

DRAFT SECOND READING SPEECH BY THE HONOURABLE JIM LONGLEY M.P.
MINISTER FOR COMMUNITY SERVICES AND ASSISTANT MINISTER FOR HEALTH
ON THE COMMUNITY WELFARE AMENDMENT BILL 1992.

I NOW MOVE THAT THIS BILL BE READ A SECOND TIME.

MR. SPEAKER THIS BILL IS A MACHINERY MEASURE TO FACILITATE THE TRANSFER OF STAFF FROM THE COMMUNITY WELFARE EMPLOYMENT CORPORATION TO EMPLOYMENT UNDER THE PUBLIC SECTOR MANAGEMENT ACT 1988.

ONE OF THE MAJOR INITIATIVES TAKEN BY THE GOVERNMENT IN THE AREA OF THE CARE OF PEOPLE WITH DEVELOPMENTAL DISABILITIES WAS THE TRANSFER OF RESPONSIBILITY FOR DELIVERY OF SERVICES TO THE DEVELOPMENTALLY DISABLED FROM THE DEPARTMENT OF HEALTH TO THEN DEPARTMENT OF FAMILY AND COMMUNITY SERVICES ON 1 JULY 1989.

THE TRANSFER RECOGNIZED THAT PERSONS WITH A DEVELOPMENTAL DISABILITY ARE NOT ILL IN THE TRADITIONAL SENSE OF THE WORD AND THAT THEY HAVE DIFFERENT BUT SPECIAL NEEDS. I AM PLEASED TO SAY THAT AT THE TIME OF THE TRANSFER THERE WAS STRONG BI-PARTISAN SUPPORT FOR THE INITIATIVE FROM BOTH SIDES OF THE HOUSE.

IN FACT THE HONOURABLE MEMBER FOR RIVERSTONE SAID IN THIS HOUSE THAT IT WAS AN INITIATIVE THAT HE WOULD HAVE "LOVED TO PRESIDE OVER" WHEN HE WAS MINISTER!

AT THE TIME OF THE TRANSFER THE COMMUNITY WELFARE EMPLOYMENT CORPORATION WAS ESTABLISHED SPECIFICALLY TO ALLOW FOR THE TRANSFER OF STAFF WHO WERE THEN EMPLOYED IN THE PROVISION OF COMMUNITY BASED SERVICES TO THE DEVELOPMENTALLY DISABLED WITHIN THE VARIOUS AREA HEALTH SERVICES.

WHILE THIS ARRANGEMENT WAS APPROPRIATE AT THE TIME OF TRANSFER THE DEPARTMENT'S CORPORATE STRUCTURE HAS CHANGED SIGNIFICANTLY SINCE 1989.

TODAY THERE IS A SINGLE INTEGRATED DEPARTMENT BASED ON AN AREA MANAGEMENT MODEL THAT EMPHASISES THE COMPLEMENTARY USE OF RESOURCES IN MEETING CLIENT NEEDS AT A LOCAL LEVEL.

THE CONTINUING EXISTENCE OF TWO SEPARATE EMPLOYING AUTHORITIES WITHIN THE DEPARTMENT IS A STRONG BARRIER TO EFFICIENT AND EFFECTIVE MANAGEMENT OF A SINGLE INTEGRATED ORGANISATION. FOR INSTANCE THERE IS NO ABILITY TO TRANSFER STAFF BETWEEN THE CORPORATION AND THE DEPARTMENT, AND MANY STAFF WORK SIDE BY SIDE WITH DIFFERING CONDITIONS OF EMPLOYMENT DEPENDING ON WHETHER THEY ARE EMPLOYED BY THE CORPORATION OR UNDER THE PUBLIC SECTOR MANAGEMENT ACT 1988.

MR. SPEAKER THE LEGISLATION NOW BEFORE THE HOUSE WILL REMOVE THESE BARRIERS AND ALLOW THE DEPARTMENT TO BECOME MORE EFFICIENT IN THE WAY IN WHICH IT UTILISES THE RESOURCES AVAILABLE TO IT. THIS WILL RESULT IN THE DEPARTMENT BEING ABLE TO ENHANCE ITS SERVICE DELIVERY TO THE PEOPLE OF NEW SOUTH WALES.

PRESENT CONDITIONS OF EMPLOYMENT FOR STAFF CURRENTLY EMPLOYED IN THE CORPORATION WILL REMAIN INTACT EXCEPT WHERE THOSE CONDITIONS DIFFER FROM THE CONDITIONS PRESCRIBED UNDER THE PUBLIC SECTOR MANAGEMENT ACT. WHERE THERE IS A DIFFERENCE IN CONDITIONS THE PROVISIONS OF THE PUBLIC SECTOR MANAGEMENT ACT WILL PREVAIL.

THE LEGISLATION ALSO SEEKS TO CORRECT SOME UNCERTAINTY THAT EXISTS IN RESPECT TO THE TRANSFER OF STAFF TO THE COMMUNITY WELFARE EMPLOYMENT CORPORATION IN 1989.

THE TRANSFER OF STAFF WAS EFFECTED BY THE SIGNING OF A "TRANSFER AGREEMENT" (NO. 2522 OF 1989) BETWEEN THE COMMUNITY WELFARE EMPLOYMENT CORPORATION, THE PUBLIC EMPLOYMENT INDUSTRIAL RELATIONS AUTHORITY, AND VARIOUS UNIONS.

HOWEVER, AS A RESULT OF RECENT PROCEEDINGS BEFORE THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES THE VALIDITY, IN A STRICTLY LEGAL SENSE, OF THAT TRANSFER AGREEMENT IS NOW IN SOME DOUBT.

ADVICE HAS BEEN RECEIVED THAT IT WOULD BE APPROPRIATE FOR THE 1989 TRANSFER OF STAFF TO BE CONFIRMED THROUGH THIS LEGISLATION AND REMOVE ANY QUESTION AS TO THE VALIDITY OF THE TRANSFER AGREEMENT.

THE UNIONS AND STAFF OF THE CORPORATION HAVE BEEN KEPT INFORMED OF THE PROPOSED LEGISLATION AND THERE IS GENERAL AGREEMENT BETWEEN ALL PARTIES THAT THE LEGISLATION NOW BEFORE THE HOUSE IS APPROPRIATE AND NECESSARY IN THE INTERESTS OF EFFICIENT AND EFFECTIVE MANAGEMENT.

I NOW SEEK LEAVE TO TABLE THE EXPLANATORY NOTE TO THE BILL

FIRST PRINT

COMMUNITY WELFARE (AMENDMENT) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

In 1989, the administration of developmental disability services was transferred from the Department of Health to the Department of Family and Community Services (as it was then named). The Community Welfare Employment Corporation was constituted to be the employer of certain persons formerly employed within the Department of Health, and others employed under community welfare legislation. The persons employed by the Corporation are not public servants.

The object of this Bill is to amend the Community Welfare Act 1987:

- (a) to dissolve the Community Welfare Employment Corporation; and
- (b) to provide for the transfer of staff employed by that Corporation to the Department of Community Services.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Community Welfare Act 1987.

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts.

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE ACT 1987

Dissolution of Community Welfare Employment Corporation

Schedule 1 (2) repeals section 13B of the Act which constituted the Community Welfare Employment Corporation and enabled it to employ staff for the purposes of the community welfare legislation.

Schedule 1 (1), (3) and (4) contain consequential amendments.

Community Welfare (Amendment) 1992

Transfer of staff of the Corporation to the Department of Community Services

Schedule 1 (5) and (6) insert Schedule 4 which contains savings, transitional and other provisions. The following clauses are included in Schedule 4.

Clause 3 dissolves the Corporation.

Clause 5 transfers the assets of the Corporation to the Crown and provides that legal proceedings in relation to the Corporation become legal proceedings by or against the Crown.

Clause 7 provides for the transfer of employees of the Corporation to the Department of Community Services.

Clause 8 provides that transferred employees are entitled to the same salary or wages and allowances as applied to the employees before the transfer.

Clause 9 provides that other conditions of employment also remain the same unless they conflict with the Public Sector Management Act 1988 or regulations under that Act.

The conditions of employment covered by clauses 8 and 9 can be varied or altered by an award or agreement under the Industrial Relations Act 1991, by or under the Public Sector Management Act 1988 or otherwise in accordance with law.

Clause 10 ensures that rights accrued as an employee of the Corporation are retained. Those rights include deferred or extended leave and payments, pensions and gratuities.

Clause 11 enables the Director-General of the Department of Community Services to declare that conditions of employment that are applicable to transferred employees are to apply to comparable positions to which new staff are appointed until those conditions are lawfully varied.

Clause 12 validates an agreement made in 1989 between the Corporation and the Public Employment Industrial Relations Authority and certain employee associations which was intended to give effect to the transfer of certain staff to the employment of the Corporation under section 13B of the Act.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

Schedule 2 makes consequential amendments to the following Acts:

Children (Detention Centres) Act 1987

Public Sector Management Act 1988

State Authorities Non-contributory Superannuation Act 1987

State Authorities Superannuation Act 1987

Superannuation Act 1916

FIRST PRINT

COMMUNITY WELFARE (AMENDMENT) BILL 1992

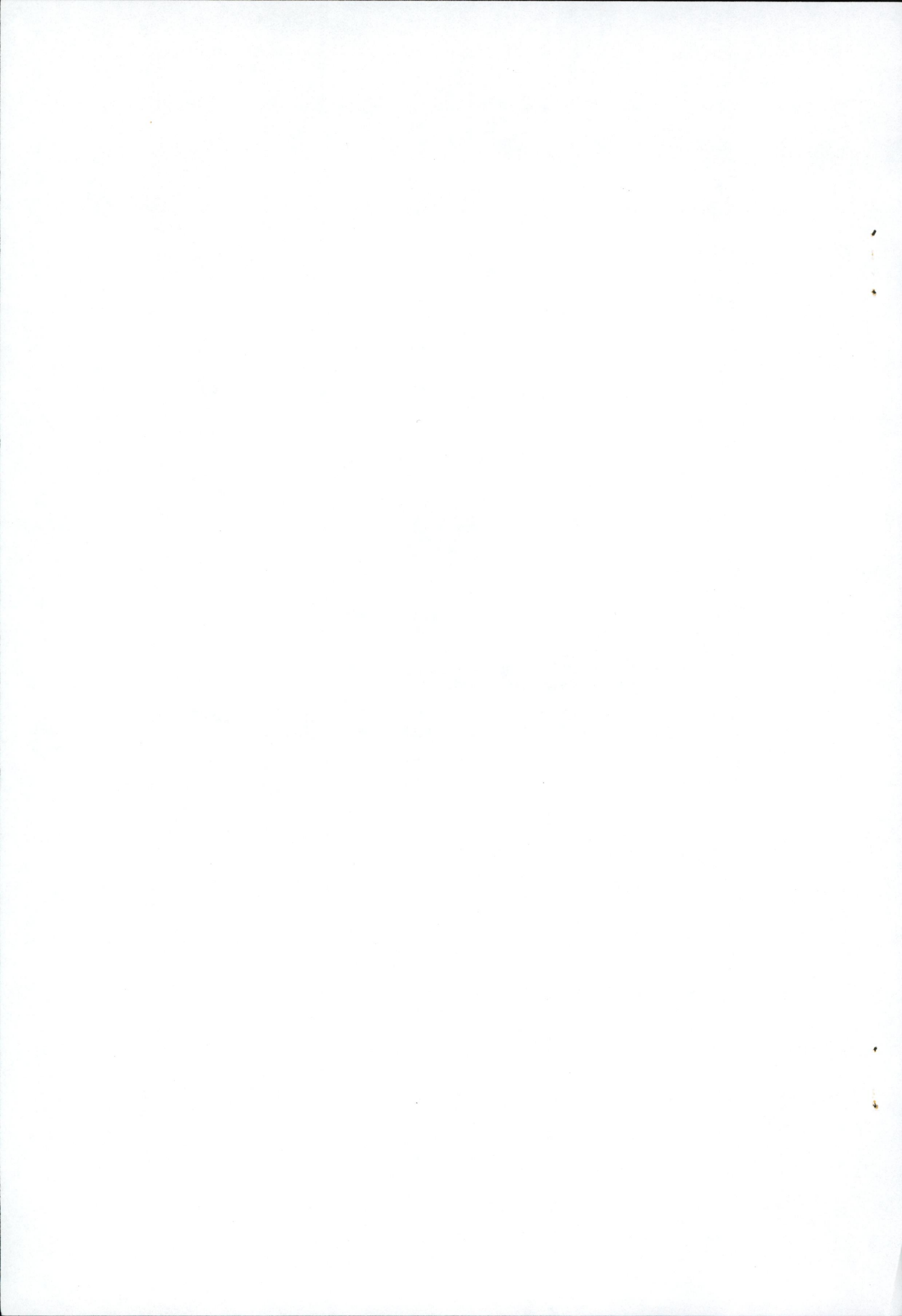
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Community Welfare Act 1987 No. 52
4. Consequential amendment of other Acts

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE ACT 1987
SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS



COMMUNITY WELFARE (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Community Welfare Act 1987 relating to the staff of the Community Welfare Employment Corporation; to abolish that Corporation; and for other purposes.

Community Welfare (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Community Welfare (Amendment) Act 1992.

5 Commencement

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

Amendment of Community Welfare Act 1987 No. 52

3. The Community Welfare Act 1987 is amended as set out in Schedule 1.

10 Consequential amendment of other Acts

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

**SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987**

15

(Sec. 3)

(1) Section 3 (**Definitions**):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B”.

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(2) Section 13B (**Community Welfare Employment Corporation**):

Omit the section.

(3) Section 13C (**Regulations concerning employees of Community Welfare Employment Corporation**):

Omit the section.

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(4) Section 78 (**Regulations**):

Omit section 78 (1) (a1).

(5) Section 79:

After section 78, insert:

Savings, transitional and other provisions

79. Schedule 4 has effect.

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

(6) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS** 5

(Sec. 79)

PART 1—REGULATIONS

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

Community Welfare (Amendment) Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date. 15

(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 20

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication. 25

**PART 2—PROVISIONS CONSEQUENT ON THE
COMMUNITY WELFARE (AMENDMENT) ACT
1992**

Definitions 30

2. In this Part:

“appointed day” means the date of commencement of the Community Welfare (Amendment) Act 1992;

“Corporation” means the Community Welfare Employment Corporation constituted by section 13B before its repeal by the Community Welfare (Amendment) Act 1992; 35

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

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

Dissolution of Corporation

3. On the appointed day, the Corporation is dissolved.

References to Corporation or its staff

10 4. On and from the appointed day, and subject to the
regulations, a reference in any other Act, or in any instrument
made under any Act or in any other instrument of any kind:

- (a) to the Corporation is to be read as a reference to the
Director-General; and
- 15 (b) to officers or employees (however expressed) of the
Corporation is to be read as a reference to officers of
the Department.

Transfer of assets, liabilities etc. of Corporation

5. On the appointed day:
- 20 (a) the assets and liabilities of the Corporation become
assets and liabilities of the Crown; and
- (b) all proceedings by or against the Corporation pending
immediately before the appointed day become
proceedings pending by or against the Crown.

Actions etc. of Corporation

25 6. Any act, matter or thing done or omitted to be done by
or in respect of the Corporation is (to the extent that the act,
matter or thing had any force or effect immediately before
the appointed day) taken to have been done or omitted to be
done by or in respect of the Director-General.

30 **Transfer of employees of Corporation to Department of
Community Services**

35 7. (1) On the appointed day, a person who was an
employee of the Corporation immediately before that day is
taken to be a member of the staff of the Department of
Community Services employed under Part 2 of the Public
Sector Management Act 1988 in the same capacity (whether

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

temporary or otherwise) as that in which the person was employed by the Corporation immediately before that day. This subclause has effect subject to any order under subclause (3). 5

(2) Subclause (1) does not have the effect of appointing a person to a position under the Public Sector Management Act 1988.

(3) The Governor may, on the recommendation of the Minister, by order published in the Gazette, appoint a person who is a member of staff of the Department of Community Services by virtue of subclause (1) to a position under Part 2 of the Public Sector Management Act 1988 in the Department of Community Services. 10
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(4) A person who is the subject of such an order is taken for all purposes to have been appointed to that position in accordance with the terms of the order and to have been so appointed in accordance with any relevant provision of the Public Sector Management Act 1988. 20

(5) This clause has effect despite anything in the Public Sector Management Act 1988.

Salary, wages and allowances of transferred persons

8. A transferred person is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the person as an employee of the Corporation immediately before the appointed day, until the salary, wages or allowances is or are varied or altered: 25

(a) by an award or agreement under the Industrial Relations Act 1991; or 30

(b) by or under the Public Sector Management Act 1988; or

(c) otherwise in accordance with law.

Other conditions of employment of transferred persons

9. (1) This clause applies to any condition of employment of a transferred person (other than salary, wages or allowances) that was, immediately before the appointed day, regulated by an award or agreement (within the meaning of 35

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

the Industrial Relations Act 1991) or a lawful determination applicable to the person as an employee of the Corporation.

5 (2) A condition to which this clause applies (so long as it does not conflict with any provision of the Public Sector Management Act 1988 or the regulations under that Act) is to continue to apply to the person until it is regulated:

10 (a) by an award or agreement under the Industrial Relations Act 1991; or

(b) by or under the Public Sector Management Act 1988; or

(c) otherwise in accordance with law.

Preservation of rights of transferred persons

15 10. (1) A transferred person is to retain any rights (including any rights to deferred or extended leave and any payment, pension or gratuity) accrued as an employee of the Corporation.

20 (2) For the purposes of the accrual of any such rights after the appointed day, service as an employee of the Corporation is taken to be service as a public servant.

25 (3) This clause applies to and in respect of the preservation of rights of those transferred persons who, but for the operation of this clause, would not be entitled to retain those rights.

Conditions of employment for new staff

30 11. (1) The Director-General of the Department of Community Services may declare that a condition of employment (including salary, wages and allowances) that was regulated by an award, agreement (within the meaning of the Industrial Relations Act 1991) or lawful determination applicable to employees of the Corporation applies to a position:

35 (a) that, in the Director-General's opinion, is comparable to a position governed by the award, determination or agreement; and

(b) to which a person is appointed after the appointed day.

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

- (2) Such a condition applies only until it is varied, altered or regulated:
- (a) by an award or agreement under the Industrial Relations Act 1991; or 5
 - (b) by or under the Public Sector Management Act 1988; or
 - (c) otherwise in accordance with law.
- (3) The Director-General is not to make a declaration under this clause in respect of a condition unless the award, agreement or determination that regulates it applies, at the time the declaration is made, to transferred persons. 10
- (4) This clause does not apply to a condition that conflicts with any provision of the Public Sector Management Act 1988. 15
- (5) A declaration under this clause is to be published in the Gazette.
- Previous agreement for transfer of staff to Corporation**
12. (1) This clause applies to the agreement (No. 2522 of 1989) dated 30 November 1989 and expressed to be between: 20
- (a) the Community Welfare Employment Corporation and the Public Employment Industrial Relations Authority; and
 - (b) the Health and Research Employees' Association of New South Wales, the Hospital Officers' Association of New South Wales, the New South Wales Nurses' Association, the New South Wales Public Medical Officers' Association and the Public Service Association of New South Wales. 25
- (2) The agreement is taken to have been valid and effective according to its terms with effect on and from 1 July 1989. 30
- (3) In particular, the agreement is taken to have been effective to transfer the officers and employees referred to in the agreement to the employment of the Corporation in accordance with the terms of the agreement. 35

Community Welfare (Amendment) 1992

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

5 (4) However, subclauses (2) and (3) do not apply in relation to persons who were officers of the Department of Health appointed and employed under Part 2 of the Public Sector Management Act 1988 immediately before 1 July 1989.

10 (5) If not previously terminated, the agreement is terminated on the appointed day, without prejudice to the other clauses of this Schedule.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS

(Sec. 4)

Children (Detention Centres) Act 1987 No. 57

15 Section 3 (**Definitions**):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B of the Community Welfare Act 1987”.

Public Sector Management Act 1988 No. 33

20 Schedule 3 (**Declared Authorities**):

Omit “Community Welfare Employment Corporation.”.

**State Authorities Non-contributory Superannuation Act 1987
No. 212**

25 Schedule 1 (**Employers**):

From Part 1, omit “Community Welfare Employment Corporation”.

State Authorities Superannuation Act 1987 No. 211

30 Schedule 1 (**Employers**):

From Part 1, omit “Community Welfare Employment Corporation”.

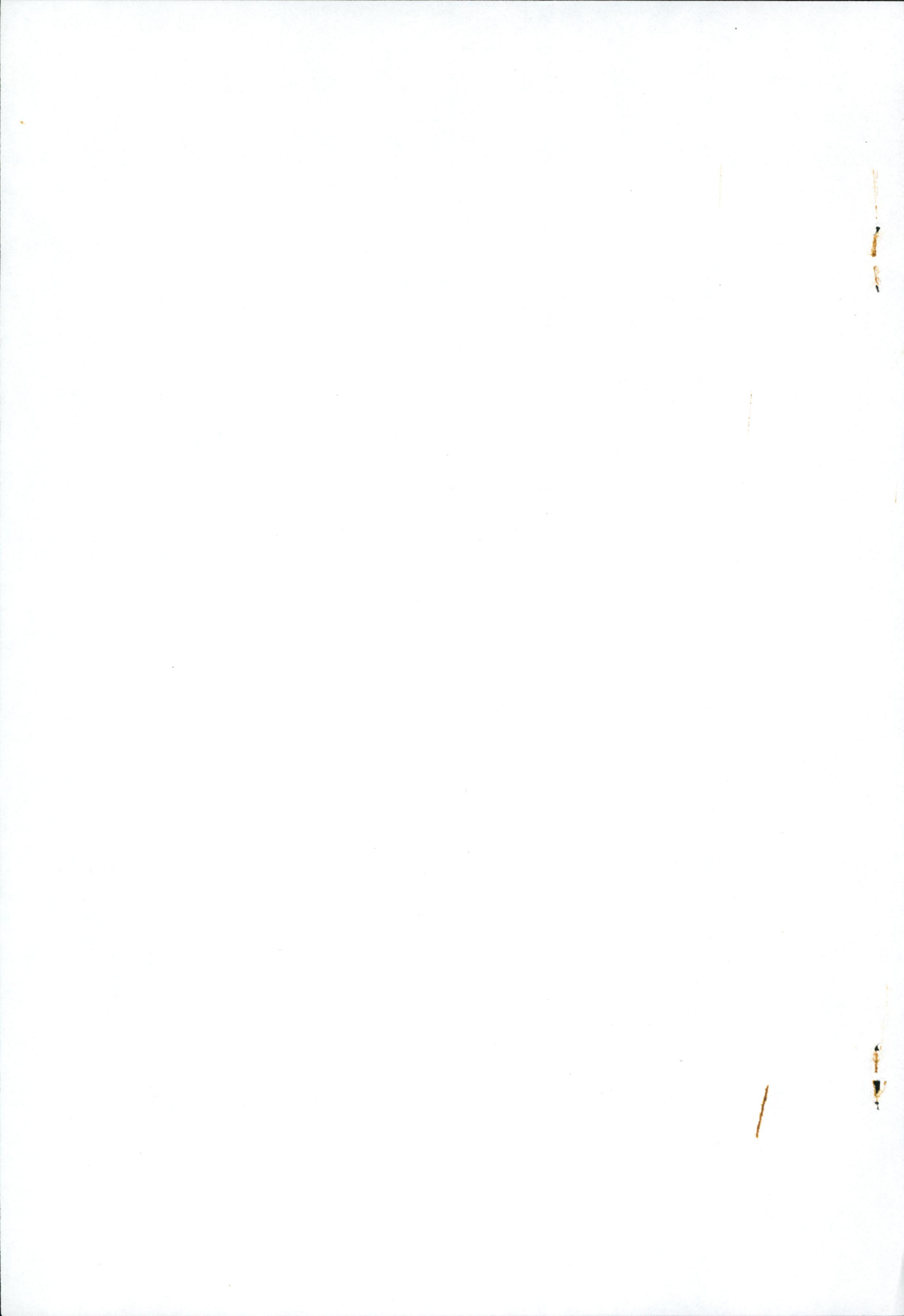
Community Welfare (Amendment) 1992

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

Superannuation Act 1916 No. 28

Schedule 3 (List of employers):

From Part 1, omit “Community Welfare Employment Corporation”.



COMMUNITY WELFARE (AMENDMENT) ACT 1992 No. 105

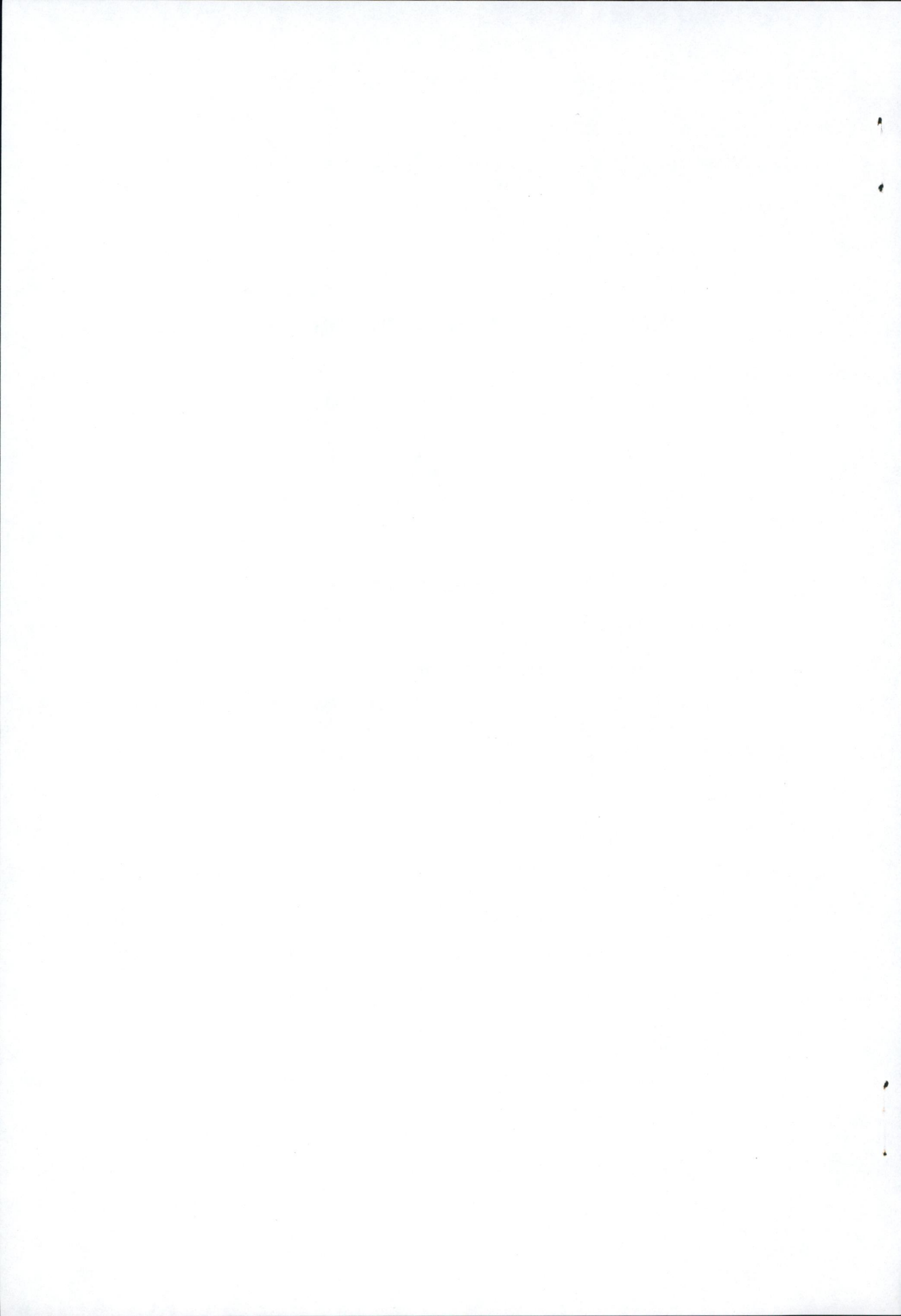
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
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4. Consequential amendment of other Acts

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE ACT 1987
SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS



COMMUNITY WELFARE (AMENDMENT) ACT 1992 No. 105

NEW SOUTH WALES



Act No. 105, 1992

An Act to amend the Community Welfare Act 1987 relating to the staff of the Community Welfare Employment Corporation; to abolish that Corporation; and for other purposes. [Assented to 8 December 1992]

Community Welfare (Amendment) Act 1992 No. 105

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Community Welfare (Amendment) Act 1992.

Commencement

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

Amendment of Community Welfare Act 1987 No. 52

3. The Community Welfare Act 1987 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE ACT 1987

(Sec. 3)

(1) Section 3 (**Definitions**):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B”.

(2) Section 13B (**Community Welfare Employment Corporation**):

Omit the section.

(3) Section 13C (**Regulations concerning employees of Community Welfare Employment Corporation**):

Omit the section.

(4) Section 78 (**Regulations**):

Omit section 78 (1) (a1).

(5) Section 79:

After section 78, insert:

Savings, transitional and other provisions

79. Schedule 4 has effect.

Community Welfare (Amendment) Act 1992 No. 105

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

(6) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 79)

PART 1—REGULATIONS

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Community Welfare (Amendment) Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
COMMUNITY WELFARE (AMENDMENT) ACT
1992**

Definitions

2. In this Part:

“**appointed day**” means the date of commencement of the Community Welfare (Amendment) Act 1992;

“**Corporation**” means the Community Welfare Employment Corporation constituted by section 13B before its repeal by the Community Welfare (Amendment) Act 1992;

Community Welfare (Amendment) Act 1992 No. 105

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

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

Dissolution of Corporation

3. On the appointed day, the Corporation is dissolved.

References to Corporation or its staff

4. On and from the appointed day, and subject to the regulations, a reference in any other Act, or in any instrument made under any Act or in any other instrument of any kind:

- (a) to the Corporation is to be read as a reference to the Director-General; and
- (b) to officers or employees (however expressed) of the Corporation is to be read as a reference to officers of the Department.

Transfer of assets, liabilities etc. of Corporation

5. On the appointed day:

- (a) the assets and liabilities of the Corporation become assets and liabilities of the Crown; and
- (b) all proceedings by or against the Corporation pending immediately before the appointed day become proceedings pending by or against the Crown.

Actions etc. of Corporation

6. Any act, matter or thing done or omitted to be done by or in respect of the Corporation is (to the extent that the act, matter or thing had any force or effect immediately before the appointed day) taken to have been done or omitted to be done by or in respect of the Director-General.

Transfer of employees of Corporation to Department of Community Services

7. (1) On the appointed day, a person who was an employee of the Corporation immediately before that day is taken to be a member of the staff of the Department of Community Services employed under Part 2 of the Public Sector Management Act 1988 in the same capacity (whether

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

temporary or otherwise) as that in which the person was employed by the Corporation immediately before that day. This subclause has effect subject to any order under subclause (3).

(2) Subclause (1) does not have the effect of appointing a person to a position under the Public Sector Management Act 1988.

(3) The Governor may, on the recommendation of the Minister, by order published in the Gazette, appoint a person who is a member of staff of the Department of Community Services by virtue of subclause (1) to a position under Part 2 of the Public Sector Management Act 1988 in the Department of Community Services.

(4) A person who is the subject of such an order is taken for all purposes to have been appointed to that position in accordance with the terms of the order and to have been so appointed in accordance with any relevant provision of the Public Sector Management Act 1988.

(5) This clause has effect despite anything in the Public Sector Management Act 1988.

Salary, wages and allowances of transferred persons

8. A transferred person is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the person as an employee of the Corporation immediately before the appointed day, until the salary, wages or allowances is or are varied or altered:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

Other conditions of employment of transferred persons

9. (1) This clause applies to any condition of employment of a transferred person (other than salary, wages or allowances) that was, immediately before the appointed day, regulated by an award or agreement (within the meaning of

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

the Industrial Relations Act 1991) or a lawful determination applicable to the person as an employee of the Corporation.

(2) A condition to which this clause applies (so long as it does not conflict with any provision of the Public Sector Management Act 1988 or the regulations under that Act) is to continue to apply to the person until it is regulated:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

Preservation of rights of transferred persons

10. (1) A transferred person is to retain any rights (including any rights to deferred or extended leave and any payment, pension or gratuity) accrued as an employee of the Corporation.

(2) For the purposes of the accrual of any such rights after the appointed day, service as an employee of the Corporation is taken to be service as a public servant.

(3) This clause applies to and in respect of the preservation of rights of those transferred persons who, but for the operation of this clause, would not be entitled to retain those rights.

Conditions of employment for new staff

11. (1) The Director-General of the Department of Community Services may declare that a condition of employment (including salary, wages and allowances) that was regulated by an award, agreement (within the meaning of the Industrial Relations Act 1991) or lawful determination applicable to employees of the Corporation applies to a position:

- (a) that, in the Director-General's opinion, is comparable to a position governed by the award, determination or agreement; and
- (b) to which a person is appointed after the appointed day.

Community Welfare (Amendment) Act 1992 No. 105

SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued*

(2) Such a condition applies only until it is varied, altered or regulated:

- (a) by an award or agreement under the Industrial Relations Act 1991; or
- (b) by or under the Public Sector Management Act 1988; or
- (c) otherwise in accordance with law.

(3) The Director-General is not to make a declaration under this clause in respect of a condition unless the award, agreement or determination that regulates it applies, at the time the declaration is made, to transferred persons.

(4) This clause does not apply to a condition that conflicts with any provision of the Public Sector Management Act 1988.

(5) A declaration under this clause is to be published in the Gazette.

Previous agreement for transfer of staff to Corporation

12. (1) This clause applies to the agreement (No. 2522 of 1989) dated 30 November 1989 and expressed to be between:

- (a) the Community Welfare Employment Corporation and the Public Employment Industrial Relations Authority; and
- (b) the Health and Research Employees' Association of New South Wales, the Hospital Officers' Association of New South Wales, the New South Wales Nurses' Association, the New South Wales Public Medical Officers' Association and the Public Service Association of New South Wales.

(2) The agreement is taken to have been valid and effective according to its terms with effect on and from 1 July 1989.

(3) In particular, the agreement is taken to have been effective to transfer the officers and employees referred to in the agreement to the employment of the Corporation in accordance with the terms of the agreement.

Community Welfare (Amendment) Act 1992 No. 105

**SCHEDULE 1—AMENDMENT OF COMMUNITY WELFARE
ACT 1987—*continued***

(4) However, subclauses (2) and (3) do not apply in relation to persons who were officers of the Department of Health appointed and employed under Part 2 of the Public Sector Management Act 1988 immediately before 1 July 1989.

(5) If not previously terminated, the agreement is terminated on the appointed day, without prejudice to the other clauses of this Schedule.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS**

(Sec. 4)

Children (Detention Centres) Act 1987 No. 57

Section 3 (Definitions):

From the definition of “officer” in section 3 (1), omit “or a person employed under section 13B of the Community Welfare Act 1987”.

Public Sector Management Act 1988 No. 33

Schedule 3 (Declared Authorities):

Omit “Community Welfare Employment Corporation.”.

**State Authorities Non-contributory Superannuation Act 1987
No. 212**

Schedule 1 (Employers):

From Part 1, omit “Community Welfare Employment Corporation”.

State Authorities Superannuation Act 1987 No. 211

Schedule 1 (Employers):

From Part 1, omit “Community Welfare Employment Corporation”.

Community Welfare (Amendment) Act 1992 No. 105

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

Superannuation Act 1916 No. 28

Schedule 3 (List of employers):

From Part 1, omit “Community Welfare Employment Corporation”.

*[Minister's second reading speech made in—
Legislative Assembly on 18 November 1992
Legislative Council on 27 November 1992]*

