

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 76, 1976.

An Act to constitute the Ethnic Affairs Commission of New South Wales; to define its responsibilities, powers, authorities, duties and functions; and to amend the Statutory and Other Offices Remuneration Act, 1975. [Assented to, 2nd December, 1976.]

BE

Ethnic Affairs Commission.

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.

1. This Act may be cited as the "Ethnic Affairs Commis- Short title.
sion Act, 1976".

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

(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.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–4.

PART II.—CONSTITUTION OF THE COMMISSION—ss.
5–13.

PART III.—FUNCTIONS OF THE COMMISSION—ss. 14–
17.

PART IV.—GENERAL—ss. 18–20.

4. In this Act, except in so far as the context or subject- Interpret-
matter otherwise indicates or requires— tion.

"Chairman" means the Chairman of the Commission
appointed under section 6 (2) (a);

"Commission"

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- “Commission” means the Ethnic Affairs Commission of New South Wales constituted under this Act;
- “commissioner” means the Chairman or a part-time commissioner;
- “Deputy Chairman” means the Deputy Chairman of the Commission appointed under section 6 (3);
- “ethnic affairs” means matters pertaining to the existence of different ethnic groups in the community;
- “functions” includes responsibilities, powers, authorities and duties;
- “part-time commissioner” means a part-time commissioner appointed under section 6 (2) (b);
- “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.

PART II.

CONSTITUTION OF THE COMMISSION.

- Constitution of Commission.** 5. (1) There is hereby constituted a commission called the “Ethnic Affairs Commission of New South Wales”.
- (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 exercise and performance of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

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6. (1) The Commission shall consist of not less than 7 Appoint-
ment of
commis-
sioners. and not more than 11 commissioners appointed by the Governor.

(2) Of the commissioners—

- (a) one shall be appointed as the Chairman of the Commission; and
- (b) the remainder shall be appointed as part-time commissioners.

(3) A part-time commissioner may be appointed by the Governor as Deputy Chairman of the Commission and, where the Chairman or any person appointed to act in the office of the Chairman under subsection (6) is absent from his office through illness or any other cause, the Deputy Chairman shall act as Chairman.

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

(5) On the occurrence of a vacancy in the office of a commissioner otherwise than by 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.

(6) 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 any other cause and that person while so acting shall have and may exercise and perform the functions of the commissioner in whose office he is appointed to act.

(7)

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

Provisions relating to commissioners generally.

7. (1) The Chairman shall devote the whole of his time to the duties of his office.

(2) The Chairman 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.

(3) Each 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.

(4) 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 (3).

(5) 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.

8. (1) A commissioner shall be deemed to have vacated his office—

- (a) if he dies;

(b)

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- (b) if, being the Chairman, 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 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;
- (d) if, being the Chairman, he absents himself from duty for a period exceeding 14 consecutive days, except on leave granted by the Minister or unless the absence is occasioned by illness or 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, unless on leave granted by the Minister or, unless, before the expiration of 4 weeks after the last of those meetings, he is excused 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; or
- (j) if he is removed from office by the Governor.

(2)

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

Meetings
of the
Commission.

9. (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) The Chairman shall preside at all meetings of the Commission at which he is present.

(3) In the absence of the Chairman from a meeting of the Commission, the Deputy Chairman may preside at that meeting.

(4) Four commissioners, of whom one shall be the Chairman or the Deputy Chairman, shall form 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, also has a casting vote.

(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.

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10. (1) In this section—

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

Preservation
of rights of
Chairman
previously
public
servant, etc.

“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) Subject to subsection (3) and to the terms of his appointment, where the Chairman was, immediately before his appointment as the Chairman—

- (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, 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 the Chairman; 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, a contributor or a person during his service as the Chairman, and—

- (h) his service as the Chairman 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)

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- (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 the Chairman 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 the Chairman or at any later time while he holds office as the Chairman) 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 the Chairman 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) The Chairman shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Chairman
entitled
to re-
appointment
in former
employment
in certain
cases.

11. (1) In this section—

“retiring age” means—

- (a) in relation to a person who was, immediately before his appointment as Chairman, 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 Chairman, an officer or employee of a statutory body—the age at which officers or employees

(being

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(being officers or employees of the class to which that person belonged immediately before his appointment as Chairman), as the case may be, of that statutory body are entitled to retire;

“statutory body” means any body declared under section 12 to be a statutory body for the purposes of this section.

(2) A person who ceases to be the Chairman, otherwise than pursuant to section 8 (1) (paragraph (h) excepted), shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as Chairman, he was—

- (a) an officer of the Public Service—to some office in the Public Service; 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 Chairman.

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 section 10 or 11. Declaration of statutory bodies.

13. (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. Staff establishment of Commission.

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(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.

PART III.
FUNCTIONS OF THE COMMISSION.

14. (1) As soon as practicable after the day appointed and notified under section 2 (2), the Commission shall cause an investigation to be made of—

Commission to conduct investigation and report to Minister.

- (a) the constitution and functions of the Commission; and
- (b) ethnic affairs,

and, not later than one year after that day or such further period as the Governor may determine, shall furnish to the Minister a report of its investigation recommending the legislative, administrative or other action which the Commission considers necessary and practicable with respect to ethnic affairs and, in particular, with respect to promoting the integration of different ethnic groups and determining the functions which should be conferred and imposed on the Commission and the manner in which the Commission should be constituted.

(2) The Minister shall lay a copy of the report furnished to him under subsection (1), or cause it to be laid, before each House of Parliament as soon as practicable after the report is so furnished.

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15. (1) The Commission shall—

Commission
to report,
etc., on
certain
matters.

- (a) at any time before it furnishes its report under section 14 (1), report and make recommendations to the Minister on matters relating to ethnic affairs which are referred to it by the Minister or which it considers require urgent action; and
- (b) at any time after it furnishes that report, investigate, and report and make recommendations to the Minister on, matters relating to ethnic affairs which are referred to it by the Minister or which it considers require action.

(2) The Commission may report and make recommendations to the Anti-Discrimination Board constituted under the Anti-Discrimination Act, 1976, on matters relating to the avoidance of discrimination on the basis of ethnic origin.

16. 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 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.

17. 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.

PART

Ethnic Affairs Commission.

PART IV.

GENERAL.

Cost of administration of Act. **18.** The expenses of the Commission in exercising or performing its functions under this Act shall be paid out of money provided by Parliament.

Regulations. **19.** 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.

Amendment of Act No. 4, 1976. **20.** The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Part 1 of Schedule 2 the following matter :—

Chairman of the Ethnic Affairs Commission of New South Wales.
