

Passed by both Houses



New South Wales

Law and Justice Foundation Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Law and Justice Foundation Bill 2000

Act No , 2000

An Act to reconstitute the Law Foundation as the Law and Justice Foundation, to alter the objects of the reconstituted Foundation so that they include focus on the development of a fair and equitable justice system and to repeal the *Law Foundation Act 1979*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Law and Justice Foundation Bill 2000

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Law and Justice Foundation Act 2000*.

2 Commencement

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

3 Definitions

In this Act:

Board means the Board of the Foundation.

Chairperson means the Chairperson of the Board for the time being holding office under clause 5 of Schedule 1.

Director means the Director of the Foundation for the time being holding office under section 10.

exercise a function includes perform a duty.

former Law Foundation means the Law Foundation of New South Wales constituted under the *Law Foundation Act 1979* immediately before its repeal by this Act.

Foundation means the Law and Justice Foundation of New South Wales constituted by section 4.

function includes a power, authority or duty.

Fund means the Law and Justice Foundation Fund established by section 13.

legal practitioner has the same meaning as in the *Legal Profession Act 1987*.

member means a member of the Board.

Public Purpose Fund means the Fund maintained under Division 2 of Part 6 of the *Legal Profession Act 1987*.

Part 2 Law and Justice Foundation, Board and Director

4 Constitution of Law and Justice Foundation of New South Wales

- (1) There is constituted by this Act a body corporate with the corporate name of the Law and Justice Foundation of New South Wales.
- (2) The Foundation is a continuation of, and the same legal entity as, the former Law Foundation.
- (3) The Foundation is an exempt public authority for the purposes of the *Corporations Law*.
- (4) The Foundation is not and does not represent the Crown.

5 Objects of Foundation

- (1) The objects of the Foundation are to contribute to the development of a fair and equitable justice system which addresses the legal needs of the community and to improve access to justice by the community (in particular, by economically and socially disadvantaged people).
- (2) Without limiting section 6, in attaining its objects the Foundation may do any one or more of the following:
 - (a) conduct and sponsor research (including inter-disciplinary research) into the law, the justice system, alternative dispute resolution and the legal profession,
 - (b) collect, assess and disseminate information about the justice system,
 - (c) conduct and sponsor projects aimed at facilitating access to justice and access to information about the justice system,
 - (d) promote education about the justice system.

6 Powers of Foundation

The Foundation may:

- (a) collaborate with organisations, institutions or companies (such as a joint venture or partnership), whether for a specific project or in continuing co-operation, and
- (b) accept gifts, devises and bequests made to the Foundation, whether on trust or otherwise, and act as trustee of money or other property vested in the Foundation upon trust, and

- (c) arrange for the printing, publication and distribution of information obtained as a result of the performance of the objects of the Foundation, and
- (d) borrow money in such manner and upon such security, if any, as the Board may determine, and
- (e) provide funds and make grants for the performance of any of the objects of the Foundation, and
- (f) do anything incidental or conducive to the carrying out of any of the objects of the Foundation.

7 Establishment of Board of Foundation

- (1) There is to be a Board of the Foundation.
- (2) The Board is:
 - (a) to determine policies for the implementation of the objects of the Foundation, and
 - (b) subject to section 11, to conduct and manage the affairs of the Foundation, and
 - (c) to perform any other functions conferred or imposed on it by this or any other Act.
- (3) Schedule 1 has effect with respect to the constitution and procedure of the Board.

8 Committees

- (1) The Board may establish committees for the purpose of advising it on any activities of the Foundation.
- (2) Each committee is to consist of such persons, whether members of the Board or not, as the Board appoints.

9 Staff of Foundation

- (1) The Foundation may employ or engage on contract such staff as may be necessary to enable the Foundation to exercise its functions. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (2) The Foundation may, with the approval of the Minister administering any Department, make use of the services of an officer or employee of that Department on such terms as may be arranged.

10 Director

- (1) The Board is to appoint a person from time to time to be the Director of the Foundation.
- (2) Schedule 2 has effect with respect to the Director.

11 Duties of Director

- (1) The Director is to conduct and manage the affairs of the Foundation in accordance with any directions of the Board.
- (2) Anything done by the Director under this section in the name of the Foundation is taken to have been done by the Foundation.

12 Delegation by Foundation

- (1) The Foundation may, by instrument in writing, delegate to a person any of the functions of the Foundation, other than this power of delegation.
- (2) The person may sub-delegate the exercise of a delegated function to another person if the first-mentioned person is authorised in writing to delegate the function to that person by the Foundation.

Part 3 Property of Foundation

13 Establishment of Law and Justice Foundation Fund

- (1) There is established a fund to be called the “Law and Justice Foundation Fund”.
- (2) The Fund is the property of the Foundation and is to be maintained by the Foundation.

14 Composition of Fund

The Fund is to consist of:

- (a) all money standing to the credit of, and all investments and other property forming part of, the former Law Foundation, and
- (b) all money paid to the Foundation out of the Public Purpose Fund, and
- (c) all money borrowed by the Foundation under this Act, and
- (d) all investments made under section 16, and
- (e) the proceeds of any investments made under section 16, and
- (f) any other money or other property received from any source by the Foundation.

15 Payments out of Fund

There may be paid out of the Fund:

- (a) all charges, costs and expenses incurred by the Board or the Director in the administration of the Foundation, and
- (b) all charges, costs and expenses otherwise incurred in the administration of this Act, and
- (c) all charges, costs and expenses incurred in carrying out the objects of the Foundation, and
- (d) grants or payments for carrying out the objects of the Foundation.

16 Investment

The Foundation may invest money held by it in any investment in which a trustee may invest trust funds in accordance with the *Trustee Act 1925* or, in the case of money held on trust, in any manner authorised by the instrument creating the trust.

17 Accounts

The Foundation must:

- (a) keep proper accounts and records in relation to all of its operations, and
- (b) do all things necessary to ensure that all payments are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Foundation and over the incurring of liabilities by the Foundation.

18 Audit

The Foundation must have the accounts of the Foundation audited annually by a registered company auditor within the meaning of the *Corporations Law*.

Part 4 Miscellaneous

19 Annual report

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Foundation must prepare an annual report exhibiting a true and correct view of the financial position of the Foundation as at that date and the transactions of the Foundation with respect to the period of 12 months ending on that date.
- (2) The annual report must be made available for inspection at the office of the Foundation at all reasonable hours by any member of the public.
- (3) The Attorney General is to lay the annual report before both Houses of Parliament as soon as practicable after receiving the report.

20 Repeal and savings

- (1) The *Law Foundation Act 1979* is repealed.
- (2) Schedule 3 has effect.

21 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

Schedule 1 Constitution and procedure of Board

(Section 7)

1 Definitions

In this Schedule:

appointed member means a member appointed under clause 2 (2).

Opposition member means a member appointed under clause 2 (2) (b).

special expertise means special knowledge, experience or expertise in any one or more of the following areas:

- (a) social sciences,
- (b) the justice system,
- (c) consumer issues,
- (d) the needs of disadvantaged people,
- (e) legal practice.

2 Composition of Board

- (1) The Board is to consist of 7 members.
- (2) Six of the members are to be appointed by the Attorney General and of them:
 - (a) 3 are to be persons who have, in the opinion of the Attorney General, special expertise, and
 - (b) one is to be a person nominated by the Leader of the Opposition in the Legislative Assembly who has, in the opinion of the Leader, special expertise, and
 - (c) one is to be a legal practitioner who:
 - (i) is appointed from a panel of 6 persons nominated by the New South Wales Bar Association, and
 - (ii) has, in the opinion of the Attorney General, special expertise, and
 - (d) one is to be a legal practitioner who:
 - (i) is appointed from a panel of 6 persons nominated by the Law Society of New South Wales, and
 - (ii) has, in the opinion of the Attorney General, special expertise.

- (3) The other member is to be the person for the time being holding the office of Director.
- (4) Not more than one of the 3 persons referred to in subclause (2) (a) may be a legal practitioner.
- (5) Where nominations for the purposes of subclause (2) (b), (c) or (d) are not submitted within the time or in the manner directed by the Attorney General, the Attorney General may appoint a person to be a member instead of the member required to be appointed, being a person possessing the same qualifications for appointment as the member required to be appointed.

3 Alternate members

- (1) The Attorney General may, from time to time, appoint an alternate member to act in the office of an appointed member during the illness or absence of the member, and the alternate member, while so acting, has and may exercise all the functions of the member and is taken to be an appointed member.
- (2) An alternate member is to have the same qualifications and be nominated in the same manner as the member for whom he or she is the alternate member.
- (3) An alternate member acts in the office until the occurrence of a vacancy in the office of the member for whom he or she is the alternate member.
- (4) An alternate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the alternate member.

4 Terms of office of appointed members

- (1) An appointed member (other than the Opposition member) holds office for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and is, if otherwise qualified, eligible for re-appointment as a member.
- (2) The Opposition member holds office until the member's successor is appointed under subclause (3).
- (3) The Leader of the Opposition in the Legislative Assembly may at any time while an Opposition member holds office nominate another person to be the Opposition member.

- (4) On the expiry of the term of office of an appointed member (other than the Opposition member):
 - (a) the person who held the office concerned immediately before the expiry of that term is to act in that office until the person's successor is appointed (or the person is re-appointed) or until the expiration of a period of 3 months from expiry, whichever occurs first, and
 - (b) while so acting, the person has and may exercise all the functions of a member and is taken to be an appointed member.

5 Chairperson

- (1) The Attorney General is to appoint one of the members to be the Chairperson of the Board as often as occasion requires.
- (2) The Director may not be appointed Chairperson, and may not act in the office of Chairperson.

6 Effect of other Acts

- (1) 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 travelling and subsistence allowances payable to a member under clause 7.
- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.

7 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the member.

8 Vacancy in office of appointed member

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 his or her office by instrument in writing addressed to the Attorney General, or
- (d) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member, unless on leave granted to the member by the Board, or
- (e) 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
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence 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, or
- (h) ceases to hold a qualification by virtue of which the member was eligible for appointment, or
- (i) in the case of the Opposition member, has a successor appointed, or
- (j) has his or her membership of the Board terminated under clause 18.

9 Filling of casual vacancies

On the occurrence of a vacancy in the office of an appointed member, the Attorney General may appoint a person to the vacant office for the balance of his or her predecessor's term of office, being a person qualified and nominated under the same paragraph of clause 2 (2) as the predecessor.

10 Quorum

The quorum for a meeting of the Board is 4 members.

11 Presiding member

- (1) The Chairperson is to preside at a meeting of the Board at which the Chairperson is present and, if the Chairperson is absent from any meeting, the members are to appoint one of their number to preside at that meeting.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 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.

13 Transaction of business outside meeting 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.

14 Minutes

The Board is to cause full and accurate minutes to be kept of its proceedings at meetings.

15 General procedure

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

16 Protection from liability

No matter or thing done, and no contract entered into, by the Board, and no matter or thing done or omitted to be done by a member, subjects a member personally to any action, liability, claim or demand if the matter or thing was done, or the contract was entered into, in good faith for the purpose of executing this Act.

17 Disclosure of pecuniary interests

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

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

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

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

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee 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 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) A contravention of this clause does not invalidate any decision of the Board.

18 Termination of membership

- (1) The Attorney General may terminate the membership of an appointed member at any time.
- (2) Without affecting the generality of subclause (1), the Attorney General may terminate the membership of an appointed member who contravenes clause 17.

19 First meeting

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

Schedule 2 Office of the Director

(Section 10)

1 Appointment and term of office

- (1) The Director holds office for such term (not exceeding 5 years) as is specified in the Director's instrument of appointment but is eligible for re-appointment.
- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the Director.

2 Remuneration

The Director is to be paid such remuneration (including travelling and subsistence allowances), and be entitled to such superannuation benefits on such conditions, as the Board may determine in respect of the Director.

3 Termination of appointment

- (1) The Board may remove the Director from office at any time.
- (2) Without limiting the generality of subclause (1), the Board may remove the Director if he or she contravenes clause 17 of Schedule 1.

4 Vacancy in office

The office of Director becomes vacant if the Director:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns his or her office by instrument in writing addressed to the Board, or
- (d) 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
- (e) becomes a mentally incapacitated person, or

- (f) is convicted in New South Wales of an offence 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, or
- (g) without the approval of the Board, engages in paid employment outside the duties of the office, or
- (h) is removed from office under clause 3.

5 Acting Director

- (1) The Board may, from time to time, appoint a person to act in the office of Director during the illness or absence of the Director (or during a vacancy in the office of the Director) and the person, while so acting, has all the functions of the Director (including the functions of the Director as a member of the Board) and is taken to be the Director.
- (2) Any person appointed as an acting Director holds office for such term (not exceeding 12 months) as is specified in the person's instrument of appointment but is eligible for re-appointment.
- (3) The Board may:
 - (a) determine the terms and conditions of appointment of a person as acting Director, and
 - (b) at any time terminate such an appointment.
- (4) The validity of any act done by a person appointed, or purporting to be appointed, as acting Director may not be questioned in any proceeding on the ground that the occasion for the person's appointment had not arisen.

Schedule 3 Savings and transitional provisions

(Section 20)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
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 in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

former Board means the Board of Governors of the former Law Foundation.

new Board means the Board of the Foundation established by this Act.

1979 Act means the *Law Foundation Act 1979*.

3 The Board

A person who, immediately before the repeal of the 1979 Act, held office as a member of the former Board:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, and
- (c) is eligible (if otherwise qualified) to be appointed as a member of the new Board.

4 Actions of former Board

Anything done or omitted to be done by or on behalf of the former Board immediately before the repeal of the 1979 Act is taken to have been done or omitted to be done by or on behalf of the new Board.

5 Continuity of Fund

The Fund is a continuation of the Law Foundation Fund established by section 16 of the 1979 Act.

6 Members of staff

Any person who was a member of staff of the former Law Foundation immediately before the repeal of the 1979 Act continues to be a member of staff of the Foundation.

7 Termination of appointment of Director

A person who held office as Director (including as an acting Director) of the former Law Foundation immediately before the repeal of the 1979 Act:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, and
- (c) is eligible to be appointed as Director of the Foundation under this Act.

Schedule 4 Amendment of other Acts

(Section 21)

4.1 Administrative Decisions Tribunal Act 1997 No 76

Schedule 2 Composition and functions of Division

Omit “Law Foundation” from clause 1 (2) (c) of Division 1 of Part 3.
Insert instead “Law and Justice Foundation”.

4.2 Legal Profession Act 1987 No 109

[1] Section 69I Discretionary payments from Fund for other purposes

Omit “Law Foundation” from section 69I (1) (a) (iii).
Insert instead “Law and Justice Foundation”.

[2] Section 69I (7)

Omit the definition of *Law Foundation Fund*. Insert instead:

Law and Justice Foundation Fund means the Law and Justice Foundation Fund established under the *Law and Justice Foundation Act 2000*.