



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 122 of 1975

An Act to amend the Constitution Act, 1934, as amended.

{Reserved 23rd October, 1975
}Royal Assent proclaimed 22nd January, 1976}

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Constitution Act Amendment Act (No. 5), 1975". Short titles.

(2) The Constitution Act, 1934, as amended by all other amendments, if any, amending the same prior to the commencement of this Act, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Constitution Act, 1934-1975".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 3 of the principal Act is amended by inserting after the passage— Amendment of principal Act, s. 3—
Division of Act.

PART IV—The Judiciary: sections 74 and 75.

the passage—

PART V—Electoral Redistribution: sections 76-88.

4. Section 27 of the principal Act is repealed and the following section is enacted and inserted in its place:— Repeal of s. 27 of principal Act and enactment of section in its place—

27. The House of Assembly shall consist of forty-seven members elected by the inhabitants of the State legally qualified to vote. Number of members of House of Assembly.

Repeal of
s. 32 of
principal Act
and enactment
of section in
its place—

Assembly
districts.

5. Section 32 of the principal Act is repealed and the following section is enacted and inserted in its place:—

32. (1) Until the first general election of members of the House of Assembly to which subsection (2) of this section applies, the State shall, for the purposes of an election of a member or members of the House of Assembly, be divided into the forty-seven House of Assembly electoral districts described in Part II of the third schedule to this Act.

(2) Where the Commission has published an order dividing the State into House of Assembly electoral districts, and—

(a) the order has become operative;

and

(b) the order has not been superseded by a subsequent operative order of the Commission,

the State shall, as from the day on which a general election of members of the House of Assembly is next held be divided into the appropriate number of House of Assembly electoral districts described in the order.

(3) An order of the Commission becomes operative for the purposes of this section upon the expiration of the prescribed period from the date of publication of the order.

(4) Each electoral district shall return one member of the House of Assembly.

(5) In this section—

“the appropriate number” means a number equal to the number of members of the House of Assembly from time to time prescribed by section 27 of this Act:

“the Commission” means the Electoral Districts Boundaries Commission established under Part V of this Act:

“the prescribed period”, in relation to an order of the Commission, means—

(a) where no appeal has been made against the order—the period of three months from the date of publication of the order;

or

(b) where an appeal has been made against the order—the period extending from the date of publication of the order to the date falling three months after the day on which all appeals have been finally determined.

Amendment of
principal Act,
s. 37—
Quorum etc.

6. Section 37 of the principal Act is amended by striking out subsections (1) and (1a) and inserting in lieu thereof the following subsection:—

(1) The House of Assembly shall not be competent to proceed with the dispatch of business unless there are present, including the Speaker or a person chosen to preside in his absence, at least seventeen members of the House.

7. The following Part, heading and sections are enacted and inserted in the principal Act immediately after section 75 thereof:—

Enactment of
Part V of
principal Act

PART V

ELECTORAL REDISTRIBUTION

DIVISION I—PRELIMINARY

76. (1) In this Part, unless the contrary intention appears—

Definitions.

“the Chief Justice” means the Chief Justice of the Supreme Court and includes a puisne judge who is acting in the office of Chief Justice:

“the Commission” means the Electoral Districts Boundaries Commission established under this Part:

“elector” means a person whose name appears as an elector on the electoral roll for an electoral district:

“the Electoral Commissioner” means the person holding, or acting in, the office of the Electoral Commissioner under the Electoral Act, 1929, as amended:

“electoral district” means an electoral district of the House of Assembly:

“electoral redistribution” means a division of the State into electoral districts:

“order” means an order of the Commission made under this Part:

“polling day” means a day on which a general election of members of the House of Assembly is held:

“the Surveyor-General” means the person holding, or acting in, the office of the Surveyor-General.

77. (1) Whenever an electoral redistribution is made, the redistribution shall be made upon the principle that the number of electors comprised in each electoral district must not (as at the relevant date) vary from the electoral quota by more than the permissible tolerance.

Basis of
redistribution.

(2) In this section—

“electoral quota” means the nearest integral number obtained by dividing the total number of electors for the House of Assembly (as at the relevant date) by the number of electoral districts into which the State is to be divided as at the first polling day for which the order is to be effective:

“permissible tolerance” means a tolerance of ten per centum:

“the relevant date” means a date specified in an order as the relevant date, being a date falling not earlier than two months before the date of the order.

DIVISION II—ELECTORAL DISTRICTS BOUNDARIES COMMISSION

The Commission.

78. (1) There shall be a Commission by the name of the “Electoral Districts Boundaries Commission” constituted of the following members:—

- (a) the Chairman of the Commission who shall be a Judge of the Supreme Court appointed by the Chief Justice to be Chairman of the Commission;
 - (b) the Electoral Commissioner or a person appointed pursuant to subsection (3) of this section;
- and
- (c) the Surveyor-General or a person appointed pursuant to subsection (4) of this section.

(2) The Judge appointed by the Chief Justice under subsection (1) of this section should be the most senior puisne Judge who is available to undertake the duties of Chairman of the Commission.

(3) If there is no Electoral Commissioner, or the Electoral Commissioner is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient, a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, electoral matters.

(4) If there is no Surveyor-General, or the Surveyor-General is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, surveying.

(5) Where the Chairman is for the time being acting in the office of the Chief Justice any appointment to the Commission under subsection (3) or subsection (4) of this section shall be made by the puisne judge next in order of seniority after the Chairman.

(6) A member appointed under subsection (3) or subsection (4) of this section, may by instrument in writing addressed to the Governor resign his office.

Incorporation of Commission.

79. (1) The Commission—

- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be capable, in its corporate name of acquiring, holding and disposing of real and personal property;
 - (c) shall be capable of acquiring or incurring any other legal rights or liabilities, and of suing and being sued;
- and
- (d) shall hold its property on behalf of the Crown.

(2) Where an apparently genuine document purports to bear the common seal of the Commission, it shall be presumed, in the absence of proof to the contrary, that the common seal of the Commission was duly affixed to that document.

80. (1) At every meeting of the Commission the Chairman of the Commission shall preside. Procedure, etc., at meetings.

(2) The Chairman of the Commission and one other member shall constitute a quorum of the Commission for the transaction of business.

(3) At a meeting of the Commission a decision concurred in by the Chairman of the Commission and by at least one other member shall be a decision of the Commission.

(4) No proceedings of the Commission are invalid by reason only of the fact that, at the time of the proceedings, there was a vacancy in the membership of the Commission.

(5) No proceedings of the Commission are invalid by reason only of the fact that, during the course of the proceedings, there was a change in the membership of the Commission.

81. (1) The Commission may appoint a person to be secretary to the Commission. Secretary.

(2) The office of secretary to the Commission may be held in conjunction with an office in the public service of the State.

(3) The secretary shall receive such remuneration, if any, as is determined by the Commission.

82. (1) The Commission shall, whenever required to do so under subsection (2) of this section, make an electoral redistribution. Electoral redistributions.

(2) The Commission is required to commence proceedings for the purpose of making an electoral redistribution—

(a) within three months after the commencement of the Constitution Act Amendment Act (No. 5), 1975;

(b) as soon as practicable after the enactment of an Act that alters presently or prospectively the number of members of the House of Assembly;

(c) within three months after a polling day if five years or more has intervened between a previous polling day on which the last electoral redistribution made by the Commission was effective and that polling day.

(3) After commencing proceedings for the purpose of making an electoral redistribution, the Commission shall proceed with all due diligence to complete those proceedings.

(4) An electoral redistribution under this section shall be effected by order of the Commission.

(5) Except where discontinuous or separate boundaries are necessary for the purpose of including an island within an electoral district, the boundaries of an electoral district shall, in any electoral redistribution made by the Commission, form an unbroken line.

83. For the purpose of making an electoral redistribution, the Commission shall as far as practicable have regard to— Matters to be taken into account.

(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

- (b) the population of each proposed electoral district;
- (c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing electoral districts;
- (d) the topography of areas within which new electoral boundaries will be drawn;
- (e) the feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly;

and

- (f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution,

and may have regard to any other matters that it thinks relevant.

Application
of Royal
Commissions
Act.

84. The Royal Commissions Act, 1917, shall, so far as its provisions are applicable, apply to and in relation to the Commission, the secretary to the Commission, the members of the Commission and the proceedings of or conducted before the Commission as if—

- (a) the Commission were a commission to whom a commission of inquiry had been issued by the Governor under his hand and the public seal of the State;
- (b) the Chairman of the Commission and each other member were the chairman and a member respectively of such a commission;

and

- (c) the secretary to the Commission were the secretary to such a commission.

Representations
to the
Commission.

85. (1) Before commencing proceedings for the purpose of making an electoral redistribution the Commission shall, by means of an advertisement published in a newspaper circulating generally throughout the State, invite representations from any person in relation to the proposed electoral redistribution and in any such advertisement a date must be specified as the date before which such representations must be made.

(2) A person who desires to make representations to the Commission in relation to the proposed electoral redistribution may do so by instrument in writing served personally or by post upon the secretary of the Commission before the date specified in the advertisement.

(3) The Commission shall consider all representations made in accordance with this section, and may, at its discretion, hear and consider any evidence or argument submitted to it in support of those representations by or on behalf of any person.

86. (1) The Commission shall cause an order making an electoral redistribution to be published in the *Gazette*. Order of the Commission.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

(3) The Commission shall be the respondent to any appeal under this section.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(5) Where more than one appeal is instituted against the same order, every such appeal may be dealt with in the same proceedings.

(6) In any appeal under this section, any person having an interest in the proceedings may, upon application to the Court, be joined as a party to the proceedings.

(7) On the hearing of an appeal under this section the Full Court may—

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.

(8) The validity of an order of the Commission shall not be called in question except in an appeal under this section.

(9) An appeal against an order of the Commission shall be set down for hearing by the Full Court as soon as practicable after the expiration of one month from the date of the order, and the appeal shall be heard and determined by the Full Court as a matter of urgency.

87. The moneys reasonably required for the purposes of the Commission shall be payable, on the certificate of the Auditor-General, out of the General Revenue of the State, which is hereby to the necessary extent appropriated accordingly. Moneys required for the purposes of the Commission.

DIVISION III—ENTRENCHMENT OF THIS PART

88. (1) Except as provided in this section, no provision of section 32 of this Act or of this Part shall be repealed, suspended or amended. Special provisions as to referendum.

(2) A Bill providing for or effecting the repeal, suspension, or amendment of any provision of section 32 of this Act or of this Part shall not be presented to Her Majesty or the Governor for assent unless—

(a) the Bill does not provide for, or effect, the repeal, suspension or amendment of a provision of this section and the Bill does not:—

(i) offend against the principle that the State is to be divided into electoral districts each returning the same number (whether that number be one or more than one) of members to the House of Assembly;

(ii) offend against the principle expressed in section 77 of this Act by which the number of electors to be comprised in each electoral district upon an electoral redistribution is to be ascertained;

(iii) affect the frequency with which electoral redistributions are to be made;

or

(iv) offend against the principle that an electoral redistribution is to be made by a Commission that is independent of political influence or control;

or

(b) the Bill has been approved by the electors in accordance with this section.

(3) Where it is necessary for a Bill to be approved by the electors in accordance with this section, the Bill shall, on a day appointed by proclamation (being a day that falls not earlier than two months after the day on which the Bill is passed by Parliament) be submitted to a referendum of the electors for the House of Assembly.

(4) If the majority of the persons voting at the referendum approve of the Bill it shall be presented to the Governor for assent.

(5) Any person entitled to vote at a general election of members of the House of Assembly shall have the right to bring an action in the Supreme Court for a declaration, injunction or other legal remedy to enforce any of the provisions of this section.

Amendment of
third
schedule of
principal Act.

8. The third schedule to the principal Act is amended by striking out Part I thereof.

Reserved for the signification of Her Majesty the Queen's pleasure thereon.

M. L. OLIPHANT, Governor