

Law Reform Commission Act 1967 No 39

[1967-39]



New South Wales

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Law Reform Commission Act 1967 No 39



New South Wales

An Act to constitute a Law Reform Commission; to define its powers, authorities, duties and functions; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Law Reform Commission Act 1967*.

2 Definitions

In this Act, unless the context or subject matter otherwise indicates or requires:

Chairperson means the Chairperson of the Commission.

Commission means the Law Reform Commission constituted under this Act.

Commissioner means a commissioner appointed under section 3 and includes the Chairperson.

Reference means a reference referred to in section 10.

3 Constitution of the Commission

- (1) There shall be a Law Reform Commission which shall have and may exercise the powers, authorities, duties and functions conferred and imposed upon it by this Act.
- (2) The Commission shall consist of a Chairperson appointed by the Governor and not less than 2 other commissioners appointed by the Governor.
- (3) A person is qualified to be appointed as the Chairperson if he or she 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 an Australian legal practitioner 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 Chairperson,

if:

- (a) he or she is qualified to be appointed as the Chairperson, or
 - (b) he or she is a person who, in the opinion of the Minister, is suitable for appointment by reason of the person's special qualifications, training or experience.
- (5) A qualification for appointment as the Chairperson or a commissioner, other than the Chairperson, may be a qualification obtained within New South Wales or outside New South Wales, or partly within and partly outside New South Wales.

3A Full-time and part-time commissioners

- (1) A commissioner shall, in accordance with the instrument of appointment or reappointment, be a full-time commissioner or part-time commissioner.
- (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 or her time to the duties of the office.

3B Term of office

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

4 Appointment of holders of judicial office as commissioners

- (1) The appointment of a person who is the holder of judicial office as a commissioner shall not, nor shall the person's service as a commissioner, affect the person's tenure of that office or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.
- (2) A person who is the holder of a judicial office may, notwithstanding that the person is a commissioner, exercise powers as a holder of that office, but while the person is a commissioner the person shall not (unless otherwise provided by the instrument of appointment as commissioner) be required to perform duties as a holder of that office.
- (3) The service, as commissioner, of a holder of a judicial office shall, for all purposes, be taken to be service as a holder of that judicial office.

5 Deputy Chairperson

- (1) The Governor may appoint a commissioner to be Deputy Chairperson.
- (2) Subject to section 10 (2), the Deputy Chairperson shall during the absence, illness or incapacity of the Chairperson or during any vacancy in the office of the Chairperson have and may exercise the powers, authorities, duties and functions conferred or

imposed upon the Chairperson by this Act.

6, 7 (Repealed)

8 Remuneration, allowances, leave and rights

- (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 the part-time commissioner.
- (2A) The leave which may be granted to a full-time commissioner, not being the holder of a judicial office, shall be as the Minister may from time to time determine in respect of such commissioners.
- (3) Where, by or under any Act, provision is made requiring a person who is the holder of an office specified therein to devote the whole of the person's time to the duties of the office, or prohibiting the person from engaging in employment outside the duties of the office, the provision shall not operate to disqualify the person 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 appointment or as may be agreed upon by the Governor and the commissioner.
- (6) The *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a commissioner by the Governor and a person so appointed is not, in the person's capacity as a commissioner, subject to that Act while the person 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.

9 Removal and vacation of office

- (1) The Governor may remove a commissioner, being the holder of a judicial office, from office upon the address of both Houses of Parliament, but not otherwise.
- (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

employment as a commissioner,

- (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 the 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 or her creditors or makes an assignment of his or her 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 7 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 the commissioner 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 or her office by writing under his or her hand addressed to the Governor.

(2B), (3) (Repealed)

10 Powers and duties of Commission

- (1) The Commission, in accordance with any reference to it made by the Minister:
 - (a) shall consider the law, enacted or promulgated by the Legislature of New South Wales or by any person under the authority of that Legislature, with a view to, or for the purpose of:
 - (i) eliminating defects and anachronisms in the law,
 - (ii) repealing obsolete or unnecessary enactments,
 - (iii) consolidating, codifying or revising the law,
 - (iv) simplifying or modernising the law by bringing it into accord with current conditions,
 - (v) adopting new or more effective methods for the administration of the law and the dispensation of justice,
 - (vi) systematically developing and reforming the law,
 - (b) shall consider proposals relating to matters in respect of which it is competent for the Legislature of New South Wales or any person under the authority of that

Legislature to enact or promulgate laws, and

(c) may for the purposes of this section hold and conduct such inquiries as it thinks fit.

(2) For the purposes of any inquiry under this section:

(a) the Commission and the Chairperson shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and that Act (section 13 and Division 2 of Part 2 excepted) shall, mutatis mutandis, apply to any witness summoned by or appearing before the Commission,

(b) the provisions of Division 2 of Part 2 of that Act (section 17 excepted) shall apply where the Chairperson or the Deputy Chairperson, if he or she is a judge of the Supreme Court and is acting as Chairperson, is presiding at the inquiry, and

(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.

11 (Repealed)

12 Proceedings of the Commission

(1) The Commission shall meet from time to time at such places and times as the Chairperson directs.

(2) The quorum for a meeting shall be two commissioners.

(3) The Chairperson shall preside at all meetings at which the chairperson is present and, in the event of the votes being equal, shall have a casting as well as a deliberative vote.

(4) In the absence of the Chairperson and Deputy Chairperson from a meeting the commissioners present shall choose one of themselves to preside.

(5) The Commission may regulate and conduct the proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

(6) Subject to this Act, the Commission may delegate to any of the commissioners any of its powers, authorities, duties and functions.

12A Divisions

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

- (2) The Chairperson, if the chairperson 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.

12B Meetings of Divisions

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

12C Proceedings not vitiated by vacancy

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.

13 Reports

- (1) The Commission may from time to time and shall, upon direction by the Minister,

make an interim report on its work under any reference.

- (2) The Commission shall at the end of its work under any reference make a final report on its work under the reference.
- (3) The Commission shall, as soon as practicable after the thirtieth day of June in each year, make a report of the proceedings of the Commission during the period of twelve months ending on that day.
- (4) A report 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) made by the Chairperson and one other commissioner shall be a report of the Commission for the purposes of this Act.
- (5) The Commission shall furnish each of its reports to the Minister. Any report furnished to the Minister must be tabled in each House of Parliament within 14 sitting days after the Minister receives the report.
- (5A) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (5B) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.
- (6) The Minister or, with the approval in writing of the Minister, the Commission may publish a report referred to in subsection (1) or (2) before it is tabled in Parliament.
- (7) A report published pursuant to subsection (6) shall, for the purposes of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, be deemed to have been published under the authority of either House of Parliament.

14 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commission to exercise its functions.

Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission.

Schedule 1 Provisions relating to the preservation of rights of certain persons on their appointment as full-time commissioners

(Section 8 (7))

1 Definitions

In this Schedule:

commissioner means a full-time commissioner, not being the holder of a judicial office.

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.

2 Preservation of rights—generally

Subject to clause 3 and to the terms of his or her appointment, if a commissioner was, immediately before appointment as a commissioner:

- (a) a Public Service employee, or
- (b) a contributor to a superannuation scheme, or
- (c) a member of staff of a statutory body, or
- (d) a person in respect of whom provision was made by any Act that the person retain any rights accrued or accruing to the person as a Public Service employee or member of staff of a statutory body,

the commissioner:

- (e) retains any rights accrued or accruing to the commissioner as such an employee, contributor or member of staff, and
- (f) may continue to contribute to any superannuation scheme to which the commissioner was a contributor immediately before appointment as a commissioner, and

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

as if the commissioner had continued to be such an employee, contributor or member of staff during service as a commissioner, and:

(h) service as a commissioner is taken to be service as an employee or member of staff for the purpose of any law under which those rights accrued or were accruing, under which the commissioner continues to contribute or by which that entitlement is conferred, and

(i) the commissioner is taken to be an employee or member of staff, and the Government of New South Wales is taken to be the commissioner's employer, for the purposes of the superannuation scheme to which the commissioner is entitled to contribute under this clause.

3 Consequence of becoming contributor to another superannuation scheme

(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, the commissioner shall not be so entitled upon becoming (whether upon appointment as a commissioner or at any later time while the commissioner 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 the commissioner and the Government of New South Wales in any case where the commissioner becomes a contributor to such another superannuation scheme.

(2) Subclause (1) does not prevent the payment to a commissioner upon ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to the commissioner if the commissioner had ceased, by reason of his or her resignation, to be an employee or member of staff for the purposes of that scheme.

4 Restrictions on entitlement to benefit

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

5 Reappointment to former employment in certain cases

(1) In this clause, **retiring age** means, in relation to a person who was, immediately before appointment as a commissioner:

(a) a person employed in the Public Service—the age of 60 years, or

(b) a member of staff of a statutory body—the age at which members of staff (being members of staff of the class to which that person belonged immediately before appointment as a commissioner) of that statutory body are entitled to retire.

- (2) A person who ceased to be a commissioner, otherwise than pursuant to section 9 (2), is, if the person has not attained the retiring age, entitled to be employed, if, immediately before appointment as a commissioner, the person was:
- (a) a person employed in the Public Service—in the Public Service, or
 - (b) a member of staff of a statutory body—as a member of staff of that body, at a work level and salary not lower than the level at which the person was employed immediately before appointment as a commissioner.

6 Declarations of statutory bodies

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.