

COMMISSIONER OF PUBLIC COMPLAINTS ACT, 1984, No. 76

NEW SOUTH WALES.



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COMMISSIONER OF PUBLIC COMPLAINTS ACT, 1984, No. 76

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 76, 1984.

An Act to provide for the appointment of a Commissioner of Public Complaints and to define the functions of the Commissioner. [Assented to, 27th June, 1984.]

See also Police Regulation (Allegations of Misconduct) (Commissioner of Public Complaints) Amendment Act, 1984; Defamation (Commissioner of Public Complaints) Amendment Act, 1984.

Commissioner of Public Complaints.

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 "Commissioner of Public Complaints Act, 1984".

Commencement.

2. (1) Sections 1 and 2 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.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commissioner" means the Commissioner of Public Complaints appointed under this Act;

"complainant" means a person who makes a complaint under this Act;

"complaint" means a complaint under this Act;

"conduct" means any action or inaction, or alleged action or inaction;

"Crown" means the Crown in right of New South Wales;

"investigating agency", in relation to a complaint or a matter arising out of a complaint under this Act, means a person or body to whom or to which the complaint or matter is or may be referred by the Commissioner under section 17 for investigation or other action;

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“Judge” means a Judge of the Supreme Court or a person holding a judicial office with the status of a Judge of the Supreme Court;

“local government authority” means a council within the meaning of the Local Government Act, 1919, a county council within the meaning of that Act or an urban committee constituted under Part XXVII of that Act;

“office” includes position;

“person” includes an unincorporated body of persons;

“public authority” means—

- (a) any person appointed to an office by the Governor;
- (b) any statutory body representing the Crown;
- (c) any officer or temporary employee of the Public Service;
- (d) any person in the service of the Crown or of any statutory body representing the Crown;
- (e) any person in relation to whom or to whose functions an account is kept of administration or working expenses, where the account—
 - (i) is part of the accounts prepared pursuant to the Public Finance and Audit Act, 1983;
 - (ii) is required by or under any Act to be audited by the Auditor-General;
 - (iii) is an account with respect to which the Auditor-General has powers under any law; or
 - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;
- (f) any person entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

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- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act;
- (h) any local government authority or any member or employee of a local government authority;
- (i) any member of the Police Force; or
- (j) any employee or any person otherwise acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulation” means a regulation made under this Act;

“Supreme Court” means the Supreme Court of New South Wales.

(2) In this Act, a reference, in relation to a complaint, to the complainant is a reference to the person who made the complaint, and, where the complaint was made by 2 or more persons, includes a reference to either or any of those persons.

(3) The regulations may provide that in a prescribed provision of this Act—

- (a) a reference to the responsible Minister shall, in relation to a specified public authority, be read and construed as a reference to a prescribed Minister; or
- (b) a reference to the head of a public authority shall, in relation to a specified public authority, be read and construed as a reference to a prescribed person or body.

(4) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Wrongful conduct.

4. For the purposes of this Act, conduct of a public authority is wrongful conduct if it constitutes an offence punishable by penal servitude or imprisonment.

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Conduct of former public authorities.

5. This Act applies to and in respect of any conduct of a public authority, whether or not the person or body who or which was the public authority has ceased or ceases to be a public authority, and for this purpose a reference in this Act to a public authority includes a reference to a former public authority.

Crown to be bound.

6. This Act binds the Crown.

PART II.

THE COMMISSIONER OF PUBLIC COMPLAINTS.

Office of Commissioner.

7. (1) The Governor may, on the recommendation of the Minister, appoint a Commissioner of Public Complaints on such terms and conditions as are specified in the instrument of appointment.

(2) Subject to this Act, the Commissioner shall hold office for such period, not exceeding 2 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(3) A person is not eligible for appointment as Commissioner unless the person is a Judge or former Judge or is eligible to be appointed as a Judge.

(4) A person is not eligible for appointment as Commissioner if the person is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(5) The Commissioner shall be deemed to have vacated office if the Commissioner—

- (a) is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or

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(b) resigns the office by instrument in writing addressed to the Governor and the Governor accepts the resignation.

(6) The Commissioner may, at any time, be removed from office by the Governor upon the address of both Houses of Parliament.

(7) The Public Service Act, 1979, does not apply to or in respect of the appointment of the Commissioner and the Commissioner is not, as Commissioner, subject to that Act.

Acting Commissioner.

8. (1) The Governor may, on the recommendation of the Minister, appoint an acting Commissioner to act in the office of Commissioner during the absence of the Commissioner or during a vacancy in the office of Commissioner.

(2) A person is not eligible for appointment as acting Commissioner unless the person is a Judge or former Judge or is eligible to be appointed as a Judge.

(3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances), if any, as the Minister may from time to time determine in respect of the acting Commissioner.

(4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Commissioner to act as Commissioner.

(5) This Act, section 7 (2) and (3) excepted, applies to and in respect of an acting Commissioner in the same way as it applies to and in respect of the Commissioner.

(6) Any act or thing done, suffered or omitted pursuant to this or any other Act by an acting Commissioner has the same force and effect as if done, suffered or omitted by the Commissioner and shall be deemed to have been done, suffered or omitted by the Commissioner.

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Staff.

9. (1) Such staff as may be necessary to enable the Commissioner to exercise the Commissioner's functions may be employed under and subject to the Public Service Act, 1979.

(2) The Commissioner may, with the approval of the responsible Minister, make use of the services of any of the staff of a public authority.

(3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while so employed, or while the services of the person are so used, an officer of the Commissioner.

PART III.**MAKING AND EXAMINATION OF COMPLAINTS.****Right to complain.**

10. (1) Subject to this section, any person (including a public authority) may complain to the Commissioner about the conduct of a public authority unless—

- (a) the conduct is of a class described in subsection (4);
- (b) the conduct is that of an individual, is of a private nature and is not relevant to the functions of the public authority; or
- (c) the conduct, being—
 - (i) action or alleged action—took place before the day appointed and notified under section 2 (2); or
 - (ii) inaction or alleged inaction—commenced or occurred before that day.

(2) A complaint under subsection (1) must be in writing and must identify the complainant.

(3) A complaint may be made in relation to any conduct whether or not the conduct is already the subject of investigation or other action by any other person or body.

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(4) The classes of conduct referred to in subsection (1) (a) are as follows:—

- (a) Conduct of the Governor, whether acting with or without the advice of the Executive Council.
- (b) Conduct of—
 - (i) Parliament;
 - (ii) the Houses of Parliament; or
 - (iii) either House of Parliament.
- (c) Conduct of a committee of either House, or both Houses, of Parliament.
- (d) Conduct of a member of either House of Parliament, where acting as such.
- (e) Conduct of an officer of Parliament or of either House of Parliament, where acting as such.
- (f) Conduct of the Executive Council.
- (g) Conduct of Cabinet or of a committee or subcommittee of Cabinet.

Examination of complaint.

11. (1) Where it appears to the Commissioner after perusal of a complaint that any conduct of a public authority, being conduct to which the complaint relates, may be wrongful conduct, the Commissioner may make the complaint the subject of further examination under this Act.

(2) Subsection (1) has effect notwithstanding anything in any Act (other than this Act) passed before the day appointed and notified under section 2 (2).

(3) The Commissioner may discontinue an examination under this Act.

(4) The Commissioner, in deciding whether or not to conduct an examination of a complaint under this Act or whether to discontinue an examination commenced under this Act—

- (a) may have regard to such matters as the Commissioner thinks fit; and

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- (b) without limiting paragraph (a), may have regard to whether, in the opinion of the Commissioner—
- (i) the complaint is frivolous, vexatious or not in good faith;
 - (ii) the subject-matter of the complaint is trivial;
 - (iii) the conduct complained of occurred at too remote a time to justify investigation;
 - (iv) in relation to the conduct complained of there is or was available a satisfactory means of redress or of dealing with the conduct; or
 - (v) having regard to all the circumstances of the case, an examination of the complaint would be or is unnecessary or unjustifiable.

(5) The Commissioner may conduct an examination of a complaint under this Act, and exercise any other function in relation to the complaint, notwithstanding that there is or was available a satisfactory means of redress or of dealing with the conduct complained of.

(6) An examination, including the exercise of any of the functions conferred by section 14, shall take place in private.

Notification of refusal to examine complaint.

12. Where the Commissioner decides not to conduct an examination of a complaint under this Act, the Commissioner may inform—

- (a) the complainant;
- (b) the public authority concerned; and
- (c) such other persons or bodies as are considered by the Commissioner to be appropriate in the circumstances,

of the decision and, if the Commissioner thinks fit, of the reasons for the decision.

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Request to give information, etc.

13. (1) For the purposes of an examination under this Act, the Commissioner may request a public authority or other person—

- (a) to give the Commissioner a statement of information;
- (b) to produce to the Commissioner any document or other thing; or
- (c) to give the Commissioner a copy of any document.

(2) Without affecting section 14, a public authority or other person need not comply with a request under subsection (1).

Special provisions relating to complainant as witness.

14. (1) For the purposes of an examination under this Act, the Commissioner has, in relation to the complainant, the powers, authorities, protections and immunities conferred on a commissioner by Part II of the Royal Commissions Act, 1923, and that Act applies to the complainant appearing before the Commissioner in the same way as it applies to a witness summoned by or appearing before a commissioner.

(2) Subsection (1) applies to and in respect of the Commissioner, whether or not the Commissioner is a Judge of the Supreme Court.

(3) For the purposes of subsection (1), a reference—

- (a) in that subsection to the Royal Commissions Act, 1923, does not include a reference to section 13, 15 (1), 16 or 17 (4) of that Act; and
 - (b) in that Act to a book, document or writing includes a reference to a document or other thing.
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PART IV.

ACTION FOLLOWING EXAMINATION OF COMPLAINTS.

Decision after complete or partial examination of complaint.

15. (1) After examining a complaint, or after discontinuing examination of a complaint, the Commissioner shall decide whether or not an investigation or other action by an investigating agency is warranted in relation to the complaint or any matter arising out of the complaint.

(2) The Commissioner, in making the decision referred to in subsection (1)—

- (a) may have regard to such matters as the Commissioner thinks fit; and
- (b) without limiting paragraph (a), may have regard to any evidence of wrongful conduct that is the subject of the complaint.

Notification of decision against further action.

16. Where the Commissioner decides, after examination of a complaint (whether or not that examination is discontinued), that an investigation or other action by an investigating agency is not warranted, the Commissioner may inform—

- (a) the complainant;
- (b) the public authority concerned; and
- (c) such other persons or bodies as are considered by the Commissioner to be appropriate in the circumstances,

of the decision and, if the Commissioner thinks fit, of the reasons for the decision.

Referral of complaint.

17. (1) Where the Commissioner decides, after examination of a complaint (whether or not that examination is discontinued), that an investigation of the complaint or a matter arising out of the complaint or other action by an investigating agency is warranted, the Commissioner may

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refer the complaint or matter for investigation or other action to any person or body considered by the Commissioner to be appropriate in the circumstances.

(2) In referring a complaint or a matter arising out of a complaint for investigation or other action to an investigating agency, the Commissioner may—

- (a) communicate to the investigating agency any information which the Commissioner has obtained during the course of examining the complaint; and
- (b) indicate the time by which the investigation or other action is to be completed and a report submitted to the Commissioner under section 20 by the investigating agency.

(3) The Commissioner may refer a complaint to an investigating agency under this section, notwithstanding that a similar complaint has already been made to the agency.

(4) Where the Commissioner refers a complaint under this section, the Commissioner does not thereby become a complainant for the purposes of this or any other Act.

Notification of referral for further action.

18. Where the Commissioner refers a complaint or a matter arising out of a complaint to an investigating agency for investigation or other action, the Commissioner may inform—

- (a) the complainant;
- (b) the public authority concerned; and
- (c) such other persons or bodies as are considered by the Commissioner to be appropriate in the circumstances,

of the referral.

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Other recommendations.

19. Where the Commissioner, after examination of a complaint, considers that, in addition to or instead of taking action under any of the preceding sections of this Part, the Commissioner should recommend that some other action be taken in relation to the complaint or a matter arising out of the complaint, the Commissioner may make a recommendation to the Minister that that other action be taken.

PART V.**REPORTS.****Reports by investigating agencies.**

20. (1) The Commissioner may require an investigating agency to whom or to which a complaint or a matter arising out of a complaint is referred by the Commissioner for investigation or other action to report, on completion of the investigation or other action, to the Commissioner on the investigation or other action and on the results of the investigation or other action, and the investigating agency shall comply with the requirement.

(2) Subject to subsection (3), a report under this section shall be of such a nature as the Commissioner directs.

(3) A report under this section shall specify—

- (a) the method or manner of investigation;
- (b) the findings of an investigation; and
- (c) any other action taken and the outcome of the other action.

Commissioner of Public Complaints.

Report to complainant.

21. Where the Commissioner is satisfied that an investigating agency has duly and properly carried out an investigation or taken other action in relation to a complaint, or a matter arising out of a complaint, referred to the investigating agency by the Commissioner, the Commissioner—

- (a) may inform—
 - (i) the complainant;
 - (ii) the public authority concerned; and
 - (iii) the Minister,that the Commissioner is so satisfied; and
- (b) may communicate to any of them any relevant information which the Commissioner considers appropriate.

Reports to Minister.

22. (1) Where the Commissioner is not satisfied that an investigating agency has duly and properly carried out an investigation or taken other action in relation to a complaint referred to the agency by the Commissioner, the Commissioner shall inform the agency of the grounds of the Commissioner's dissatisfaction and shall give the agency an opportunity to comment within a specified period.

(2) If, after considering any comments received from the agency within the specified period, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister setting out the grounds of the Commissioner's dissatisfaction, together with any comments from the agency.

Special reports to Parliament.

23. (1) Where the Commissioner makes a recommendation under section 19 to the Minister, and the Minister is of the opinion that the recommendation should not be adopted whether in whole or in part, the Minister may inform the Commissioner of the Minister's views and the reasons for those views.

(2) If, after considering the Minister's views, the Commissioner is still of the opinion that the recommendation should be adopted, the Commissioner may submit a report to the Minister setting out that opinion and the reasons for that opinion.

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(3) Where the Commissioner makes a recommendation under section 19 to the Minister and the recommendation has not been fully given effect to within such time as the Commissioner considers reasonable, the Commissioner may inform the Minister that the Commissioner proposes to submit a report for tabling in Parliament.

(4) If, within 14 days after the Minister has been notified under subsection (3), the Minister has taken no action, the Commissioner may submit a report to the Minister setting out the Commissioner's recommendation and the reasons for the recommendation.

(5) A report under subsection (2) or (4) shall be laid before each House of Parliament within 15 sitting days of that House after the Minister receives the report.

Annual reports to Parliament.

24. (1) The Commissioner shall, as soon as practicable after 30th June in each year, prepare and submit to the Minister a report of the work and activities of the Commissioner for the 12 months preceding that date.

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

Publication by Ministers of reports of Commissioner.

25. A Minister may publish in whole or in part any report of the Commissioner made under this Act, and the report shall, for the purposes of the Defamation Act, 1974, be deemed to have been published under the authority of either House of Parliament.

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PART VI.

PROVISIONS RELATING TO CERTAIN MATERIAL.

Interpretation.

26. In this Part, "the prescribed material" means—

- (a) the purported transcripts and other material referred to in the Solicitor General's advice tabled in the Legislative Assembly on 21st February, 1984, in relation to certain tape recordings alleged to have been made before the day appointed and notified under section 2 (2) (being purported transcripts and other material from which extracts were published in *The Age* newspaper, Melbourne, on 2nd, 3rd, 4th and 10th February, 1984);
- (b) the 3 tapes referred to in that advice; and
- (c) any official reports made to the Government by—
 - (i) officers of the Crown (whether in right of New South Wales or of the Commonwealth); or
 - (ii) members of the Police Force of New South Wales or of the Australian Federal Police,

being reports of investigations concerning any of the material referred to in paragraph (a) or (b) and of the results of any such investigations.

Application of Act to the prescribed material.

27. This Act applies to and in respect of such matters relating to the prescribed material as appear to the Commissioner, after giving due consideration as to whether or not any or all of the material referred to in section 26 (a) or (b) has been authenticated, to be capable of being the subject of, and to be appropriate to be dealt with as, a complaint under this Act, as if—

- (a) those matters constituted a complaint duly made under section 10; and
 - (b) section 10 (1) (c) had not been enacted.
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PART VII.**MISCELLANEOUS PROVISIONS.****Functions of investigating agencies.**

28. (1) Except as expressly provided by this Act, this Act does not affect the functions of an investigating agency to whom or to which a complaint or a matter arising out of a complaint is referred under this Act and, in particular, does not authorise such an investigating agency to investigate any conduct of a class or kind which, if this Act had not been enacted, it would not have been authorised to investigate.

(2) Subject to subsection (1), where there is an inconsistency between this Act and another Act that confers functions on an investigating agency, the provisions of this Act prevail to the extent of the inconsistency.

Disclosure by Commissioner or officer.

29. (1) The Commissioner shall not, nor shall an officer of the Commissioner, disclose any information obtained by the Commissioner or officer in the course of his or her office, unless the disclosure is made—

- (a) where the information is obtained from a public authority, with the consent of that authority or the head of that authority or of the responsible Minister;
- (b) where the information is obtained from any other person, with the consent of that person;
- (c) for the purposes of—
 - (i) any proceedings under section 33;
 - (ii) any proceedings of an inquiry arising out of a recommendation under section 19; or
 - (iii) any legal proceedings under Part III of the Royal Commissions Act, 1923, or Part IV of the Special Commissions of Inquiry Act, 1983; or
- (d) for the purpose of exercising the Commissioner's functions, or the officer's functions, under this or any other Act.

Penalty: \$1,000.

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(2) Subsection (1) does not operate to render admissible in any proceedings any evidence that would not have been so admissible if this section had not been enacted.

Commissioner or officer as witness.

30. (1) The Commissioner shall not, nor shall an officer of the Commissioner, be competent or compellable to give evidence or produce any document in respect of any information obtained by him or her in the course of his or her office.

(2) Subsection (1) does not apply—

(a) to any legal proceedings—

- (i) under section 31 or 33;
- (ii) under Part III of the Royal Commissions Act, 1923; or
- (iii) under Part IV of the Special Commissions of Inquiry Act, 1983; or

(b) for the purpose of establishing a defence of absolute privilege under section 171 of the Defamation Act, 1974.

Immunity of Commissioner and officers.

31. (1) The Commissioner shall not, nor shall an officer of the Commissioner, be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings in respect of any act, matter or thing done or omitted to be done unless the act, matter or thing was done, or omitted to be done, in bad faith.

(2) Civil or criminal proceedings in respect of any act or omission referred to in subsection (1) shall not be brought against the Commissioner or an officer of the Commissioner without the leave of the Supreme Court.

(3) The Supreme Court shall not grant leave under subsection (2) unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted, or omitted to act, in bad faith.

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No proceedings to lie in respect of Commissioner.

32. (1) Nothing done by the Commissioner under or for the purposes of this Act shall be vitiated by reason of any informality or want of form or be liable to be challenged, appealed against, quashed or called in question by any court.

(2) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of anything done by the Commissioner under or for the purposes of this Act.

Offences.

33. (1) A person shall not—

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Commissioner or an officer of the Commissioner in the exercise of his or her functions under this or any other Act; or
- (b) wilfully make any false statement to or mislead, or attempt to mislead, the Commissioner or an officer of the Commissioner in the exercise of his or her functions under this or any other Act.

Penalty: \$1,000.

(2) A person shall not directly or indirectly—

- (a) where he or she is not the Commissioner—represent that he or she is the Commissioner;
- (b) where he or she has not been appointed under section 8 as acting Commissioner—represent that he or she has been so appointed;
- (c) where he or she is not an officer of the Commissioner—represent that he or she is an officer of the Commissioner; or
- (d) where he or she is not engaged in the administration or execution of this Act or of any other Act in so far as it confers or imposes on the Commissioner or an officer of the Commissioner any function—represent that he or she is so engaged.

Penalty: \$1,000.

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(3) For the purposes of subsection (2), a person represents that a state of affairs exists if the person does or says anything or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

Proceedings for offences.

34. A penalty imposed by this Act may be recovered in a summary manner in a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Sitting days.

35. For the purposes of this Act, sitting days of a House of Parliament shall be counted, whether or not they occur during the same session.

Regulations.

36. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Expiry of Act.

37. (1) This Act shall expire at the beginning of the day that is 2 years after the day appointed and notified under section 2 (2), unless either House of Parliament passes a resolution that this Act shall not expire in accordance with this subsection.

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(2) Either House of Parliament may pass a resolution that this Act shall not expire in accordance with subsection (1), but such a resolution has no effect unless passed before the time at which the expiry would, but for the resolution, take effect.
