

**LOCAL GOVERNMENT (BOUNDARIES
COMMISSION) AMENDMENT ACT.**

Act No. 32, 1963.

**Elizabeth II,
No. 32, 1963**

An Act to make further provisions with regard to the alteration of local government boundaries; to constitute a Boundaries Commission and to specify its powers, authorities, duties and functions; for these and other purposes to amend the Local Government Act, 1919, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 18th September, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title,
commence-
ment and
construction.

1. (1) This Act may be cited as the "Local Government (Boundaries Commission) Amendment Act, 1963".

(2)

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. **No. 32, 1963**

(3) This Act shall be read and construed with the Local Government Act, 1919, as amended by subsequent Acts, which Act, as so amended, is in this Act referred to as the Principal Act.

2. The Principal Act is amended—

Amendment
of Act No.
41, 1919.

(a) by inserting in section three next after the matter relating to Part II the words and symbols “PART IIA.—LOCAL GOVERNMENT BOUNDARIES COMMISSION—ss. 15A–15J.”; Sec. 3. (Division into Parts.)

(b) by inserting in section four next before the definition of “Building line” the following new definition :— Sec. 4. (Definitions.)
“Boundaries Commission” means the Local Government Boundaries Commission constituted under Part IIA of this Act.

(c) by inserting next after section fifteen the following new Part :— New Part IIA.

PART IIA.

LOCAL GOVERNMENT BOUNDARIES COMMISSION.

15A. (1) There shall be a Local Government Boundaries Commission which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon it by or under this Act. Boundaries Commission.

(2) (a) The members of the Boundaries Commission shall be appointed by the Governor and, subject to this Part, each member shall hold office for five years from the date of his appointment and shall be eligible for reappointment.

(b)

(b) Subject to paragraph (c) of this subsection, the Boundaries Commission shall consist of three members, that is to say—

- (i) one member nominated by the Minister, who shall be the chairman;
- (ii) one member (hereinafter referred to as “the departmental member”) who shall be an officer of the Department of Local Government nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;
- (iii) one member (hereinafter referred to as “the councils’ member”) who shall be selected by the Governor from three officers of councils who have been nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales.

(c) Where in the exercise or discharge of any of the powers, authorities, duties or functions conferred on the Boundaries Commission by paragraph (a), (b) or (e) of subsection one of section 15J of this Act, an examination, inquiry or report is made in relation to the boundaries of the City of Sydney, the Boundaries Commission shall consist of four members of whom three shall be the persons referred to in paragraph (b) of this subsection and the remaining member shall be a person selected by the Governor from three officers of the Council of the City of Sydney who have been nominated by such Council who shall hold office as such member only for the purpose of the examination or inquiry for which he is appointed and of making any report, recommendation or proposal arising out of such examination or inquiry :

Provided

Provided that the member of the Boundaries Commission appointed pursuant to this paragraph shall not vote on any recommendation or proposal by the Boundaries Commission for the inclusion in the City of Sydney of the whole or any part of any other area. No. 32, 1963

(3) (a) Where at any time a member of the Boundaries Commission is absent from his office as a member with the leave of the Minister, granted for any particular period or with respect to any particular examination or inquiry, the Governor may—

- (i) if such member is the chairman, on the nomination of the Minister, appoint a person as an acting member and the acting chairman of the Boundaries Commission;
- (ii) if such member is the departmental member, on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government, appoint an officer of that Department as an acting member of the Boundaries Commission;
- (iii) if such member is the councils' member, select and appoint a member of the panel as an acting member of the Boundaries Commission;
- (iv) if such member is the person nominated by the Council of the City of Sydney in accordance with paragraph (c) of subsection two of this section, appoint another person nominated by that council as an acting member of the Boundaries Commission.

(b) Such appointment may be made with respect to one or more members of the Boundaries Commission, and shall be for such period or with respect to such particular examination or inquiry as may be specified in the notification of appointment. (4)

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(4) An acting chairman or an acting member, as the case may be, shall have and may exercise and discharge all the powers, authorities, duties and functions of the chairman or member in whose place he acts.

(5) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting chairman or acting member to act in the place of the chairman or a member; and all acts and things done or omitted to be done by an acting chairman or acting member when so acting as aforesaid shall have the same consequences as if the same had been done or omitted to be done by the chairman or member in whose place the acting chairman or acting member is acting.

(6) The provisions of the Public Service Act, 1902, or any Act amending the same, shall not apply to or in respect of the appointment by the Governor of any member or acting member of the Boundaries Commission, and any member or acting member so appointed shall not, in his capacity as such member or acting member, be subject to the provisions of any such Act.

(7) The office of member or acting member of the Boundaries Commission shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

Panel.

15B. (1) There shall be a panel to be called the "Boundaries Commission Panel" which in this Part is referred to as "the panel".

(2) The members of the panel shall be appointed by the Governor and, subject to this Part, each member of the panel shall hold office for five years from the date of his appointment and shall be eligible for reappointment.

(3)

(3) The panel shall consist of five members of whom— No. 32, 1963

- (a) three shall be officers of councils who have been nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales; and
- (b) the remaining members shall be the officers of councils referred to in subparagraph (iii) of paragraph (b) of subsection two of section 15A of this Act, other than the officer selected by the Governor to be a member of the Boundaries Commission pursuant to that subparagraph.

Notwithstanding paragraph (b) of this subsection a person shall not become a member of the panel by reason of his being nominated pursuant to paragraph (a) of subsection four of section 15D of this Act to fill the vacant office of a member or acting member of the Boundaries Commission.

15c. (1) Nominations for the appointment of the members of the Boundaries Commission referred to in subparagraph (iii) of paragraph (b), and in paragraph (c), of subsection two of section 15A of this Act, of the acting member referred to in subparagraph (iv) of paragraph (a) of subsection three of that section, and of the members of the panel referred to in paragraph (a) of subsection three of section 15B of this Act shall be made in the manner and within the time prescribed, and shall be accompanied by the written consent of each person nominated to serve on the Boundaries Commission and the panel, if appointed.

(2) If within the time prescribed sufficient nominations under this Part have not been validly made by the bodies entitled to make nominations the Governor may appoint such number of persons having the appropriate qualifications as may be necessary.

15D.

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Cessation
of office.

15D. (1) A member or acting member of the Boundaries Commission or a member of the panel shall be deemed to have vacated his office if he—

- (a) dies;
- (b) resigns his office in writing under his hand addressed to the Governor;
- (c) becomes a mentally ill person, a protected person, or an incapable person, within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts;
- (d) becomes permanently incapable of performing his duties;
- (e) is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for twelve months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or misdemeanour punishable as aforesaid;
- (f) having been appointed as a member or an acting member in his capacity as an officer of a council or of the Department of Local Government, ceases to be such an officer;
- (g) for any cause which appears to the Governor to be sufficient, is removed from office by the Governor.

(2) If a member of the panel is appointed (otherwise than under subparagraph (iii) of paragraph (a) of subsection three of section 15A of this Act) as a member of the Boundaries Commission, he shall be deemed to have vacated his office as a member of the panel.

(3) Notwithstanding the provisions of subsection one of this section, a member or acting member of the Boundaries Commission who, pursuant to paragraph (f) of that subsection, vacates his office as such by reason of his ceasing

to

to be an officer of a council may continue to act **No. 32, 1963**
as a member or acting member of the Boundaries
Commission for the purposes only of—

- (a) any examination or inquiry commenced before he ceased to be such an officer if, before he ceased to be such an officer, he took part as a member or acting member of the Boundaries Commission in the proceedings of the Boundaries Commission in respect of such examination or inquiry; and
- (b) making any report or proposal arising out of any such examination or inquiry.

(4) Upon the vacation of office under this section of—

- (a) a member or acting member of the Boundaries Commission, a new member or acting member nominated or selected in the same manner as his predecessor shall be appointed by the Governor to fill the vacant office; or
- (b) a member of the panel, a new member nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales shall be appointed by the Governor to fill the vacant office,

and shall hold office for the residue of his predecessor's term.

15E. (1) No act or proceeding of the Boundaries Commission shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done, taken or commenced, there was a vacancy in the office of any member other than the chairman.

Unfilled
vacant
office.

(2)

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(2) All acts and proceedings of the Boundaries Commission shall, notwithstanding the subsequent discovery of any defect in the appointment of any member or acting member thereof, be as valid as if such member or acting member had been duly appointed and as if the Boundaries Commission had been properly and fully constituted.

Powers of Boundaries Commission where acting member appointed or casual vacancy filled.

15F. Where an acting member is appointed to the Boundaries Commission under subsection three of section 15A of this Act, or a person is appointed under subsection four of section 15D of this Act to a vacancy on the Boundaries Commission, the Boundaries Commission as newly constituted, in respect of any examination or inquiry commenced before the appointment and for the purposes of making any report or proposal arising out of any such examination or inquiry, may exercise and shall discharge any power, authority, duty or function that the Boundaries Commission could have exercised or discharged had the necessity for the appointment of the acting member or person, as the case may be, not arisen, without commencing the examination or inquiry anew.

Fees and travelling expenses.

15G. The chairman and each other member of the Boundaries Commission, and any acting chairman or acting member, as the case may be, shall be entitled to receive such travelling and out-of-pocket expenses and, if he is not a member of the Public Service, such remuneration (whether by way of fees or allowance or otherwise), as may be prescribed in respect of the chairman or an acting chairman, or a member or acting member.

Legal or other representation.

15H. (1) In proceedings before the Boundaries Commission, no person shall be represented—

- (a) by a barrister or solicitor or by a person who has qualified for admission as a barrister or solicitor; or
- (b) by any person acting for fee or reward.

(2)

(2) Nothing in this section shall No. 32, 1963
preclude—

- (a) an employee of any person from representing that person before the Boundaries Commission if such employee is not a barrister or solicitor or other person referred to in paragraph (a) of subsection one of this section;
- (b) a person who is the mayor of a municipality, president of a shire or chairman of a county council or urban committee from appearing in that capacity in proceedings before the Boundaries Commission;
- (c) a person who is a barrister or solicitor or other person referred to in paragraph (a) of subsection one of this section from preparing any documents or submissions or tendering any legal advice in connection with any proceedings before the Boundaries Commission.

15I. (1) The chairman shall preside at all meetings of the Boundaries Commission. Meetings
and
procedure.

(2) The chairman and one other member of the Boundaries Commission constituted in accordance with paragraph (b) of subsection two of section 15A of this Act, shall form a quorum.

(3) The chairman and two other members of the Boundaries Commission constituted in accordance with paragraph (c) of subsection two of section 15A of this Act shall form a quorum.

(4) At a meeting of the Boundaries Commission constituted in accordance with paragraph (b) of subsection two of section 15A of this Act, the decision of the majority shall prevail, but the dissenting member may furnish a minority report.

(5)

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(5) At a meeting of the Boundaries Commission constituted in accordance with paragraph (c) of subsection two of section 15A of this Act at which all of the members are present, the decision of the majority shall prevail, but where the members present are equally divided in opinion upon any question, no decision of the Boundaries Commission shall be recorded and each member may furnish a separate report.

(6) Where at any meeting of the Boundaries Commission constituted in accordance with paragraph (b) of subsection two of section 15A of this Act, at which one of the members is not present, the members present are divided in opinion upon any question, the determination of that question shall be postponed until a meeting at which all members are present.

(7) Where at any meeting of the Boundaries Commission constituted in accordance with paragraph (c) of subsection two of section 15A of this Act at which all of the members are not present, the members present are divided in opinion on any question, the determination of that question shall be postponed until a meeting at which all members are present.

(8) The procedure for the calling of meetings of the Boundaries Commission and for the conduct of business thereat shall, except as may be from time to time prescribed, be as determined by the Boundaries Commission.

(9) In the exercise and discharge of its powers, authorities, duties and functions, the Boundaries Commission shall not be bound to follow strict legal procedure nor to observe the rules of law governing the admission of evidence.

(10) No writ of prohibition or certiorari shall lie in respect of any examination, inquiry, proposal, report, recommendation, determination, order,

order, proceeding or direction of the Boundaries Commission in the exercise or discharge of the powers, authorities, duties and functions conferred and imposed on it by this Part. No. 32, 1963

15J. (1) The Boundaries Commission shall have and may exercise and discharge the following powers, authorities, duties and functions :—

Powers,
authorities,
duties and
functions
of the
Boundaries
Commission.

- (a) to examine, without holding an inquiry, and report on any matter with respect to the boundaries of cities, municipalities, shires, urban areas and county districts which may be referred to it by the Minister;
- (b) to hold an inquiry into and report upon any proposal mentioned in subsection one of section nineteen of this Act and referred to the Boundaries Commission in accordance with subsection four of that section;
- (c) to hold any inquiry for the purposes of Division 2 of Part XXVII of this Act and to report thereon to the Minister;
- (d) to hold an inquiry into and report upon any proposal mentioned in subsection one of section 561A of this Act and referred to the Boundaries Commission in accordance with subsection four of that section;
- (e) to submit to the Minister any proposal—
 - (i) mentioned in subsection one of section nineteen of this Act;
 - (ii) for the creation or dissolution, or the alteration of boundaries, of an urban area; or
 - (iii) mentioned in subsection one of section 561A of this Act,

and which arises out of any examination or inquiry under paragraph (a), (b), (c) or (d) of this subsection.

Notwithstanding

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Notwithstanding paragraphs (a), (b), (c), (d) or (e) of this subsection no recommendation by the Boundaries Commission shall be implemented by the Minister until a copy of the report of the Boundaries Commission containing that recommendation has been laid before both Houses of Parliament.

(2) Notwithstanding the provisions of subsection one of this section the Boundaries Commission shall not have, and shall not exercise or discharge, the powers, authorities, duties and functions referred to in paragraph (a), or subparagraph (iii) of paragraph (e), of that subsection in relation to a county district constituted or proposed to be constituted for the supply of electricity.

(3) Any inquiry held by the Boundaries Commission under this section shall be open to the public.

Sec. 16.
(Alteration
of areas.)

(d) by inserting in paragraph (d) of section sixteen after the word "into" the words "the same or";

Sec. 17.
(New municipality—
conditions
precedent.)

(e) by omitting section seventeen;

Sec. 19.
(Proposals
for alteration of
areas.)

(f) (i) by inserting next after subsection one of section nineteen the following new subsection:—

(1A) A proposal submitted to the Minister by the Boundaries Commission pursuant to the provisions of subparagraph (i) of paragraph (e) of subsection one of section 15J of this Act shall, except where it is a modification within the meaning of subsection six of this section, be deemed to be a proposal to the Governor for the purposes of this Part.

(ii) by omitting from subsection four of the same section the words "such local land board as he may appoint, or to a person appointed by him
in

in accordance with this Act” and by inserting in lieu thereof the words “the Boundaries Commission”;

- (iii) by inserting at the end of subsection six of the same section the following new paragraph:—

In this subsection “modification” means only such a modification as does not in the opinion of the Minister constitute a new proposal but does not include a modification that would, if it were implemented, result in any part of the City of Sydney being included in any other area, unless it is recommended by the Boundaries Commission constituted as provided for in paragraph (c) of subsection two of section 15A of this Act.

- (g) by inserting in subsection one of section 20D after the word “into” the words “the same or”;

Sec. 20D.
(Transfer of servants where areas are divided.)

- (h) by inserting at the end of paragraph (b) of subsection two of section five hundred and forty-one the following word and new paragraph:—

Sec. 541.
(Declaration of urban areas.)

; or

- (c) on a proposal submitted to the Minister by the Boundaries Commission pursuant to the provisions of subparagraph (ii) of paragraph (e) of subsection one of section 15J of this Act.

- (i) (i) by omitting from subsection one of section five hundred and forty-three the word “Where” and by inserting in lieu thereof the words “Where the Boundaries Commission submits a proposal, or where”;

Sec. 543.
(Notice of application.)

- (ii) by omitting from the same subsection the words “grant the application” and by inserting in lieu thereof the words “declare the urban area”;

(j)

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 Sec. 544.
 (Inquiries
 and polls.)

- (j) by inserting next after subsection one of section five hundred and forty-four the following new subsection : —

(1A) Any such inquiry shall be held by the Boundaries Commission.

Sec. 561A.
 (Proposals
 for
 alteration
 or union.)

- (k) (i) by inserting next after subsection one of section 561A the following new subsection : —

(1A) A proposal in relation to a county district submitted to the Minister by the Boundaries Commission pursuant to the provisions of subparagraph (iii) of paragraph (e) of subsection one of section 15J of this Act shall, except where it is a modification within the meaning of subsection five of this section, be deemed to be a proposal to the Governor for the purposes of this section.

- (ii) by omitting from subsection four of the same section the words “a person appointed by him in accordance with this Act” and by inserting in lieu thereof the words “the Boundaries Commission”;

- (iii) by inserting at the end of subsection five of the same section the following new paragraph : —

In this subsection “modification” means only such a modification as does not in the opinion of the Minister constitute a new proposal.

Savings.

3. Any proposal—

- (a) mentioned in subsection one of section nineteen of the Principal Act;
- (b) for the creation or dissolution, or alteration of the boundaries, of an urban area; or
- (c) mentioned in subsection one of section 561A of the Principal Act,

which

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which was submitted to the Minister before the commencement of this Act and which has not been dealt with and disposed of before that commencement shall be deemed to have been submitted under and shall be dealt with and completed under the provisions of the Principal Act as amended by this Act. No. 32, 1963
