

LAW REFORM COMMISSION (AMENDMENT) ACT, 1981, No. 1

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 1, 1981.

An Act to amend the Law Reform Commission Act, 1967, to make further provision with respect to the constitution of the Law Reform Commission and the powers, authorities, duties and functions of the Commission. [Assented to, 20th March, 1981.]

See also Statutory and Other Offices Remuneration (Law Reform Commission) Amendment Act, 1981.

Law Reform Commission (Amendment).

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.

1. This Act may be cited as the "Law Reform Commission (Amendment) Act, 1981".

Commencement.

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

(2) Except as provided by 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.

Principal Act.

3. The Law Reform Commission Act, 1967, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

Amendment of Act No. 39, 1967.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Law Reform Commission (Amendment).

Savings.

6. (1) Nothing in the Principal Act, as amended by this Act, affects the appointment or office of any person who, immediately before the day appointed and notified under section 2 (2), held office under the Principal Act and a person so holding office may, subject to subsection (2), continue in his office accordingly.

(2) Notwithstanding section 5, the provisions of the Principal Act, as in force immediately before the day appointed and notified under section 2 (2), shall continue to apply to and in respect of the person who, immediately before that day, was the executive member of the Commission appointed under section 6 of the Principal Act, as so in force, and those provisions shall so continue to apply until the expiration of that person's term of office or such time as that person vacates his office pursuant to those provisions.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 2, definition of "Commissioner"—
After "section 3", insert ", and includes the Chairman".
- (b) Section 2, definition of "Executive member"—
Omit the definition.
- (2) Section 3 (2)–(5)—
Omit section 3 (2)–(4), insert instead:—
- (2) The Commission shall consist of a Chairman appointed by the Governor and not less than 2 other commissioners appointed by the Governor.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A person is qualified to be appointed as the Chairman if he is a person who, in the opinion of the Minister, is suitable for appointment by reason of—

- (a) being or having been the holder of a judicial office;
- (b) experience as a lawyer in legal practice;
- (c) experience as a teacher of law; or
- (d) academic attainment in law.

(4) A person is qualified to be appointed as a commissioner, other than the Chairman, if—

- (a) he is qualified to be appointed as the Chairman; or
- (b) he is a person who, in the opinion of the Minister, is suitable for appointment by reason of his special qualifications, training or experience.

(5) A qualification for appointment as the Chairman or a commissioner, other than the Chairman, may be a qualification obtained within New South Wales or outside New South Wales, or partly within and partly outside New South Wales.

(3) Sections 3A, 3B—

After section 3, insert:—

Full-time and part-time commissioners.

3A. (1) A commissioner shall, in accordance with the instrument of his appointment or reappointment, be a full-time commissioner or part-time commissioner.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) A commissioner appointed as a full-time commissioner shall, except as provided by section 4 or except in so far as the Minister otherwise approves in writing, devote the whole of his time to the duties of his office.

Term of office.

3B. A commissioner shall, subject to this Act, be appointed for such term, not exceeding 7 years, as is specified in the instrument of his appointment and is eligible for reappointment as a commissioner.

(4) Section 5 (2)—

After “Chairman” where secondly occurring, insert “or during any vacancy in the office of the Chairman”.

(5) Section 6—

Omit the section.

(6) Section 8—

Omit the section, insert instead:—

Remuneration, allowances and rights.

8. (1) A full-time commissioner, not being the holder of a judicial office, is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975.

(2) A part-time commissioner is entitled to be paid such allowances and such fees as the Minister may from time to time determine in respect of him.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) 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, or prohibiting him from engaging in employment outside the duties of his office, the provision shall not operate to disqualify him from holding that office and also the office of a part-time commissioner.

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

(5) The appointment of a commissioner, not being the holder of a judicial office, shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument of his appointment or as may be agreed upon by the Governor and the commissioner.

(6) The Public Service Act, 1979, does not apply to or in respect of the appointment of a commissioner by the Governor and a person so appointed is not, in his capacity as a commissioner, subject to that Act while he holds office as a commissioner.

(7) Schedule 1 has effect with respect to the preservation of rights of certain persons on their appointment as full-time commissioners.

(7) (a) Section 9 (1)—

Omit “the Chairman or”.

(b) Section 9 (2)—(2B)—

Omit section 9 (2), insert instead:—

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Governor may remove a commissioner (not being the holder of a judicial office) from office—

- (a) for inability, misbehaviour or failure to comply with the terms and conditions of his employment;
- (b) if the commissioner, being a full-time commissioner, engages, except in so far as the Minister otherwise approves in writing, in any paid employment outside the duties of his office;
- (c) if the commissioner 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 for their benefit;
- (d) if the commissioner 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; or
- (e) if the commissioner is convicted in New South Wales of a crime or an offence which is punishable by imprisonment for 12 months or upwards, or he is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable.

(2A) A commissioner may resign his office by writing under his hand addressed to the Governor.

(2B) A commissioner (not being the holder of a judicial office) who is required (by the terms of his appointment or reappointment) to devote the whole of his time to the duties of his office, may be retired from office by the Governor after the commissioner attains the age of 60 years.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) Section 9 (3)—
Omit “or the executive member”.
- (8) (a) Section 10 (2) (a)—
Omit “and” where lastly occurring.
- (b) Section 10 (2) (b)—
After “Act”, insert “(section 17 excepted)”.
- (c) Section 10 (2) (b)—
Omit “inquiry.”, insert instead “inquiry; and”.
- (d) Section 10 (2) (c)—
After section 10 (2) (b), insert:—
(c) the provisions of section 17 (1), (2) and (3) of that Act shall apply where the Minister has, at any time, in, or in relation to, the reference to which the inquiry relates, declared those provisions to apply and where the commissioner presiding at the inquiry is a judge of the Supreme Court.
- (9) Sections 12A–12C—
After section 12, insert:—

Divisions.

12A. (1) The Chairman may constitute a Division of the Commission consisting of not less than 3 commissioners including, if the Chairman thinks fit, himself, for the purposes of a reference or any part, determined by the Chairman, of a reference.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Chairman, if he thinks fit, may, at any time, dissolve a Division constituted under subsection (1).

(3) A Division constituted under subsection (1) shall, for the purposes of the reference or part in respect of which it is constituted (including the making of any report on its work under the reference or part), be deemed to be the Commission.

Meetings of Divisions.

12B. (1) A meeting of a Division constituted under section 12A (1) shall be convened and presided over by the Chairman or a member of the Division specified for the purpose by the Chairman.

(2) In the event of the absence from a meeting of a Division of the member who, pursuant to subsection (1), is to preside, those members of the Division who are present at the meeting may elect one of their number to preside at the meeting.

(3) The number of members who shall constitute a quorum at any meeting of a Division is—

- (a) where the Division consists of an even number of members—
—one-half of that number; or
- (b) where the Division consists of a number of members that is not an even number—
—one-half of the even number next above that number.

(4) A question arising at a meeting of a Division shall be decided by a majority of the votes of the members present and voting.

(5) If, at a meeting of a Division at which only 2 members are present, those members differ in opinion on a question, the member presiding shall postpone the determination of the question to a meeting of the Division at which more than 2 of the members of the Division are present.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) In the event of an equality of votes on a question before a meeting of a Division at which more than 2 members are present, the member presiding shall have a casting as well as a deliberative vote.

Proceedings not vitiated by vacancy.

12c. So long as there are 2 or more commissioners, no act or proceeding of the Commission or any commissioner shall be vitiated by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of any commissioner.

(10) Section 13 (4)—

After “report” where firstly occurring, insert “made by a Division of the Commission constituted under section 12A (1) and signed by not less than 2 members of the Division and a report (other than a report of a Division)”.

(11) Section 14 (1)—

Omit “(other than the executive member)”.

(12) Schedule 1—

At the end of the Act, insert:—

SCHEDULE 1.

(Sec. 8 (7).)

PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS
ON THEIR APPOINTMENT AS FULL-TIME COMMISSIONERS.

Interpretation: Sch. 1.

1. In this Schedule—

“commissioner” means a full-time commissioner, not being the holder of a judicial office;

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

“statutory body” means a body declared under clause 6 to be a statutory body for the purposes of this Schedule;

“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—generally.

2. Subject to clause 3 and to the terms of his appointment, where a commissioner was, immediately before his appointment as a commissioner—

- (a) an officer of the Public Service;
- (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, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a commissioner; and
- (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, contributor or person during his service as a commissioner, and—

- (h) his service as a 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 Government of New South Wales shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this clause.

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Consequence of becoming contributor to another superannuation scheme.**

3. (1) If a commissioner would, but for this subclause, be entitled under clause 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 commissioner or at any later time while he holds office as a commissioner) a contributor to any other superannuation scheme, and the provisions of clause 2 (i) cease to apply to or in respect of him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.

(2) Subclause (1) does not prevent the payment to a 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.

Restrictions on entitlement to benefit.

4. A commissioner shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Reappointment to former employment in certain cases.

5. (1) In this clause, "retiring age" means, in relation to a person who was, immediately before his appointment as a commissioner—

- (a) an officer of the Public Service—the age of 60 years; or
- (b) 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 commissioner), as the case may be, of that statutory body are entitled to retire.

(2) A person who ceased to be a commissioner, otherwise than pursuant to section 9 (2), shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as a commissioner, he was—

- (a) an officer of the Public Service—to some position in the Public Service; or

Law Reform Commission (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an officer or employee of a statutory body—to some position in the service of that body,

not lower in classification or salary than that which he held immediately before his appointment as a commissioner.

Declarations of statutory bodies.

6. 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 this Schedule.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION.

(1) Section 5 (2)—

Omit “subsection (2) of section 10”, insert instead “section 10 (2)”.

(2) Section 7—

Omit the section.

(3) (a) Section 10 (2) (a)—

Omit “as amended by subsequent Acts,”.

(b) Section 10 (2) (a)—

Omit “, as so amended,”.

(c) Section 10 (2) (b)—

Omit “, as so amended,”.

Law Reform Commission (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

(4) Section 14 (1)—

Omit “Public Service Act, 1902, as amended by subsequent Act”,
insert instead “Public Service Act, 1979”.

(5) Schedule—

Omit the Schedule.
