

**CORPORATE AFFAIRS COMMISSION (AMENDMENT)  
ACT 1987 No. 16**

NEW SOUTH WALES



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ACT 1981**

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**CORPORATE AFFAIRS COMMISSION (AMENDMENT) ACT 1987**  
**No. 16**

NEW SOUTH WALES



**Act No. 16, 1987**

An Act to amend the Corporate Affairs Commission Act 1981 with respect to the constitution of the Corporate Affairs Commission and the office of Commissioner for Corporate Affairs; to make consequential amendments to the Statutory and Other Offices Remuneration Act 1975 and the Public Service Act 1979; and for other purposes. [Assented to 13 April 1987]

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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:

**Short title**

1. This Act may be cited as the "Corporate Affairs Commission (Amendment) Act 1987".

**Commencement**

2. (1) Sections 1, 2 and 4 (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 and notified by proclamation published in the Gazette.

**Amendment of Act No. 64, 1981**

3. The Corporate Affairs Commission Act 1981 is amended in the manner set forth in Schedule 1.

**Consequential amendment of Act No. 4, 1976**

4. (1) The Statutory and Other Offices Remuneration Act 1975 is amended by inserting in Schedule 2 after the matter relating to the Corporate Affairs Commission the words "Commissioner for Corporate Affairs."

(2) The Statutory and Other Offices Remuneration Act 1975 is further amended by omitting from Schedule 2 the following matter:

Chairman of the Corporate Affairs Commission.

Deputy Chairman of the Corporate Affairs Commission.

Commissioner of the Corporate Affairs Commission, other than the Chairman and Deputy Chairman.

**Consequential amendment of Act No. 89, 1979**

5. The Public Service Act 1979 is amended by omitting from the matter relating to the Corporate Affairs Commission in Schedule 2 the words "Chairman of the Commission" and by inserting instead the words "Commissioner for Corporate Affairs".

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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981

(1) Long title—

Omit the long title, insert instead “An Act relating to the constitution of the Corporate Affairs Commission and the office of Commissioner for Corporate Affairs.”.

(2) Section 3 (**Interpretation**)—

Section 3 (1), definition of “Commissioner”—

Omit the definition, insert instead:

“Commissioner” means the person holding office or acting as Commissioner for Corporate Affairs;

(3) Sections 4–7—

Omit the sections, insert instead:

**Constitution of Commission**

4. (1) There is constituted by this Act a corporation under the corporate name of the “Corporate Affairs Commission”.

(2) The Commission—

(a) has perpetual succession;

(b) shall have a seal;

(c) may take proceedings and be proceeded against in its corporate name;

(d) may, for the purpose of enabling it to perform or exercise its functions and powers, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and

(e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the performance or exercise of its functions and powers.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

(3) The Commission is, for the purposes of any Act, a statutory body representing the Crown.

**Commissioner for Corporate Affairs**

5. (1) The Governor may appoint a person to hold office as Commissioner for Corporate Affairs.

(2) Schedule 1A has effect with respect to the Commissioner.

**Seal of Commission**

6. (1) Judicial notice shall be taken of the seal of the Commission.

(2) The seal of the Commission may be affixed to a document by the Commissioner or by an officer or employee of the Commission authorised to do so either generally or in any particular case or class of cases.

(3) The Commissioner or the officer or employee affixing the seal of the Commission shall attest by signature the fact of the affixing of the seal.

(4) In any legal proceedings, the seal of the Commission, when affixed to a document, shall, until the contrary is proved, be presumed to have been duly affixed to the document.

(4) Section 8 (**Staff of the Commission**)—

Section 8 (6)—

After section 8 (5), insert:

(6) The Commission may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

appoint persons having suitable qualifications and experience as consultants to the Commission.

SCHEDULE 1—*continued*AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

## (5) Section 9—

Omit the section, insert instead:

**Performance of functions of Commission**

9. (1) The affairs of the Commission shall be managed by the Commissioner.

(2) A function or power of the Commission may be performed or exercised in the name of, or on behalf of, the Commission by—

(a) the Commissioner; or

(b) an officer or employee of the Commission with the authority of, and on behalf of, the Commissioner.

(3) Functions and powers of the Commission may also be performed or exercised in accordance with a delegation under this Act.

(4) A function or power of the Commission may be performed or exercised either with or without the seal of the Commission, as appropriate.

(6) Section 10 (**Functions of Commission**)—

Section 10 (3)—

Omit “a Commissioner” and “the Commissioners”, insert instead “the Commissioner”.

(7) Section 13 (**Delegation by Commission**)—

Omit “common seal” wherever occurring, insert instead “seal”.

(8) Section 15 (**Secrecy**)—

Section 15 (1)—

Omit “a Commissioner”, insert instead “the Commissioner”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

(9) Section 16 (**Restrictions on dealings in securities**)—

(a) Section 16 (1)—

Omit “a Commissioner” wherever occurring, insert instead “the Commissioner”.

(b) Section 16 (6)—

After “Commission” wherever occurring, insert “or the Minister”.

(10) Section 17 (**Notification of interests**)—

(a) Section 17 (1)—

Omit “A Commissioner”, insert instead “The Commissioner”.

(b) Section 17 (1)—

Omit “a Commissioner”, insert instead “the Commissioner”.

(11) Section 19 (**Proceedings for offences**)—

Section 19 (1)—

Omit the subsection, insert instead:

(1) Proceedings for an offence against a provision of this Act may be taken before a Local Court constituted by a Magistrate sitting alone.

(12) Schedule 1A—

After Schedule 1, insert:

SCHEDULE 1A

(Sec. 5 (2))

PROVISIONS RELATING TO THE COMMISSIONER

**Definitions**

1. In this Schedule—

“statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

“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.

**Age of Commissioner**

2. A person of or above the age of 65 years is not eligible to be appointed as Commissioner or to act in the office of Commissioner.

**Acting Commissioner**

3. (1) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner.

(2) The person, while so acting, shall have and may perform and exercise all the functions and powers of the Commissioner and shall be deemed to be the Commissioner.

(3) The Minister may remove any person appointed to act under this clause.

(4) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of Commissioner shall be deemed to be an absence from office of the Commissioner.

**Term of office**

4. Subject to this Schedule, the Commissioner shall hold office for such period not exceeding 7 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Commissioner to be full-time**

5. The Commissioner shall devote the whole of his or her time to the duties of the office of Commissioner, except as permitted by this Act or except with the consent of the Minister.

**Remuneration**

6. The 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 the Commissioner.



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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

**Filling of vacancy in office of Commissioner**

7. If the office of Commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

8. (1) The Commissioner shall be deemed to have vacated office if the Commissioner—

- (a) dies;
- (b) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable;
- (f) engages in any paid employment outside the duties of the office of Commissioner, except with the consent of the Minister;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) reaches the age of 65 years;
- (i) is retired from office by the Governor under subclause (2); or
- (j) is removed from office by the Governor under subclause (3) or (4).

(2) The Commissioner may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

(4) Without affecting the generality of subclause (3), the Governor may remove the Commissioner from office for a contravention of section 17.

**Public Service Act 1979**

9. 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.

**Preservation of rights of Commissioner previously public servant, etc.**

10. (1) Subject to subclause (2) and to the terms of appointment, where the Commissioner was, immediately before being appointed as Commissioner—

- (a) an officer of the Public Service or a Teaching 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 for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Commissioner; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity.

as if he or she had continued to be such an officer, contributor or person during his or her service as Commissioner and—

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

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

(2) If the Commissioner would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled on becoming (whether on appointment as Commissioner or at any later time while holding office as Commissioner) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Commission in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the Commissioner on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be such an officer or employee for the purposes of the scheme.

(4) The Commissioner is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

**Commissioner entitled to re-appointment to former employment in certain cases**

11. (1) A person who—

- (a) ceases to be Commissioner by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as Commissioner—
  - (i) an officer of the Public Service or a Teaching Service; or
  - (ii) an officer or employee of a statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as Commissioner.

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as Commissioner,

*Corporate Affairs Commission (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Commissioner, as are specified in the instrument of appointment as Commissioner or as are agreed on by the person and by or on behalf of the Government.

**Declaration of statutory bodies**

12. 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.

**(13) Schedule 2 (Savings and transitional provisions)—****(a) Heading—**

Before clause 1, insert:

PART 1—PROVISIONS CONSEQUENT ON THE  
ENACTMENT OF THIS ACT**(b) Clauses 3, 4, 5 and 8—**

Omit the clauses.

**(c) Part 2—**

At the end of the Schedule, insert:

PART 2—PROVISIONS CONSEQUENT ON THE  
CORPORATE AFFAIRS COMMISSION (AMENDMENT)  
ACT 1987**Definition**

9. In this Part, “the old Commission” means the Corporate Affairs Commission constituted in accordance with this Act as in force before the commencement of the Corporate Affairs Commission (Amendment) Act 1987.

**Continuity of Commission**

10. (1) The corporation constituted by this Act, as amended by the Corporate Affairs Commission (Amendment) Act 1987, is a continuation of and the same legal entity as the corporation continued by this Act as originally enacted.

*Corporate Affairs Commission (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

(2) A reference in any Act, by-law, regulation, order, statutory or other instrument to the Corporate Affairs Commission continued in existence by this Act shall, after the commencement of the Corporate Affairs Commission (Amendment) Act 1987, be construed as a reference to the Corporate Affairs Commission constituted by this Act, as in force after that commencement.

**Former Commissioners**

11. (1) A person who, immediately before the commencement of the Corporate Affairs Commission (Amendment) Act 1987, held office as a Commissioner of the old Commission—

- (a) shall cease to hold office as such on that commencement; and
- (b) is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

(2) A reference in this Act to a person appointed for the purposes of this Act includes a reference to a Commissioner of the old Commission.

**Former Chairman**

12. (1) The person who, immediately before the commencement of the Corporate Affairs Commission (Amendment) Act 1987, held office as the Chairman of the old Commission—

- (a) shall be deemed to have been duly appointed on the date of that commencement as the Commissioner for Corporate Affairs;
- (b) shall be deemed to have been so appointed—
  - (i) on the same terms and conditions as those applicable to the person immediately before that commencement; and
  - (ii) for the residue of the term of office for which the person was appointed; and

(c) is eligible for appointment under this Act with effect from the expiration of that term of office or from any later time.

(2) For the purposes of the application of clauses 10 and 11 (1) of Schedule 1A to the person so deemed to have been appointed as Commissioner for Corporate Affairs—

- (a) previous service in any full-time office constituted by an Act shall be treated as service as Commissioner for Corporate Affairs; and

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SCHEDULE 1—*continued*

AMENDMENTS TO THE CORPORATE AFFAIRS COMMISSION ACT  
1981—*continued*

- (b) a reference in those provisions to appointment as Commissioner for Corporate Affairs includes a reference to any previous appointments to any such full-time positions.