

Home Care Service Act 1988 No 6

[1988-6]



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](#), Schs 2.12 and 3.43 (not commenced — Sch 2.12 to commence on 8.1.2016; Sch 3.43 to commence on 15.1.2016)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Home Care Service Act 1988 No 6



New South Wales

An Act relating to the constitution of the Home Care Service of New South Wales.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Home Care Service Act 1988*.

2 Commencement

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

3 Definitions

(1) In this Act:

Board means the Home Care Service Advisory Board established by this Act.

Department means the Department of Family and Community Services.

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

Service means the Home Care Service of New South Wales constituted by 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.

(3) In this Act, a reference to home care services includes a reference to such personal care services as may be provided by the Service in accordance with guidelines prepared by the Director-General from time to time.

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

Part 2 Constitution of the Service

4 The Service

- (1) There is constituted by this Act a corporation under the corporate name of the Home Care Service of New South Wales.
- (2) The affairs of the Service shall be managed by the Director-General.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Service by the Director-General, or with the authority of the Director-General, shall be deemed to have been done by the Service.
- (4) In the exercise of its functions, the Service is subject to the control and direction of the Minister.

5 The Board

- (1) There shall be a Home Care Service Advisory Board, consisting of:
 - (a) the Director-General, and
 - (b) the Executive Director of the Service, and
 - (c) 7 part-time members appointed by the Governor.
- (1A) (Repealed)
- (2) The Board shall:
 - (a) furnish to the Service reports on matters relating to home care services, and
 - (b) advise the Service on such matters relating to home care services as are referred to it by the Director-General.
 - (c) (Repealed)
- (3) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Part 3 Objects and functions of the Service

6 Objects of the Service

- (1) The objects of the Service in relation to home care services are as follows:
 - (a) to provide home care services to persons:
 - (i) with disability, or who are ill or otherwise incapacitated or who are affected by personal or family problems, and
 - (ii) who, as a result, are incapable of carrying out work of a domestic or home

maintenance nature without assistance or are otherwise in need of assistance to manage their homes,

(b) to ensure that, as far as possible, those services are provided so that:

- (i) the independence of the person being assisted is maintained, and
- (ii) institutional care is avoided wherever appropriate, and
- (iii) adequate standards are achieved and maintained, and
- (iv) the rights of persons to make their own decisions about their affairs are respected, and
- (v) priority is given to those most in need, and
- (vi) fees are based on the assessed capacity of the individual client to pay, and
- (vii) disadvantaged people, such as those referred to in section 4 (1) (c) of the *Community Welfare Act 1987*, have access to services, and
- (viii) available resources are used efficiently and effectively, and
- (ix) there is adequate planning to enable these objects to be achieved.

(2) In addition to the objects set out in subsection (1), it is also an object of the Service to facilitate the provision of accommodation designed and constructed to meet the housing and care needs of older people, in particular those on low or modest incomes.

7 Functions of the Service

(1) The principal function of the Service is to provide home care services in accordance with its objects.

(2) In addition, the Service:

- (a) shall research, monitor and evaluate all aspects of its work and of the need for home support services, and
- (b) shall work in co-operation with programs and activities conducted by officers or bodies operating under the direction and control of the Minister, and
- (c) shall develop and administer training programs and liaise with other training institutions, and
- (d) may charge fees for any services it provides, and
- (e) may do all things necessary for, or incidental to, the achievement of its principal function, and

(f) has and may exercise any function conferred or imposed on it by or under this or any other Act.

(3) However, the Service cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Service to exercise its functions.

7AA Certain functions to be exercised in accordance with *Disability Inclusion Act 2014*

Part 5 of the *Disability Inclusion Act 2014* applies to financial assistance provided under this Act in the same way as it applies to financial assistance provided under that Act if the assistance is to persons or organisations for whom financial assistance may be provided under that Act.

Part 3A

7A, 7B (Repealed)

Part 4 Miscellaneous

8 (Repealed)

9 Service of documents

- (1) A document may be served on the Service by leaving it at, or by sending it by post to, the office of the Service.
- (2) This section does not affect the validity of any other method of service authorised by the rules of any court or otherwise provided by law.

10 Delegation by Service

- (1) The Service may delegate any of its functions (other than this power of delegation) to any officer of the Department or an authorised person.
- (2) In this section, **authorised person** means any person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Service to exercise its functions.

11 Power to accept gifts etc

- (1) The Service has power:
 - (a) to acquire by gift, bequest or devise any property for any of the purposes of the Service, and
 - (b) to agree to any condition to which any such gift, bequest or devise is subject.
- (2) The rule of law against remoteness of vesting does not apply to any condition to

which the Service has agreed.

- (3) The *Duties Act 1997* does not apply to any real or personal property comprised in a gift, bequest or devise made or to be made to the Service.

12 Accounts

For the purposes of its operations, the Service shall open and maintain accounts with such bank, building society or credit union as the Treasurer may approve.

13 Investment of money

The Service may invest any of its funds:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987* in respect of the Service, or
- (b) if that Act does not confer power to invest those funds:
- (i) in such manner as is authorised by the *Trustee Act 1925* for the investment of trust funds, and
- (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

14 Financial year

- (1) The financial year of the Service is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

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

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

16 Limitation of personal liability

No matter or thing done by the Service, by a member of the Board or by any employee or person acting under the direction of the Service shall, if the matter or thing was done in good faith and with reasonable care for the purpose of exercising the functions of the Service, subject such a member, employee or person so acting personally to any action, liability, claim or demand.

17 Proceedings for offences

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

17A Appeals to the Community Services Appeals Tribunal

- (1) An appeal may be made to the Community Services Appeals Tribunal constituted by the *Community Services (Complaints, Appeals and Monitoring) Act 1993* against a decision made under or for the purposes of this Act by:
 - (a) the Minister, or
 - (b) the Service, or
 - (c) any other person or body at the request of the Minister or the Service,if it is a decision within a class of decisions prescribed by the regulations for the purposes of this section.
- (2) If there is a failure to make within a reasonable time a decision referred to in subsection (1) (b) or (c) that, if made, could be the subject of an appeal to the Tribunal, the Tribunal may:
 - (a) treat the failure as an unfavourable decision with respect to the applicant for the decision, and
 - (b) permit the applicant to appeal to the Tribunal as if the unfavourable decision had in fact been made.

18 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) In particular, the regulations may make provision for or with respect to:
 - (a) the functions of the Service (including the conferring on the Service of additional functions), and
 - (b) the use and custody of the seal of the Service, and

(c) the fees to be charged by the Service.

(3) A regulation may create offences, in connection with:

(a) the lodgement of applications for assistance from the Service, or

(b) any prescribed matter,

and may provide that any such offence shall be punishable by a penalty not exceeding 5 penalty units.

19 (Repealed)

20 Abolition of previous board of management

The board of management constituted by Part 3 of the *Community Welfare Act 1987* is abolished.

21 Transitional provisions

(1) A person who, immediately before the commencement of this Act, held office as a member of the board of management referred to in section 20:

(a) ceases to hold office as such on that commencement, and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

(2) This Act does not affect the continuity of employment of any person employed by the Service immediately before the commencement of this Act.

(3) Subsection (2) does not affect any right of the Service to control, manage or dismiss its staff.

(4) The Service shall be taken for all purposes to be a continuation of, and to be the same legal entity as, the corporation constituted by Part 3 of the *Community Welfare Act 1987*, as in force immediately before the commencement of this Act.

(5) The lodgement at the office of the Corporate Affairs Commission of the constitution referred to in section 29 of the *Community Welfare Act 1982*, and any registration or other dealings or proceedings under any Act as a consequence of that lodgement, are of no continuing effect after the commencement of this Act.

Schedule 1 Provisions relating to the constitution and procedure of

the Board

(Section 5 (3))

1 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member.
- (2) A person while so acting has all the functions of a member of the Board and shall be taken to be a member.

2 Terms of office

Subject to this Schedule, a part-time member of the Board shall hold office for such period not exceeding 3 years as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A part-time member of the Board 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.

4 Vacancy in office of Board member

- (1) The office of a part-time member of the Board 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.
- (2) The Governor may remove a member of the Board from office at any time.

5 Filling of vacancy in office of Board member

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

6 Effect of certain other Acts

- (1) The [Public Service Act 1979](#) does not apply to the appointment of a part-time member of the Board and a part-time member is not, as a part-time member of the Board, subject to that Act.
- (2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member of the Board or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

7 Presiding member

(1) The Director-General shall preside at Board meetings.

(2) In the absence of the Director-General, the members present shall elect one of their number to preside at the meeting.

8 Quorum

(1) The quorum for a meeting of the Board is 5 members.

(2) (Repealed)

9 Voting

(1) 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.

(2) At any meeting, the person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

10 General procedure

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