

Library Act 1939 No 40

[1939-40]



New South Wales

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Notes—

- **Does not include amendments by**
State Revenue and Other Legislation Amendment (Budget Measures) Act 2006 No 50 (not commenced)

Authorisation

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Library Act 1939 No 40



New South Wales

An Act to make further provision for the establishment, maintenance and management of libraries, library services and information services; to amend the [Local Government Act 1919](#) and certain other Acts; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

(1) This Act may be cited as the [Library Act 1939](#).

(2)

(a) This Act with the exception of sections 13 and 14 shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) Sections 13 and 14 shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, but such day shall be a later day than the day appointed under paragraph (a).

(3) (Repealed)

1A (Repealed)

2 Definitions

(1) In this Act, unless the context or subject-matter otherwise indicates or requires:

Area has the same meaning as it has in the [Local Government Act 1993](#).

Council means the Library Council of New South Wales constituted under section 3.

Elector has the same meaning as it has in the [Local Government Act 1993](#).

Function includes a power, authority or duty, and **exercise** a function includes perform a duty.

Information service means an information service provided, controlled or managed in conjunction with a library or library service.

Investment pool means an investment pool established by the Council under section 5C (1).

Library material includes book, periodical, newspaper and any other printed matter and also includes map, music, manuscript, picture, photographic plate and film and any other matter or thing on or by which words, sounds or images are recorded or reproduced.

Local authority means a council within the meaning of the [Local Government Act 1993](#).

Local library means a library in an area provided, controlled or managed by a local authority and includes a library provided, controlled or managed pursuant to section 12 or 12A and a library provided, controlled or managed by a local authority in conjunction with any other person.

Member means a member of the Council.

Prescribed means prescribed by this Act or the regulations.

Regulations means regulations made under this Act.

State Librarian means the person employed in the Public Service as the State Librarian.

State Library means the State Library of New South Wales.

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

Part 2 The Library Council of New South Wales

3 Constitution of Council

- (1) There is hereby constituted a corporation under the corporate name of “Library Council of New South Wales”.
- (2) The Council shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) (Repealed)
- (4) The Council shall be subject to the control and direction of the Minister in the exercise of a function conferred or imposed on it under Part 3 or 4 in relation to local libraries.

4 Appointment and procedure

- (1) The Council is to consist of 9 members appointed by the Governor on the nomination of the Minister.

(2) Schedule 1 has effect.

4A Objects of Council

The objects of the Council are:

- (a) to promote, provide and maintain library services and information services for the people of New South Wales through the State Library and through co-operation with local libraries and other libraries and information agencies,
- (b) to advise the Minister, local authorities and, when the Minister so approves, other bodies, on matters of policy and administration relating to library services and information services that are or may be provided through local libraries or other libraries, and
- (c) to advise the Minister on the provision of assistance to local libraries or other libraries.

4B Powers of Council

- (1) The Council shall have, and may exercise such functions as are reasonably necessary for the attainment of its objects.
- (2) Subject to this Act and the regulations, the Council shall have the control and management of all property vested in the Council.
- (3) The Council may agree to any conditions being imposed on its acquisition of any property.
- (4) Where, by gift inter vivos, devise or bequest, the Council acquires property without any condition it may retain the property in the form in which it is acquired.
- (5) The rule of law relating to remoteness of vesting does not apply to a condition to which the Council has agreed pursuant to subsection (3).
- (6) The [Duties Act 1997](#) does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the State Library or the Council.
- (7), (8) (Repealed)
- (9) The Council may establish such committees as it thinks fit for the purpose of assisting it to exercise its functions.
- (10) A person may be appointed to a committee whether or not the person is a member of the Council.
- (11) The Council may provide, control and manage branches or departments of the State Library.
- (12) The Council cannot employ any staff.

5 Duties of Council

(1) It shall be the duty of the Council:

- (a) to make or cause to be made careful inquiry into the administration and management of every local library, library service and information service which is provided, controlled and managed (either directly or under an agreement or other arrangement to which it is a party) by a local authority which has adopted this Act,
- (b) to cause every local library, library service and information service which is provided, controlled and managed (either directly or under an agreement or other arrangement to which it is a party) by a local authority which has adopted this Act, to be inspected from time to time,
- (c) to report to the Minister as to the sums required to be provided in each year to meet the cost of subsidies payable under this Act,
- (d) to make recommendations to the Minister as to:
 - (i) what local libraries, library services and information services should be subsidised under this Act,
 - (ii) what sum of money should be paid by way of subsidy under this Act to any local authority,
 - (iii) what conditions should be attached to the payment of subsidy under this Act to any local authority.

(e), (f) (Repealed)

(2) Subject to this section and section 4B, the Council shall invest any of its funds not immediately required for the purposes of the Council in any manner authorised by law for the investment of trust funds.

(2A) Subject to section 4B (4), the Council shall not deal with any property acquired by gift inter vivos, devise or bequest, or with any real property otherwise acquired, except with the approval of the Governor (which may be given in respect of any case or class of cases) or except in accordance with the condition subject to which the property was acquired.

(3) The Council shall exercise such other functions in relation to local libraries, library services and information services as the Minister may, from time to time, by writing under the Minister's hand direct or as may be prescribed.

5A Staff

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Council to exercise its functions.

Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Council makes use of) may be referred to as officers or employees, or members of staff, of the Council.

5B Trust instruments apply notwithstanding secs 5C, 5D

The terms of any instrument creating a trust with respect to a fund held by the Council shall have effect notwithstanding sections 5C and 5D.

5C Investment pools

- (1) The Council may establish and maintain one or more investment pools for the collective investment of funds held by the Council whether or not those funds are, or any of those funds is, subject to a trust.
- (2) The Council may from time to time bring into or withdraw from an investment pool the whole or any part of any fund referred to in subsection (1).
- (3) Notwithstanding subsections (1) and (2), the Council shall not bring into or retain in an investment pool the whole or any part of a fund subject to a trust if the investments in which the capital of the investment pool is invested are not investments made in accordance with and subject to the *Trustee Act 1925* or any other Act authorising the investment of trust funds.

5D Distribution of income of investment pools

- (1) The Council shall, at the time the whole or any part of a fund referred to in subsection (2) (a) is withdrawn from an investment pool, and, in any event, at least once a year, distribute the income of an investment pool.
- (2) Where the Council distributes the income of an investment pool under subsection (1):
 - (a) it shall, in respect of a fund the subject of a trust which specifies that the income from the investment of that fund shall be applied for a purpose other than the general purposes of the State Library, credit the income of that investment pool to the account kept by it in respect of that fund proportionately according to the value of that fund or part at the date of distribution and the period for which that fund or part has formed part of the capital of that investment pool, and
 - (b) it may, in respect of a fund, other than a fund referred to in paragraph (a), credit the income of that investment pool to any account kept by it.

5E Nature of funds not affected by pooling

The inclusion in an investment pool of the whole or any part of a fund held by the Council does not affect:

- (a) the identity of that fund or part, or

- (b) any trust to which that fund or part is subject.

6-7 (Repealed)

7A State Librarian

- (1) The State Librarian is responsible for the administration and management of the State Library and the library services and information services provided in conjunction therewith.
- (2) Where library services or information services are provided by the Council through co-operation with local libraries, other libraries (not including the State Library), or information agencies, the State Librarian is, to the extent (if any) to which the conditions subject to which those services are provided so provide, responsible for the administration or management of those services.
- (3) The State Librarian shall be secretary to the Council.
- (4) The State Librarian is, in the exercise of the State Librarian's functions under this Act, subject to the control and direction of the Council.

7B Delegation by Council

The Council may delegate the exercise of any function of the Council under this Act (other than this power of delegation) to:

- (a) a member of the Council, or
- (b) the State Librarian, or
- (c) a member of staff of the Council.

7BA Personal liability

A matter or thing done or omitted to be done by the Council, a member of the Council, the State Librarian or a person acting under the direction of the Council or the State Librarian 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 a member of the Council, the State Librarian or a person so acting personally to any action, liability, claim or demand.

Part 2A The State Library of New South Wales

7C Title of Library

On and from the commencement of this section the institution that, immediately before that commencement, was known as the Library of New South Wales shall be the State Library of New South Wales.

7D Annual endowment

- (1) For the purpose of providing a statutory fund for the purchase of books, periodicals, publications and other requirements of the State Library, but exclusive of the payment of working expenses of the State Library, there shall be paid by the Treasurer to the Council, an annual endowment of such amount as Parliament approves.
- (2) Any moneys payable by the Treasurer under this section shall be paid out of moneys provided by Parliament.

7E Special donations

- (1) The arrangements made and conditions agreed to by The Trustees of the Public Library of New South Wales with David Scott Mitchell and other persons or their legal representatives, and by The Council of the Library of New South Wales with any persons or their legal representatives, with respect to books, manuscripts, paintings, engravings and other library material handed over or donated by the said David Scott Mitchell or other persons for custody and management either in conjunction with other property of The Trustees of the Public Library of New South Wales or The Council of the Library of New South Wales or separately therefrom shall be carried out and observed by the Council.
- (2) Without affecting the generality of section 4B (3), the Council may enter into any such arrangements and agree to such conditions as it may think fit with respect to books, manuscripts, paintings, engravings and other library material handed over to or donated to the State Library for custody or management either in conjunction with other property of the Council or separately therefrom.

Part 3 Local libraries

Division 1 Adoption of Act

8 Adoption or revocation of adoption

- (1) This Act may be adopted by any local authority:
 - (a) by resolution of the local authority,
 - (b) by vote of the electors at a poll taken on the question whether the local authority shall adopt this Act.
- (2) A local authority which has adopted this Act may, by resolution passed by the local authority after a proposal in that behalf has been approved by a poll of electors, revoke the adoption of this Act.
- (3) Notice of the adoption of this Act or of the revocation of such adoption shall be given to the Council by the local authority concerned as soon as practicable after the adoption or the revocation, as the case may be.

- (4) Where a local authority revokes the adoption of this Act an adjustment shall be made of the interests of the local authority and of the Crown in any property to the provision of which subsidy under this Act has contributed.

Such adjustment shall be made by agreement between the local authority and the Council, or in default of agreement, in such manner as the Governor may determine.

Division 2 Provisions applicable where Act adopted

9 Application of Division

This Division shall apply to and in respect of local authorities which have adopted this Act.

10 Requirements as to services to be provided by local libraries

- (1) A local authority must comply with and observe the following requirements in relation to any local library that is provided, controlled or managed by the local authority (either directly or under an agreement or other arrangement to which it is a party):

(a) **Residents and ratepayers entitled to free membership**

Any person who is a resident of the area of the local authority or a ratepayer of the local authority is entitled to membership of the library free of charge.

(b) **Free access to certain materials on library premises**

Any person (whether or not a member of the library) is entitled free of charge to access any library material of the library and any information forming part of the information service of the library (other than information excepted from free access by guidelines issued by the Council) for use on the library premises.

(c) **Free loans of certain library material to members**

Any person who is a member of the library is entitled to borrow free of charge from the library for use away from the library premises any library material of the library which has been classified by the librarian of the library as being of literary, informative or educational value or as being fiction.

(d) **Free delivery to sick or disabled members**

No charge is to be made for the delivery to a member of the library of any library material or information that the member is entitled to borrow free of charge if the member for reasons of ill health or disability cannot reasonably be expected to attend the library in person.

(e) **Free basic reference services to members**

Any person who is a member of the library is entitled to be provided free of charge with basic reference services (being any service classified by guidelines issued by

the Council as a basic reference service), including assistance in locating information and sources of information.

(f) **Restriction on use of State subsidy**

Any subsidy paid to the local authority under this Act must be expended in providing the services that are required by this section to be provided free of charge.

- (2) An entitlement under this section to borrow library material from a library for use away from the library premises does not apply to any library material that is classified by the librarian of the library as reference material.
- (3) If two or more local authorities have entered into arrangements for conferring reciprocal library entitlements on the residents and ratepayers of their areas, a resident or ratepayer of any of the areas concerned is for the purposes of this section to be considered to be a resident or ratepayer of each of the other areas concerned also.
- (4) In this section:
charge means any charge made directly or indirectly on a person but does not include a prescribed fee for the late return of library material or a charge made for the loss of or damage to library material.
- (5) The Council may issue guidelines to local authorities for the purposes of this section.

10A Restrictions on borrowing entitlements and other matters

- (1) Section 10 does not affect the operation of any regulation or by-law relating to the library to the extent that it is not inconsistent with a requirement of section 10 that an entitlement be provided free of charge.
- (2) Section 10 does not prevent a local authority from determining:
 - (a) the maximum number of items of library material or the maximum number of items of library material of a particular class of library material that a person may borrow at any one time from the library for use on or away from the library premises, or
 - (b) the limitations, restrictions and conditions which may apply to the availability of any particular item of library material or class of library material for use on or away from the library premises.
- (3) A determination under subsection (2):
 - (a) must be consistent with the requirements of section 10 that an entitlement be provided free of charge, and

- (b) must not differ, or have effect so as to differ, in its operation between members and non-members of the library (except as regards the payment of a charge by non-members).

11 Library committee

- (1) A local authority may from time to time constitute a library committee and may delegate to the library committee all or any of the powers and duties of the local authority in relation to the provision, control and management of libraries, library services and information services, except a power to borrow money, to make or levy a rate, to execute a deed or contract or an agreement under this Act, or to institute proceedings at law or in equity on behalf of the local authority.
- (2) The members of the library committee shall be appointed by the local authority but need not be members of the local authority.
- (3) A library committee shall exercise and perform its powers and duties subject to the control and direction of the local authority.
- (4) The local authority may appoint any member of the committee to be the chairperson thereof and may from time to time remove such member from the member's office as chairperson and appoint another member in the member's place.
- (5) The local authority may at any time dissolve a library committee or may, from time to time, reconstitute the library committee or revoke, amend or vary any delegation to a library committee.
- (6) The local authority shall from time to time determine the number of members of the library committee which shall constitute a quorum at meetings of the library committee.
- (7) The procedure for the calling of meetings of a library committee and for the conduct of business at such meetings shall, subject to any regulation made in relation thereto, be as determined by the library committee.

12 Agreements relating to local libraries

- (1)
 - (a) Two or more local authorities may enter into an agreement whereby the local authority of one area undertakes the function of providing, controlling and managing libraries, library services or information services within the area or areas of the other local authority or local authorities.
 - (b) Any such agreement shall specify the terms and conditions upon which the libraries, library services or information services shall be so provided, controlled and managed.

(c) The local authority undertaking the function of providing, controlling and managing libraries, library services or information services pursuant to an agreement under this subsection shall have, in relation to the area or areas of the other contracting local authority or contracting local authorities, such of the powers and duties of a local authority relating to the provision, control and management of libraries, library services and information services as may be delegated to it by the agreement.

(2)

(a) Two or more local authorities may enter into an agreement whereby the local authority of one area undertakes to exercise, for and on behalf of the local authority or local authorities of any other area or areas, within such other area or areas, any specified power or duty of a local authority in relation to the provision, control and management of libraries, library services and information services.

(b) Any such agreement shall specify the terms and conditions upon which such power or duty shall be so exercised.

(3) Any agreement made under this section shall be made to have effect for a period to be specified therein.

(4) An agreement made under this section may provide that on termination of the agreement an adjustment shall be made of the interests of the several local authorities which are parties thereto in any property to the provision of which they have contributed and as to the mode in which the adjustment shall be arrived at.

(5) It shall be a term of every agreement made under this section, whether the agreement is made before or after the day appointed and notified under section 2 (2) of the [Library \(Amendment\) Act 1977](#), that any dispute arising under the agreement shall, on the application to the Council of a party to that agreement, be settled by arbitration by an arbitrator appointed by the Council.

12A Other arrangements relating to local libraries

(1) Without limiting section 12, 2 or more local authorities may, with the approval of the Minister, enter into an arrangement for the provision, control and management of any library, library service or information service in the area of any local authority that is a party to the arrangement.

(2) The Minister is not to approve such an arrangement without the agreement of the Minister for Local Government.

13 Subsidy

(1) A local authority within whose area a library, library service or information service is provided, controlled and managed in accordance with this Act shall, subject to this

Act, be entitled to subsidy under this section.

(2) A local authority shall be eligible for subsidy under this section if during the year for which the subsidy is payable it expends out of rate income upon the provision, control and management of libraries, library services and information services in its area, not less than the larger of the following amounts, namely:

(a) An amount equivalent to the product of a rate upon the unimproved capital value of all ratable land within its area:

(i) in the case of an area that (immediately before the commencement of the [Local Government Act 1993](#)) was a municipality—of one-tenth of one cent in the dollar,

(ii) in the case of an area that (immediately before the commencement of the [Local Government Act 1993](#)) was a shire—of one twenty-fifth of one cent in the dollar.

(b) An amount equivalent to the sum of ten cents for each person resident within the area of the local authority:

Provided that in any case where the amount referred to in paragraph (a) is greater than an amount equivalent to the sum of fifteen cents for each person resident within the area of the local authority, the local authority shall be eligible for subsidy if it so expends not less than the last-mentioned amount.

(3) A local authority shall not be eligible for subsidy under this section unless the library, library service or information service so provided, controlled and managed is in the opinion of the Council reasonably capable of meeting the requirements of the persons resident in its area.

(3A) Where a local authority has failed to comply with the requirements of sections 10 and 10A during the year preceding the day on which it lodges an application for subsidy with the Council under section 14, the local authority shall not be eligible for subsidy for the year to which the application relates if the Minister so directs by order in writing served on the local authority.

(4) Where a local authority is eligible for subsidy under this section the subsidy payable to the local authority in respect of any year shall be:

(a) an amount equal to one-half of the total amount expended by the local authority on libraries, library services and information services in that year from:

(i) rate income, and

(ii) any advance against subsidy made by the Minister to the local authority in respect of that year, or

(b) an amount equivalent to the prescribed amount for each person resident within the area of the local authority,

whichever is the less.

(5) An advance against subsidy may be made by the Minister to a local authority in any year in respect of which the Minister considers the local authority would, on the basis of the local authority's estimated expenditure on libraries, library services and information services in that year from rate income, be eligible for subsidy under this section.

(5A) An advance against subsidy is payable subject to such conditions and at such times as the Minister may determine.

(6) The regulations shall prescribe the manner in which the number of persons resident within the area of a local authority is to be ascertained for the purposes of this section.

14 Subsidy—how payable

(1) A local authority which claims to be entitled to subsidy under section 13 may lodge with the Council an application for payment of such subsidy.

(2) The Council shall consider such application and forward the same to the Minister together with its report and recommendation.

(3) Subsidy shall be payable out of moneys provided by Parliament.

Part 3A Legal deposit libraries

14A Definitions

In this Part:

legal deposit library means the following:

- (a) the State Library,
- (b) the Parliamentary Library,
- (c) the Library of the University of Sydney.

library material includes an electronic publication.

relevant library material for a legal deposit library means library material relevant to the collection of the library.

14B Additional functions of legal deposit library

In addition to any other functions of a legal deposit library, the library has the following

functions:

- (a) to identify relevant library material,
- (b) to collect relevant library material,
- (c) to maintain relevant library material as part of the collection of the library.

14C Legal deposit orders

- (1) The head librarian of a legal deposit library may, by order in writing (a **legal deposit order**) served on a person who publishes library material in this State, direct the person to:
 - (a) deliver a copy of the material free of charge to the library, or
 - (b) make the material available to the library free of charge so that a copy can be made.
- (2) A legal deposit order must identify the library material to which it applies by specifying the library material or specifying a class of library material.
- (3) A legal deposit order may apply to library material that is not yet in existence at the time the order is made and may be of unlimited duration.
- (4) A legal deposit order may specify a reasonable time within which library material must be delivered or made available for copying as required by the order.
- (5) A legal deposit order requiring library material to be delivered to the library must specify the manner and form in which the material must be delivered.
- (6) A person must not fail to comply with a legal deposit order.

Maximum penalty: 10 penalty units.

- (7) If a legal deposit order applies to more than one item of library material, a failure to comply with the order in relation to each item is a separate offence for the purposes of subsection (6).
- (8) If a person fails to deliver library material or make it available for copying as required by a legal deposit order, a further legal deposit order may be made in relation to the library material.
- (9) The regulations may make further provision for or with respect to legal deposit orders.

14D Collection of freely available relevant library material

The head librarian of a legal deposit library may, despite any Act or law of this State, collect free of charge relevant library material for inclusion in the collection of the library if the material has been made freely available to members of the public by the publisher of

the material.

14E Delegation

The head librarian of a legal deposit library may delegate the exercise of any function of the head librarian under this Part (other than this power of delegation) to:

- (a) any member of staff of the library, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

Part 4 Miscellaneous

14F Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

15 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1) regulations may be made for or

with respect to:

- (a) the management and control of the State Library and local libraries that are in the areas of local authorities that have adopted this Act and have not revoked the adoption of this Act,
- (b)–(d) (Repealed)
- (e) regulating the use of libraries so as to protect the library and the fittings, furniture and contents thereof from injury, destruction or misuse,
- (f) the giving by a person using the library of any guarantee or security against loss of or injury to any item of library material and the payment of compensation, whether by reference to the value of the item or to any other prescribed matter, for any such loss or injury,
- (g) regulating the conduct of persons using a library and providing for the exclusion or removal from a library of persons committing any offence against the regulations,
- (h) the making of charges in prescribed cases for the use of a library, library service or information service and the granting of approval by the Council to any such charge,
- (i) authorising the Council or a local authority to provide, control and manage, subject to such conditions as may be prescribed, a library, library service or information service (in conjunction with any library, library service or information service being provided, controlled and managed by the Council or the local authority) at any school, hospital or other institution not open to the public,
- (j) the admission or exclusion of the public or any person to or from a library or any branch or department or part thereof,
- (k) the management of the various branches or departments of a library,
- (l) prescribing the conditions subject to which the use or reading of library material or the loan thereof or the making of copies or extracts therefrom may be allowed,
- (m) regulating the conduct of the proceedings of the Council, including the times, places and conduct of its meetings, and
- (n) the perusal and examination of books, manuscripts, paintings, engravings and other library material referred to in section 7D.

(2A) Regulations may be made so as to:

- (a) apply to and in respect of one or more of the following corporations and places:
 - (i) the Council,

- (ii) the State Library,
 - (iii) local authorities that have adopted this Act and have not revoked the adoption of this Act, and
 - (iv) local libraries that are in the areas of the local authorities referred to in subparagraph (iii), or
- (b) apply differently according to such factors as may be specified in the regulations.
- (2B) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified therein.
- (3) The regulations may impose a penalty not exceeding 2 penalty units for any breach of the regulations.
- (3A) Proceedings for an offence against the regulations are to be dealt with summarily before the Local Court.
- (4) Where any by-law, ordinance or regulation made under any Act is inconsistent with any regulation made under this Act the provisions of the regulation made under this Act shall prevail, and the provisions of the first-mentioned by-law, ordinance or regulation shall, to the extent of the inconsistency, have no force or effect.
- (5) (Repealed)

16 (Repealed)

17 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Composition and procedure of the Council

1 Composition

The members must include:

- (a) at least 1 person who has knowledge of, or experience in, education, and
- (b) at least 1 person who has knowledge of, or experience in, local government.

2 Appointment of deputy

- (1) In the case of the illness or absence of any member the Minister may appoint a person as a deputy to act in the place of the member during the member's illness or absence.
- (2) A deputy appointed under this clause shall, while acting as a deputy, have all the powers and authorities of a member.

- (3) A deputy appointed under this clause may, if the Minister thinks fit, be paid such travelling and subsistence allowances as the Minister may determine from time to time.
- (4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of a member, or as to the necessity or propriety of any appointment of a deputy; and all acts and things done or omitted by a deputy when so acting shall be as valid and shall have the same consequences as if they had been done or omitted by the member for whom the deputy is acting.

3 Term of office

- (1) Subject to subclause (3), a member shall hold office for such period, not exceeding 3 years, as is specified in the member's instrument of appointment.
- (2) (Repealed)
- (3) Where there is a vacancy in the office of a member caused otherwise than by the expiration of the member's term of office, the Governor may appoint a person to fill the vacant office, for the residue of the term of office of the member's predecessor, so that the Council is constituted as provided by clause 1 (1).
- (4) A member whose term of office expires may, if otherwise eligible, be re-appointed as a member.
- (5) A member is not to hold office for 4 consecutive terms.
- (5A) For the purposes of subclause (5) only, an appointment under subclause (3) does not constitute (and is taken never to have constituted) an appointment for a term of office.
- (6) (Repealed)

4 Public Service employment provisions excluded

The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.

5 Allowances for members

A member shall, in the member's capacity as a member, be paid such travelling and subsistence allowances as the Minister from time to time determines in respect of that member.

6 Removal from office

The Governor may, for any cause which to the Governor seems sufficient, remove a member from office.

7 Vacation of office

A member shall be deemed to have vacated the member's office if the member:

- (a) dies,
- (b) resigns the member's office by writing under the member's hand addressed to the Minister,
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's salary, or estate, for their benefit,
- (d) becomes a mentally incapacitated person,
- (e) is absent from three consecutive ordinary meetings of the Council of which notice has been given to the member personally or in the ordinary course of post and is not before the expiration of six weeks after the latest of those meetings excused by the Council for the member's absence from the meetings,
- (f) (Repealed)
- (g) is removed from office by the Governor, or
- (h) (Repealed)

8 President and Deputy President

- (1) The President of the Council shall be such member as the Minister nominates as President of the Council.
- (2) The members may nominate one of their number as Deputy President of the Council.
- (3) The President and Deputy President hold office until successors are nominated under this clause or until they cease to be members, whichever first occurs.
- (4) At a meeting of the Council:
 - (a) the President,
 - (b) in the absence of the President, the Deputy President (if any), or
 - (c) in the absence of the President and Deputy President, another member elected to chair the meeting by the members present,shall preside.

8A Disclosure of pecuniary interests

- (1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, 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 Council.

(2) A disclosure by a member at a meeting of the Council that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

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

(3) Particulars of any disclosure made under this clause must be recorded by the Council 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 Council.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:

(a) be present during any deliberation of the Council with respect to the matter, or

(b) take part in any decision of the Council with respect to the matter.

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Council for the purpose of making the determination, or

(b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.

9 Procedure, quorum etc

(1) The procedure for the calling of meetings of the Council and the conduct of business

at those meetings shall, subject to this Schedule and any regulation, be as determined by the Council.

- (2) Five members constitute a quorum for the purposes of any meeting of the Council.
- (3) Any duly convened meeting of the Council at which a quorum is present is competent to transact any business of the Council and the decision of the majority of the members present at a meeting of the Council at which a quorum is present is a decision of the Council.
- (4) Questions arising at a meeting of the Council shall be determined by a majority of votes of the members present and voting.
- (5) Where there is an equality of votes at a meeting of the Council, the member presiding at the meeting has a casting vote in addition to a deliberative vote.

10 The secretary

The secretary to the Council:

- (a) shall cause minutes of each meeting of the Council to be recorded and preserved, and
- (b) is entitled to be present at each meeting of the Council and to be heard by the Council on any matter considered by the Council.

11 Common seal

The common seal of the Council shall be kept by the secretary to the Council and shall only be affixed to an instrument or document in the presence of:

- (a) the President, or
- (b) any two members,

and the secretary to the Council with an attestation by the signatures of the persons present as required by this clause of the fact and date of the affixing of the seal.

12 Transaction of business outside meetings or by telephone

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members 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 Council.
- (2) The Council 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 President and each member have the same voting rights as they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.

(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.

Schedule 2 Savings and transitional provisions

(Section 17)

1 Savings and transitional provisions consequent on enactment of [Library \(Amendment\) Act 1975](#)

(1) A reference, in any other Act, in any instrument made under any Act or in any document of any kind:

- (a) to The Trustees of the Public Library of New South Wales, the Library Board of New South Wales or the Council of the Library of New South Wales is to be read as a reference to the Council, and
- (b) to the Principal Librarian of the Public Library of New South Wales is to be read as a reference to the State Librarian, and
- (c) to the Public Library of New South Wales or the Library of New South Wales is to be read as a reference to the State Library.

(2) Officers and employees appointed or employed under the [Library of New South Wales Act 1969](#), are taken to have been appointed or employed under this Act, as amended by the amending Act, and the repeal of the [Library of New South Wales Act 1969](#) does not affect any rights, privileges or entitlements accrued or accruing to those officers or employees under any other Act, award or industrial agreement.

(3) On and from 1 July 1975 (the date of commencement of this clause):

- (a) subject to subclause (4), all real and personal property, all right and interest in that property and all management and control of that property that, immediately before that date, was vested in or belonged to either of the former bodies is to vest in and belong to the Council, and
- (b) all money and liquidated and unliquidated claims that, immediately before that

date, were payable to or recoverable by either of the former bodies is to be payable to or recoverable by the Council, and

- (c) all proceedings commenced before that date by either of the former bodies and pending immediately before that date are taken to be proceedings pending on that date by the Council and all proceedings so commenced by any person against either of the former bodies and pending immediately before that date are taken to be proceedings pending on that date by that person against the Council, and
 - (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, either of the former bodies and in force immediately before that date are taken to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Council, and
 - (e) the Council may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of proceedings so referred to as either of the former bodies might have done but for the enactment of the amending Act, and
 - (f) the Council may enforce and realise any security or charge existing immediately before that date in favour of either of the former bodies and may exercise any powers conferred on either of the former bodies by the security or charge as if the security or charge were a security or charge in favour of the Council, and
 - (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that date, were due or payable by, or recoverable against, either of the former bodies are to be debts due by, money payable by and claims recoverable against, the Council, and
 - (h) all liquidated and unliquidated claims for which either of the former bodies would, but for the enactment of the amending Act, have been liable are to be liquidated and unliquidated claims for which the Council is to be liable.
- (4) All property vested in or belonging to the Council by the operation of subclause (3) (a) is to be held by the Council subject to any conditions on which it was held immediately before 1 July 1975.
- (5) No attornment to the Council by a lessee from either of the former bodies is to be required.
- (6) All acts, matters and things done or omitted by, or done or suffered in relation to, either of the former bodies before the commencement of this clause, being acts, matters and things not referred to in subclause (3), on and from that commencement, have the same force and effect as if they had been done or omitted by, or done or

suffered in relation to, the Council.

- (7) This clause is taken to have commenced on 1 July 1975 (the date of commencement of the amending Act).
- (8) Subclauses (1)–(6) re-enact (with minor modifications) sections 7–9 of the amending Act. Subclauses (1)–(6) are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.
- (9) In this clause:

amending Act means the [Library \(Amendment\) Act 1975](#).

former bodies means The Council of the Library of New South Wales and the Library Board of New South Wales.

2 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2009](#)

The amendment to clause 3 (1) of Schedule 1 made by the [Statute Law \(Miscellaneous Provisions\) Act 2009](#) does not affect the term of office that a person holds as a member of the Council immediately before the amendment took effect.

3 Provisions consequent on repeal of [Copyright Act 1879](#)

- (1) Library material that would have been required to be delivered to a legal deposit library under the [Copyright Act 1879](#) had that Act not been repealed continues to be required to be delivered to the library as if that Act (other than section 6) remains in force.
- (2) This clause ceases to apply to library material when a legal deposit order applies to the library material.
- (3) In this clause:
legal deposit library and **legal deposit order** have the same meanings as in Part 3A of this Act.