be an equitable, evidence-based, seamless, patient-centred approach to the care and treatment of cancer patients,
- (d) there should be timely, high quality, co-ordinated and multi-disciplinary care available for all cancer patients, with a focus on improving accessibility irrespective of geographic location, including appropriate networking of cancer-related services,
- (e) there should be specific accountability for public funds applied by the Cancer Institute to new cancer control activities,
- (f) there should be co-operation between State and national bodies engaged in cancer control,
- (g) links between cancer control bodies in New South Wales and relevant bodies

operating or located interstate or overseas should be developed or enhanced,

- (h) up to date information about cancer control (including cancer-related philanthropic activities) should be publicly available and easily accessible,
- (i) cancer-related research activities should be developed in a manner that maximises gains and builds optimal research depth in a number of key research institutions.

## **Part 3 Management and staff of Cancer Institute**

### **7 Board of Cancer Institute**

- (1) There is established by this section a Board of the Cancer Institute.
- (2) The affairs of the Cancer Institute are to be governed by the Board.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Cancer Institute by the Board, or with the authority of the Board, is taken to have been done by the Cancer Institute.
- (4) The Board is subject to the control and direction of the Minister, except in relation to a report or recommendation made by the Board to the Minister.

### **8 Membership of Board**

- (1) The Board is to consist of:
  - (a) at least 5, but not more than 11, persons appointed by the Minister, and
  - (b) the Chief Cancer Officer.
- (2) Schedule 1 has effect with respect to the members and procedure of the Board.

### **9 Committees**

- (1) The Board is to establish the following committees:
  - (a) an Ethics Committee,
  - (b) a Clinical Services Advisory Committee,
  - (c) a Research Advisory Committee,
  - (d) a Quality and Clinical Effectiveness Advisory Committee,
  - (e) such other committees as the Board considers appropriate to provide advice and assistance to the Board in carrying out its functions.
- (2) Each such committee has the function of providing advice, in its respective area of expertise, to the Board on:

- (a) the priorities of the Cancer Institute in achieving its objectives, and
  - (b) such other matters as the Board from time to time requests.
- (3) A committee of the Board is to consist of such persons (including health care professionals) with relevant expertise in the area in respect of which the committee is established.
- (4) It does not matter that some or all of the members of a committee of the Board are not members of the Board.

## **10 Chief Cancer Officer**

- (1) There is to be a Chief Cancer Officer.
- (2) If the position of Chief Cancer Officer is an executive position within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*, the appointment and employment of the Chief Cancer Officer is subject to that Part.
- (2A) If the position of Chief Cancer Officer is not an executive position within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*:
- (a) the Chief Cancer Officer is to be appointed by the Minister, and
  - (b) the Chief Cancer Officer is, while holding that office, to be employed under Part 1 of Chapter 9 of the *Health Services Act 1997* in the NSW Health Service.
- (3) The Chief Cancer Officer is the chief executive officer of the Cancer Institute.
- (4) The Chief Cancer Officer:
- (a) is responsible for the management of the affairs of the Cancer Institute, subject to and in accordance with any directions of the Board, and
  - (b) has and may exercise such other functions as are conferred or imposed on the Chief Cancer Officer by or under this or any other Act.
- (5)-(8) (Repealed)

## **11 Removal of members and appointment of administrator**

- (1) The Governor may at any time, for any reason or no reason and without notice, by order published in the Gazette:
- (a) remove any member (including the Chief Cancer Officer) or all members of the Board from office, or
  - (b) remove all members of the Board from office and appoint, as administrator of the Cancer Institute, a person specified in the order for such period as may be specified in the order, or

- (c) remove all members of the Board (other than the Chief Cancer Officer) from office and appoint, as administrator of the Cancer Institute, the Chief Cancer Officer for such period as may be specified in the order.
  - (2) The Chief Cancer Officer ceases to hold office as Chief Cancer Officer if removed from office as a member of the Board.
  - (3) An administrator of the Cancer Institute has and may exercise, subject to any conditions that may be specified in the order by which the administrator was appointed, all the functions of the Board of the Cancer Institute.
  - (4) An administrator of the Cancer Institute is entitled to be paid from the funds of the Cancer Institute such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.
  - (5) The regulations may make provision with respect to administrators of the Cancer Institute.
  - (6) If the position of Chief Cancer Officer is an executive position within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*:
    - (a) the Chief Cancer Officer may not be removed from office under section 121N of that Act, and
    - (b) section 121N of that Act applies:
      - (i) to and in respect of a Chief Cancer Officer who is removed from office under this section, and
      - (ii) to and in respect of the executive position of a Chief Cancer Officer who is so removed,
- in the same way as it applies to and in respect of a health executive who is removed from office under section 121N and to and in respect of the executive position of a health executive who is so removed.

## **Part 4 Functions of Cancer Institute**

### **12 General functions of Cancer Institute**

- (1) The Cancer Institute may do and perform all acts and things that are necessary or convenient for giving effect to its objectives.
- (2) Without limiting subsection (1), the Cancer Institute has the following functions:
  - (a) to undertake, commission or sponsor cancer-related research and development,
  - (b) to facilitate collaboration and co-operation between bodies involved in cancer-related research and development and in doing so, to establish a publicly available



- register of such bodies,
- (c) to provide a system that facilitates expeditious ethical approval for multi-centre clinical trials and other cancer-related research,
  - (d) to foster and support best practice in, and an evidence-based approach to, cancer control, including participating in the development, evaluation, recommendation or endorsement of guidelines, protocols and practices for cancer control,
  - (e) to accredit programs relating to cancer control, including prevention and screening programs,
  - (f) to review, monitor, evaluate and recommend improvements to cancer-related programs and proposed initiatives in the public health system in relation to cancer control,
  - (g) to facilitate improvements in the effectiveness of cancer control and to develop or endorse strategies to achieve such improvements,
  - (h) to review, develop or commission innovative programs for cancer control,
  - (i) to develop, in conjunction with the Department of Health and public health organisations, a State Cancer Plan by 30 June 2004 for consideration by the Minister for Health and, in conjunction with the Department of Health and public health organisations, to review and recommend changes (if any) to the Plan for consideration by the Minister for Health at least every 2 years after that date (or within such other period as may be determined by the Minister for Health),
  - (j) to advise and make recommendations to the Minister on the manner in which that portion of the money appropriated from the Consolidated Fund in any financial year to the Minister for Health, and which the Minister for Health has specifically designated to be administered by the Cancer Institute, is to be expended,
  - (k) to advise the Minister and the Director-General on such matters in relation to cancer control as may be required by the Minister or the Director-General from time to time,
  - (l) to undertake the assessment of any cancer control service or program in the public health system as may be required by the Minister for Health or the Director-General from time to time and to report to the Minister for Health or the Director-General on the outcome of that assessment,
  - (m) to investigate, evaluate and advise on complementary therapies in the care and treatment of cancer patients, having regard to their clinical effectiveness, safety and effect on quality of life,
  - (n) to obtain, collate, maintain and analyse information relating to cancer control,

- (o) to disseminate information and advice about cancer control,
  - (p) to provide training and education relevant to cancer control,
  - (q) to consult, collaborate and co-operate with public health organisations, consumers, health professionals, government agencies, non-government organisations and other persons or bodies involved in cancer control,
  - (r) to engage in fund raising activities for cancer-related purposes and to establish a publicly available register of the bodies that conduct any such fund raising activities,
  - (s) to exercise such other functions in relation to cancer control as may be prescribed by the regulations.
- (3) The Cancer Institute has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (4) However, the Cancer Institute cannot employ any staff.

**Note—**

Staff may be employed under Chapter 9 of the [Health Services Act 1997](#) in the NSW Health Service to enable the Cancer Institute to exercise its functions under this or any other Act.

### **13 Collection of cancer control information**

- (1) The Cancer Institute may request any person or body to provide the Cancer Institute with any information about cancer control that is held by the person or body.
- (2) If any such request is made with respect to the Department of Health or a public health organisation, the request must be complied with if the Director-General consents to the provision of the information concerned.

### **14 Report on activities of Cancer Institute**

- (1) The Cancer Institute is required to report to the Minister within 4 months after the end of each financial year on the activities of the Cancer Institute for the previous financial year.
- (2) The first such report is required to be provided in respect of the financial year ending 30 June 2004.
- (3) A report under this section is to include the following information in respect of the financial year to which the report relates:
  - (a) the outcomes achieved from the initiatives of the Cancer Institute,
  - (b) details about the trends in the incidence of cancer and the mortality and survival rates for cancer in New South Wales,

(c) an overview of cancer-related research and philanthropic activities in New South Wales.

(4) The Minister is to cause each report provided under this section to be tabled in both Houses of Parliament within one month after receiving it.

## **15 Powers in relation to property**

(1) The Cancer Institute may:

(a) acquire land (including an interest in land), for the purpose of the exercise of its functions, by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, and

(b) acquire any other property for the purpose of the exercise of its functions, and

(c) sell, lease, mortgage or otherwise dispose of land or any other property.

(2) However, the Cancer Institute must not:

(a) acquire land by any means, or

(b) dispose of land by sale, lease, mortgage or otherwise,

except with the approval of the Minister.

(3) The Cancer Institute may request the Minister to give approval to (and the Minister may approve) a disposition or dedication of land or a use of land, being a disposition, dedication or use:

(a) that is contrary to a provision of, or a trust arising under, the Crown grant of that land, or

(b) that, if this section had not been enacted, may make the land liable to be forfeited to the Crown.

(4) If the Minister has given an approval under this section to a disposition or dedication of land, or to a use of land, neither the disposition or dedication of the land (or its subsequent use) nor the use of the land:

(a) is to be regarded as a breach of any provision of, or any trust arising under, the Crown grant of that land, or

(b) is to make the land liable to be forfeited to the Crown.

## **16 Power to accept gifts, devises or bequests**

(1) The Cancer Institute has power to acquire by gift, devise or bequest any property for the purposes of this Act and to agree to, and carry out, the conditions (if any) of the gift, devise or bequest.

- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift, devise or bequest to which the Cancer Institute has agreed.
- (3) If the Cancer Institute 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 Act 2001* of the Commonwealth, 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 Cancer Institute 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 Cancer Institute as the holder of the securities retained.
- (4) The *Duties Act 1997* does not apply to or in respect of any gift to, or bequest or devise in favour of, the Cancer Institute.

#### **17 Contracts of Cancer Institute**

- (1) The Cancer Institute may make and enter into contracts or agreements with any person for the performance of services, or for the supply of any goods, by that person with respect to the exercise by the Cancer Institute of its functions.
- (2) Any contract or agreement under this section is taken, for the purposes of the *Constitution Act 1902*, to be a contract or agreement for or on account of the Public Service of New South Wales.

#### **18 Investments**

- (1) The Cancer Institute may invest money held by it:
  - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.
- (2) The Cancer Institute may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.
- (3) This section is, in relation to the investment of any funds, subject to the terms of any trust applying to those funds.

#### **19 By-laws**

- (1) The Cancer Institute may, with the approval of the Minister, make by-laws, not

inconsistent with this Act or the regulations, for or with respect to the following:

- (a) the keeping of records concerning the acts, decisions and proceedings of the Board,
  - (b) the procedure for the calling of meetings of the Board and for the conduct of business at those meetings,
  - (c) the appointment and functions of committees of the Board,
  - (d) the custody and use of the seal of the Cancer Institute.
- (2) A provision of a by-law may do any one or more of the following:
- (a) apply generally or be limited in its application to reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind,
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (3) Judicial notice is to be taken of a by-law authenticated by the seal of the Cancer Institute or in accordance with section 23. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

## **20 Delegations by Cancer Institute**

- (1) The Cancer Institute may delegate to any member of staff of the Cancer Institute the exercise of any of its functions other than:
- (a) this power of delegation, and
  - (b) the power to make by-laws.
- (2) The Minister may give any direction to the Cancer Institute concerning delegations under this section that the Minister thinks appropriate.
- (3) Nothing in this section authorises the Cancer Institute to delegate the whole of its functions to another person.
- (4) For the purposes of this section, the functions of the Cancer Institute include the functions of the Board.

## **Part 5 Miscellaneous provisions**

### **21 (Repealed)**

## **21A Relationship with Chapter 10 of [Health Services Act 1997](#)**

- (1) Chapter 10 (Administration of the public health system) of the [Health Services Act 1997](#) extends to the Cancer Institute as if it were a statutory health corporation.
- (2) To the extent of any inconsistency, that Chapter (as extended by subsection (1)) prevails over this Act.

## **22 Personal liability**

A matter or thing done or omitted to be done by:

- (a) the Cancer Institute, or
- (b) a member of staff of the Cancer Institute, or
- (c) the Board or a committee of the Board, or
- (d) a member of the Board, a member of a committee of the Board or any person acting under the direction of the Board or a committee of the Board,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

## **23 Authentication of certain documents**

Any document requiring authentication by the Cancer Institute may be sufficiently authenticated without the seal of the Cancer Institute if signed by the Chief Cancer Officer or by any other member of staff of the Cancer Institute authorised to do so by the Chief Cancer Officer.

## **24 Service of documents on Cancer Institute**

- (1) A document may be served on the Cancer Institute by leaving it at, or by sending it by post to:
  - (a) the office of the Cancer Institute, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Cancer Institute in a manner not provided for by subsection (1).

## **25 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.

(2)-(4) (Repealed)

## **26 Provisions relating to New South Wales Cancer Council**

Schedule 2 has effect.

## **27 Repeal of [New South Wales Cancer Council Act 1995 No 43](#)**

On or after the registration date referred to in Schedule 2, the Governor may, by proclamation, repeal the [New South Wales Cancer Council Act 1995](#) (or any specified provision or provisions of that Act).

## **28 (Repealed)**

## **29 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 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## **Schedule 1 Provisions relating to members and procedure of Board**

(Section 8 (2))

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

***appointed member*** means a member other than the Chief Cancer Officer.

***Chairperson*** means the Chairperson of the Board.

***member*** means any member of the Board.

### **Part 2 Members**

#### **2 Chairperson of Board**

- (1) The Minister may, from time to time, appoint an appointed member to be the Chairperson of the Board.
- (2) The Minister may remove the Chairperson from office as Chairperson of the Board.

- (3) A person who is an appointed member and Chairperson of the Board is taken to have vacated office as Chairperson if the person:
- (a) is removed from that office by the Minister under subclause (2), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be an appointed member.

### **3 Acting members and acting Chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may, from time to time, appoint an appointed member to act in the office of Chairperson during the illness or absence of the Chairperson, and the appointed member, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.

### **4 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **5 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.

### **6 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 Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister 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 Minister may remove an appointed member from office at any time for any or no reason and without notice.

### **7 Filling of vacancy in office of appointed member**

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

### **8 Disclosure of pecuniary and other conflicts of interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest, or any other 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 that 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 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, or any other 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) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

## **9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* 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, for the purposes of any Act, taken not to be an office or place of profit under the Crown.

## **10 No compensation for removal from office or failure to re-appoint**

An appointed member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

## **Part 3 Procedure**

### **11 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, the regulations and any by-laws relating to the Board, to be as determined by the Board.

### **12 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

### **13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another appointed member elected as Chairperson for that meeting by the members present) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **14 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.

### **15 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 16 First meeting

The Chairperson may call the first meeting of the Board in such manner as the Chairperson thinks fit.

## Schedule 2 Registration of New South Wales Cancer Council as a company

(Section 26)

### 1 Definitions

- (1) In this Schedule:

**Cancer Council** means the New South Wales Cancer Council constituted by the [New South Wales Cancer Council Act 1995](#).

**Cancer Council company** means the Cancer Council after it is taken to be registered as a company limited by guarantee under the Corporations Act by operation of section 5H (4) of that Act.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**registration date** means the registration day specified by the Minister for Health in an order made under clause 3.

- (2) Words and expressions used in this Schedule have the same meanings as in section 9 of the Corporations Act, except in so far as they are defined differently in this Schedule or the context or subject-matter otherwise indicates or requires.

### 2 Cancer Council is deemed registration company under Corporations Act

- (1) The Cancer Council is a deemed registration company for the purposes of section 5H of the Corporations Act.
- (2) For the purposes of that section:
- (a) the day on which the Cancer Council is taken to be registered as a company is the registration date specified by the Minister for Health in an order made under clause 3, and
  - (b) the type of company that the Cancer Council is to be registered as is a company limited by guarantee, and
  - (c) the company's proposed name is "The Cancer Council NSW".

**Note—**

Section 5H of the Corporations Act provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory to which the Act applies:

- (a) provides that the body is a deemed registration company for the purposes of the section, and
- (b) specifies:
  - (i) the day on which the body is to be taken to be registered (the registration day) or the manner in which that day is to be fixed, and
  - (ii) the type of company the body is to be registered as under the Act, and
  - (iii) the company's proposed name (unless the ACN is to be used in its name),

and if section 5H (2) and (3) (relating to the lodgment of certain notices and documents with ASIC) are satisfied.

### **3 Order specifying registration date**

- (1) The Minister for Health may, by order published in the Gazette, specify a day on which the Cancer Council is taken to be registered as a company limited by guarantee for the purposes of section 5H of the Corporations Act.

#### **Editorial note—**

Day specified under this subclause: 30.9.2005. See Gazette No 119 of 28.9.2005, p 7597.

- (2) The Minister for Health may make an order under this clause only if the Minister for Health is satisfied that the Cancer Council has complied with section 5H (2) and (3) of the Corporations Act.
- (3) The Minister for Health is to provide the Australian Securities and Investments Commission with a copy of an order made under this clause as soon as practicable after it is issued to the Cancer Council. However, a failure to provide such a copy does not affect the validity of the order.
- (4) An order under this clause cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal.
- (5) An order under this clause is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Schedule have been complied with concerning the registration of the Cancer Council as a company limited by guarantee under the Corporations Act.

### **4 Cancer Council company same legal entity as Cancer Council**

The Cancer Council company is taken to be a continuation of, and the same legal entity as, the Cancer Council.

### **5 Application of [New South Wales Cancer Council Act 1995](#)**

The [New South Wales Cancer Council Act 1995](#) is taken not to apply to the Cancer Council company on and after the registration date.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or 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 on the NSW legislation website, 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 to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of [Cancer Institute \(NSW\) Amendment Act 2012](#)**

#### **2 Transfer of staff**

- (1) A person who, immediately before the commencement of this clause, was employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) to enable the Cancer Institute to exercise its functions is, on that commencement, transferred to the employment of the NSW Health Service under Part 1 of Chapter 9 of the [Health Services Act 1997](#).
- (2) However, if a person referred to in subclause (1) was, immediately before the commencement of this clause, an executive officer under Part 3.1 of the [Public Sector Employment and Management Act 2002](#), that person is, on that commencement, taken to be a health executive under Part 3 of Chapter 9 of the [Health Services Act 1997](#).
- (3) The regulations may make provision for or with respect to the transfer of employment of such persons.

#### **3 Saving of appointment of members of Board**

- (1) The substitution of section 8 (1) (a) by the [Cancer Institute \(NSW\) Amendment Act 2012](#) does not affect the appointment of any member of the Board holding office

under that provision immediately before the substitution.

- (2) The amendment of clause 4 of Schedule 1 to the Act by the *Cancer Institute (NSW) Amendment Act 2012* does not affect the term of office of any person holding office as a member of the Board on the commencement of the amendment.

#### **4 Chief Cancer Officer**

The person holding office as Chief Cancer Officer, immediately before the commencement of the amendment to section 10 by the *Cancer Institute (NSW) Amendment Act 2012*, is taken, on that commencement, to be employed as a health executive (within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*) for the balance of the person's term of appointment as Chief Cancer Officer.