

**ETHNIC AFFAIRS COMMISSION ACT, 1979, No. 23**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 23, 1979.**

An Act to constitute the Ethnic Affairs Commission of New South Wales as a corporation; to specify its responsibilities, powers, authorities, duties and functions; to repeal the Ethnic Affairs Commission Act, 1976; and for other purposes. [Assented to, 24th April, 1979.]

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See also Statutory and Other Offices Remuneration (Ethnic Affairs) Amendment Act, 1979.

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**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 :—

PART I.

PRELIMINARY.

**Short title.**     **1.** This Act may be cited as the "Ethnic Affairs Commission Act, 1979".

**Commence-ment.**   **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Arrange-ment.**     **3.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—CONSTITUTION OF THE COMMISSION—ss. 6–14.

PART III.—OBJECTS AND FUNCTIONS OF THE COMMISSION—ss. 15–20.

PART IV.—GENERAL—ss. 21, 22.

**Repeal of Act No. 76, 1976.**     **4.** (1) The Ethnic Affairs Commission Act, 1976, is repealed.

(2) The amendment to the Statutory and Other Offices Remuneration Act, 1975, made by section 20 of the Ethnic Affairs Commission Act, 1976, continues to have effect as if that section had not been repealed by subsection (1) and as if the reference in Part 1 of Schedule 2 to that Act to the Chairman of the Ethnic Affairs Commission of New South Wales were a reference to the Chairman of the Ethnic Affairs Commission of New South Wales appointed under section 7 (2) (a).

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5. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpre-  
tation.

“Chairman” means the Chairman of the Commission appointed under section 7 (2) (a);

“Commission” means the Ethnic Affairs Commission of New South Wales constituted under this Act;

“commissioner” means the Chairman or any other member of the Commission;

“Deputy Chairman” means the Deputy Chairman of the Commission appointed under section 7 (4);

“ethnic affairs” means matters pertaining to the existence of different ethnic groups in the community;

“full-time commissioner” means the Chairman and any person appointed as a full-time commissioner in the instrument of his appointment as a commissioner;

“functions” includes responsibilities, powers, authorities and duties;

“part-time commissioner” means a person appointed as a part-time commissioner in the instrument of his appointment as a commissioner;

“public authority” means any public or local authority constituted by or under an Act other than this Act;

“regulation” means a regulation made under this Act.

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PART II.

CONSTITUTION OF THE COMMISSION.

6. (1) There is hereby constituted a corporation under the corporate name of the “Ethnic Affairs Commission of New South Wales”. Constitution  
of  
Commission.

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## (2) The Commission—

- (a) shall have and may exercise and perform the functions conferred or imposed on it by or under this or any other Act; and
- (b) shall, in the attainment of its objects and the exercise and performance of its functions (except in relation to the contents of a report or recommendation made by it or any advice given by it to the Minister), be subject to the control and direction of the Minister.

Appoint-  
ment of  
commis-  
sioners.

## 7. (1) The Commission shall consist of not more than 12 commissioners appointed by the Governor.

## (2) Of the commissioners—

- (a) one shall, by the instrument of his appointment or by a subsequent instrument, be appointed as Chairman of the Commission;
- (b) such number (if any) as may, from time to time, be fixed by the Minister shall, by the instruments of their respective appointments, be appointed as full-time commissioners; and
- (c) the remainder shall, by the instruments of their respective appointments, be appointed as part-time commissioners.

## (3) A person who is of or above the age of—

- (a) 65 years shall not be appointed as a full-time commissioner; or
- (b) 70 years shall not be appointed as a part-time commissioner.

(4) A commissioner (other than the Chairman) may, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Deputy Chairman of the Commission and, where—

- (a) the Chairman and any person appointed to act in the office of the Chairman under subsection (7) are absent from their respective offices through illness or other

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unavoidable cause or the office of the Chairman is vacant, the Deputy Chairman shall, if the Minister so approves in writing, act as Chairman; or

- (b) the Chairman, any person so appointed, the Deputy Chairman and any person appointed to act in the office of the Deputy Chairman under subsection (7) are absent from their respective offices through illness or other unavoidable cause or the offices of the Chairman and the Deputy Chairman are vacant, the remaining full-time commissioner (if any) shall, if the Minister so approves in writing, act as Chairman or, if there is more than one, such one of them as is approved by the Minister shall so act.

(5) A commissioner shall, subject to this Act, be appointed for such term, not exceeding 5 years, as is specified in the instrument of his appointment and shall be eligible for re-appointment from time to time for such term, not exceeding 5 years, as is specified in the instrument of his re-appointment.

(6) On the occurrence of a vacancy in the office of a commissioner before the expiration of the term for which he was appointed, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.

(7) The Minister may appoint a person (other than a commissioner) to act in the office of a commissioner while that commissioner is absent from his office through illness or other unavoidable cause or while that office is vacant and that person while so acting shall have and may exercise and perform the functions of a commissioner and, where he is appointed to act in the office of the Chairman or the Deputy Chairman, the functions of the Chairman or Deputy Chairman, as the case may be.

(8) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a commissioner and a commissioner is not, in his capacity as a commissioner, subject to the provisions of that Act during his term of office.

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Provisions  
relating  
to commis-  
sioners  
generally.

**8.** (1) The Chairman shall be the chief executive officer of the Commission.

(2) A full-time commissioner shall devote the whole of his time to the duties of his office.

(3) A full-time commissioner is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(4) A part-time commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(5) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a part-time commissioner or from accepting and retaining any remuneration payable to a part-time commissioner under subsection (4).

(6) The office of a part-time commissioner shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.

Vacation  
of office.

**9.** (1) The office of a commissioner becomes vacant—

- (a) if he dies;
- (b) if, being a full-time commissioner, he engages in New South Wales or elsewhere during his term of office in any paid employment outside the duties of his office without the written approval of the Minister;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, allowances or estate for their benefit;

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- (d) if, being a full-time commissioner, he is absent from duty for a period exceeding 14 consecutive days, except on leave granted in writing by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- (e) if, being a part-time commissioner, he is absent from 4 consecutive ordinary meetings of the Commission of which reasonable notice has been given to him, either personally or in the course of post, except on leave granted in writing by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, he is excused in writing by the Minister for his absence from those meetings;
- (f) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (g) if he is convicted in New South Wales of a felony or misdemeanour which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or misdemeanour so punishable,
- (h) if he resigns his office by writing under his hand addressed to the Governor;
- (i) if he declines office;
- (j) upon his attaining, in the case of—
  - (i) a full-time commissioner, the age of 65 years; or
  - (ii) a part-time commissioner, the age of 70 years; or
- (k) if he is removed from office by the Governor.

(2) The Governor may, for any cause which to him seems sufficient, remove a commissioner from office.

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Meetings  
of the  
Commission.

**10.** (1) The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.

(2) Notwithstanding section 7 (4) but subject to subsection (3), at a meeting of the Commission—

- (a) the Chairman;
- (b) in the absence of the Chairman—the Deputy Chairman;
- (c) in the absence of the Chairman and the Deputy Chairman—the remaining full-time commissioner (if any) or, if there is more than one, the full-time commissioner elected by the commissioners present at the meeting; or
- (d) in the absence of the Chairman, the Deputy Chairman and the remaining full-time commissioner (if any) or all of the remaining full-time commissioners (if any), a part-time commissioner elected by the commissioners present at the meeting,

shall preside.

(3) Except with the prior written approval of the Minister, a meeting of the Commission shall not be held unless there is present at the meeting the Chairman, the Deputy Chairman or a person appointed to act in the office of the Chairman or the Deputy Chairman under section 7 (7).

(4) Four commissioners or such other number as may, for the time being, be fixed by the Minister is a quorum at any meeting of the Commission.

(5) A duly convened meeting of the Commission at which a quorum is present shall be competent to transact any business of the Commission and shall have and may exercise and perform all of the functions of the Commission.

(6) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, a casting vote.



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(7) Subject to subsection (6), a decision of a majority of the commissioners present and voting at a meeting of the Commission at which a quorum is present shall be the decision of the Commission.

(8) The Commission shall cause a record of its decisions and full and accurate minutes of its proceedings at its meetings to be kept and shall submit to the Minister a copy of the minutes of each meeting within 14 days after the day on which it was held.

11. (1) In this section—

“statutory body” means any body declared under section 13 to be a statutory body for the purposes of this section;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Preservation of rights of a full-time commissioner previously public servant, etc.

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time commissioner was, immediately before his appointment as a full-time commissioner—

- (a) an officer within the meaning of the Public Service Act, 1902;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, a contributor or a person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time commissioner; and

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- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer, a contributor or a person during his service as a full-time commissioner and—

- (h) his service as a full-time commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (i) he shall be deemed to be an officer or employee, and the Commission shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this section.

(3) If a full-time commissioner would, but for this subsection, be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme he shall not be so entitled upon his becoming (whether upon his appointment as a full-time commissioner or at any later time while he holds office as a full-time commissioner) a contributor to any other superannuation scheme, and the provisions of subsection (2) (i) cease to apply to or in respect of him and the Commission in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time commissioner upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of his resignation to be an officer or employee for the purposes of that scheme.

(5) A full-time commissioner is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

*Ethnic Affairs Commission.***12.** (1) In this section—

“retiring age” means—

- (a) in relation to a person who was, immediately before his appointment as a full-time commissioner, an officer of the Public Service—the age of 60 years; and
- (b) in relation to a person who was, immediately before his appointment as a full-time commissioner, an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as a full-time commissioner), as the case may be, of that statutory body are entitled to retire;

Full-time commissioners entitled to re-appointment in former employment in certain cases.

“statutory body” means any body declared under section 13 to be a statutory body for the purposes of this section.

(2) A person who ceases to be a full-time commissioner, otherwise than pursuant to section 9 (1) (paragraph (h) excepted), shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as a full-time commissioner, he was—

- (a) an officer within the meaning of the Public Service Act, 1902—to some office as an officer under that Act; or
- (b) an officer or employee of a statutory body—to some office in the service of that body,

not lower in classification and salary than that which he held immediately before his appointment as a full-time commissioner.

**13.** The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of section 11 or 12.

Declaration of statutory bodies.

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Staff  
establish-  
ment of  
Commission.

**14.** (1) Such officers and employees as may be necessary to enable the Commission to exercise and perform its functions shall be appointed and employed under and subject to the Public Service Act, 1902.

(2) For the purposes of exercising and performing its functions, the Commission may, with the approval of the Minister and of the Department or public authority concerned and on such terms as may be arranged, make use of the facilities, or the services of any officers, employees or servants, of any Department of the Government or public authority.

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**PART III.**

**OBJECTS AND FUNCTIONS OF THE COMMISSION.**

Objects  
of the  
Commission.

**15.** The objects of the Commission are—

- (a) to encourage the full participation of persons comprising ethnic groups in the community in the social, economic and cultural life of the community;
- (b) to promote the unity of all ethnic groups in the community as a single society consistently with the recognition of their different cultural identities; and
- (c) to promote liaison and co-operation between bodies concerned in ethnic affairs.

Functions  
of the  
Commis-  
sion.

**16.** The functions of the Commission are—

- (a) to investigate, and report and make recommendations to the Minister on, any aspect of ethnic affairs which is referred to it by the Minister or which it considers requires action;

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- (b) to examine, and advise the Minister on, any representations made to the Minister by or on behalf of any persons forming or forming part of any ethnic group in the community and referred to it by the Minister;
- (c) to provide to any persons forming or forming part of any ethnic group in the community services approved by the Minister;
- (d) to advise the Minister on the most effective use of funds appropriated by Parliament for expenditure in relation to ethnic affairs;
- (e) to arrange and co-ordinate meetings, discussions, seminars and conferences with respect to ethnic affairs;
- (f) to consult with governmental, business, industrial, educational, and community bodies or groups for the purpose of ascertaining a means of improving conditions affecting ethnic affairs; and
- (g) to report and make recommendations to the Anti-Discrimination Board constituted under the Anti-Discrimination Act, 1977, on matters relating to the avoidance of discrimination on the basis of ethnic origin.

**17.** (1) The Commission shall, on or before 30th September in each year, prepare and present to the Minister a report of its work and activities for the year ending on the preceding 30th June. Annual report.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by him.

**18.** In so far as any investigation conducted by the Commission under this Act affects the functions of any officer of a Department of the Government or the functions of any public authority, that officer or public authority, as the case may be, shall afford the Commission all such assistance and shall make available to it all such information with respect to his or its functions as the Commission may require for the purposes of that investigation. Certain officers and public authorities to assist, etc., Commission.

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Delegation.

**19.** (1) The Commission, with the written approval of the Minister, may, by resolution, from time to time delegate to the Chairman the exercise or performance of such of the Commission's functions with respect to any matter (other than this power of delegation) as are specified in the resolution, and may, by resolution, revoke wholly or in part any such delegation.

(2) A function with respect to any matter, the exercise or performance of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise or performance of the function delegated, or as to time or circumstance, as are specified in the resolution.

(4) Notwithstanding any delegation under this section, the Commission may continue to exercise or perform the function delegated.

(5) Any act or thing done or suffered by the Chairman while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Commission and shall be deemed to have been done or suffered by the Commission.

(6) An instrument purporting to be signed by the Chairman in his capacity as a delegate of the Commission shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commission under seal and, until the contrary is proved, shall be deemed to be an instrument signed by the Chairman as a delegate of the Commission under this section.

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**20.** The Commission may, with the approval of the Minister, establish such committees of commissioners or of commissioners and other persons as it thinks fit for the purpose of assisting it to exercise and perform its functions. Commission may establish committees.

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PART IV.

GENERAL.

**21.** The expenses of the Commission in exercising or performing its functions under this Act shall be paid out of money provided by Parliament. Cost of administration of Act.

**22.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which, by this Act, is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

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