



ANNO OCTAVO

GEORGI VI REGIS.

A.D. 1944.

No. 32 of 1944.

An Act to provide for the establishment of a representative local governing body for the Town of Whyalla, and for purposes incidental thereto.

[Assented to 14th December, 1944.]

WHEREAS at the time of the passing of this Act there is no local governing body for the town of Whyalla, but municipal works and services have been and are being executed and provided by The Broken Hill Proprietary Company Limited : AND WHEREAS owing to the growth of the town of Whyalla and the likelihood of further growth it is desirable that a representative local governing body should be established for that town : AND WHEREAS The Broken Hill Proprietary Company Limited, in order to assist in the establishment of such a local governing body and to promote the development of the town, is willing to pay as rates the sum of £30,000 during the first five years of the existence of the local governing body, and to contribute an additional sum towards meeting expenditure incurred in completing and improving roads and streets in the town of Whyalla including those marked in green on the plan No. 1663 filed in the office of the Commissioner of Highways, and the footpaths, kerbing, and drainage of those roads and streets : AND WHEREAS the citizens of Whyalla, through the trade unions and other representative organizations and The Broken Hill Proprietary Company Limited, have expressed approval of the principles set out in the Bill for this Act : NOW THEREFORE BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short title.

1. This Act may be cited as the " Whyalla Town Commission Act, 1944 ".

2. In this Act, unless the context otherwise requires, or Interpretation. some other meaning is clearly intended—

“ the Commission ” means The Whyalla Town Commission constituted by this Act :

“ Commissioner ” means Commissioner holding office under this Act :

“ the Chairman ” means the Chairman of the Commission :

“ the Company ” means The Broken Hill Proprietary Company Limited :

“ the Local Government Act ” means the Local Government Act, 1934-1941, as amended from time to time :

“ the Minister ” means the Minister of Local Government of the State of South Australia, or any Minister of the Crown for the time being acting as that Minister :

“ the town of Whyalla ” means the area which, pursuant to this Act, for the time being constitutes the town of Whyalla.

The Area of the Town of Whyalla and Wards.

3. (1) For the purposes of this Act the town of Whyalla shall consist of the area described in the first schedule to this Act, subject to any alterations of that area made pursuant to this Act. Area of town of Whyalla and wards.

(2) The town of Whyalla shall be divided into three wards which shall respectively bear the names indicated in the second schedule to this Act, and shall, until altered pursuant to this Act, comprise the areas indicated in that schedule.

4. (1) The area of the town of Whyalla may be altered— Alteration of area and wards.

(a) by including therein any adjoining lands being the whole or any part of any lands which, by proclamation for the time being in force under the Crown Lands Act, 1929-1941, have been constituted a town, or set apart as town or suburban lands ;

(b) by excluding any lands therefrom.

(2) Subject to subsection (1) of this section, the provisions of the Local Government Act which relate to the alteration of the area of a municipality shall apply to the alteration of the area of the town of Whyalla.

(3) The boundaries of any ward in the town of Whyalla may be altered in accordance with those provisions of the Local Government Act which relate to the alteration of boundaries of wards in a municipality.

Town of
Whyalla to be
a municipality.

5. The area of the town of Whyalla shall as from the day of the establishment of the Commission be deemed to be a municipality under the Local Government Act.

The Whyalla Town Commission.

Establishment
of Commission.

6. (1) For the purposes of this Act there shall be established a Commission, to be known as "The Whyalla Town Commission", and to be constituted as hereinafter provided.

(2) The Commission shall be a body corporate and shall have perpetual succession and shall by its corporate name be capable in law of suing and being sued and of purchasing, holding, and alienating land and other property, and of doing and suffering subject to this Act all such other acts and things as bodies corporate may by law do and suffer.

(3) The Commission shall have and use a common seal which shall have thereon the corporate name of the Commission and shall be kept at the office of the Commission.

Membership of
Commission.

7. (1) The Commission shall consist of seven Commissioners.

(2) One Commissioner shall be appointed by the Governor and shall be the Chairman and principal executive officer of the Commission.

(3) Three of the Commissioners shall be elected Commissioners, and shall represent respectively the wards of the town of Whyalla.

(4) The first three elected Commissioners shall be elected, as provided in this Act, by Legislative Council electors resident in the respective wards of the town of Whyalla.

(5) All subsequent elected Commissioners shall be elected by ratepayers of the town of Whyalla in the respective wards, in accordance with the Local Government Act.

(6) Three Commissioners shall be appointed by the Company as provided in this Act.

Qualifications
of
Commissioners.

8. (1) Any person who is entitled to vote in any ward at the first election of Commissioners under this Act shall be qualified to be a candidate at that election and to hold office as a Commissioner for any ward until the first Saturday in July next after the establishment of the Commission.

(2) Thereafter the qualification for holding office as an elected Commissioner shall, subject to this Act, be that prescribed by the Local Government Act for councillors.

(3) The Chairman and the Commissioners appointed by the company need not be ratepayers.

9. (1) As soon as possible after the passing of this Act the returning officer for the State shall hold an election in each ward of the town of Whyalla to elect a Commissioner for that ward.

Election
of first elected
Commissioners.

(2) The election shall, subject to this Act, be conducted as nearly as possible in the manner prescribed by Part VII. of the Local Government Act.

(3) At the election the returning officer for the State shall discharge personally or by a person authorized by him the functions of a municipal council and of the clerk of a municipal council.

(4) A person who is enrolled on the Legislative Council roll for the subdivision of Whyalla as an elector of the Legislative Council, and who resides in a ward shall be entitled to one vote in the ward in which he resides.

(5) Parts VII. and XLIV. of the Local Government Act, so far as applicable, shall apply to the election held under this section; but the returning officer for the State may, if he considers that any provision of either of those parts would, if applied, cause difficulty or inconvenience, direct that that provision shall not apply or shall apply with variations or modifications.

(6) For the purposes of the election held under this section, the Legislative Council roll for the subdivision of Whyalla shall be closed at 6 p.m. on the eleventh day before the last day for receiving nominations of candidates at the election.

(7) The returning officer for the State shall prepare a roll for each ward of the electors who are entitled to vote in that ward: Provided that if the returning officer for the State is satisfied that the name of any elector has been wrongly omitted from the roll for any ward he may add that name to the roll before the close of the poll and allow that elector to vote.

10. As soon as is convenient after the first Commissioners have been elected and appointed, the Minister shall publish a notice in the *Gazette* setting out the names of the Commissioners and declaring that as from a day mentioned in the notice the Commission shall be deemed to be established and that as from that day the town of Whyalla shall constitute a municipality; and such notice shall have effect in accordance with its terms.

Gazetted of
establishment
of Commission.

Term of office and conditions of appointment of Chairman.

11. (1) Subject to this Act, the Chairman shall hold office for a term of five years calculated as from the first day of July nearest to the day of his appointment and may be re-appointed from time to time for a term of five years.

(2) Section 69 of the Local Government Act shall not apply to the Chairman.

(3) If an officer of the public service of the State is appointed to be Chairman—

(a) he may while holding office as Chairman continue to contribute to the South Australian Superannuation Fund ;

(b) his service as Chairman shall, for the purposes of the Superannuation Act, 1926-1943, be deemed to be service in the Public Service of the State ;

(c) the number of units of pension for which he is entitled to contribute shall be based on his salary as Chairman.

(4) If an officer of the public service is appointed as Chairman, and is subsequently re-appointed to the public service of the State, his service as Chairman shall be deemed to be service as an officer of the public service for the purpose of determining any leave to which he is entitled under section 74 of the Public Service Act, 1936-1942.

(5) The salary of the Chairman shall be fixed from time to time by the Governor on the recommendation of the Minister, and shall be paid out of the funds of the Commission.

(6) The Chairman shall also be entitled to receive, out of the funds of the Commission, an entertainment allowance. For the period between the establishment of the Commission and the next following thirtieth day of June the allowance shall be at the rate of one hundred and fifty pounds a year and thereafter at such annual rate as the Commission fixes.

Leave of absence.

12. (1) The Commission may grant the Chairman such leave of absence for the purpose of recreation or on account of ill-health or for other adequate cause, as the Commission deems reasonable.

(2) Any such leave of absence may be granted on full pay or otherwise and on such conditions as the Commission determines.

Removal of Chairman from office.

13. The Governor may remove the Chairman from his office if—

(a) the Governor is satisfied that by reason of misconduct, neglect of duty or incapacity the Chairman is not a fit and proper person to hold office as Chairman ;
or

- (b) the members of the Commission other than the Chairman unanimously resolve that the Chairman be removed from his office on the ground that he is not a fit and proper person to hold office as Chairman.

14. (1) If by reason of death, resignation, absence from the town of Whyalla or any other lawful impediment, the Chairman is prevented from performing his duties as Chairman, or if his office becomes vacant, the Governor may appoint a person to act as acting Chairman during any such absence or for the period during which the Chairman suffers any such lawful impediment or during which the office is vacant.

Appointment
of acting
Chairman.

(2) While any such person acts as acting Chairman he shall be deemed to have all the powers, rights, privileges, and functions of the Chairman and shall be entitled to such salary and allowances as the Governor fixes on the recommendation of the Minister.

15. (1) Each of the first three elected Commissioners shall hold office until the first Saturday in July next after the establishment of the Commission.

Term of
office of elected
Commissioners.

(2) On the first Saturday in July next after the establishment of the Commission an election shall be held in each ward to elect a Commissioner to represent that ward.

(3) Every Commissioner elected by ratepayers shall hold office for two years: Provided that on the first Saturday in July in the year following the year in which the first election of Commissioners by ratepayers is held, one elected Commissioner shall retire. The Commissioner so to retire shall be determined by agreement between the three elected Commissioners and in default of agreement, by lot.

16. (1) If an elected Commissioner is for any reason unable to attend any meeting, he may by notice in writing given to the Chairman authorize any other elected Commissioner to vote on his behalf at that meeting on all matters arising at that meeting, or on such of those matters as are specified in the notice.

Proxies of
elected
Commissioners.

(2) When any such notice has been given a vote by the person thereby authorized to vote shall be of the same effect as if given by the Commissioner giving the notice.

(3) Any such notice may relate to one or more meetings.

17. (1) Subject to this Act, every Commissioner appointed by the Company shall hold office until the first Saturday in July next after his appointment takes effect but may be re-appointed from time to time.

Commissioners
appointed by
the Company.

(2) The Company shall as early as convenient fill every casual vacancy occurring in the office of a Commissioner appointed by it.

(3) The Company shall—

(a) on the request of the Minister notify him of the persons appointed by the Company to be Commissioners between the time of the establishment of the Commission and the next following first Saturday in July; and

(b) in the month of June in each subsequent year notify the Chairman in writing of the names of the Commissioners appointed by it to hold office as from the first Saturday in July in that year; and

(c) forthwith after filling any casual vacancy, notify the Chairman in writing of the name of the person appointed to the vacancy.

Deputies of
Commissioner
appointed by
the Company.

18. (1) The Company may in writing appoint a person to be the deputy of any Commissioner appointed by the Company, for such period as is specified in the writing, but not extending beyond the end of the term for which the Commissioner was appointed, and may at any time revoke any such appointment.

(2) The deputy of a Commissioner may while his appointment remains in force exercise and perform any of the rights, powers, privileges, and functions of that Commissioner.

Authentication
of appoint-
ments by
Company.

19. (1) Any appointment of a Commissioner by the Company shall be sufficiently authenticated if, pursuant to a direction of the Board of Directors of the Company, it is signed by the Secretary of the Company or the Superintendent of the Company at Whyalla.

(2) Any appointment of a deputy of a Commissioner shall be sufficiently authenticated if it is signed on behalf of the Company by an officer of the Company at Whyalla authorized by the Company to appoint deputies of Commissioners.

(3) An apparently genuine document purporting to be an appointment of a Commissioner or deputy and purporting to comply with this section shall without further proof and for all purposes be *prima facie* evidence of that appointment.

Powers of the Commission.

General
powers of
Commission.

20. Subject to this Act, the Commission shall be deemed to be the corporation and the council of the town of Whyalla and in and for that town shall have—

- (a) all the rights, powers, authorities, duties, liabilities, obligations, and functions which are conferred or imposed upon the corporation and council of a municipality under the Local Government Act ; and
- (b) such other rights, powers, authorities, duties, liabilities, obligations, and functions as are conferred or imposed on the Commission by this Act.

21. (1) Subject to section 23 of this Act the Commission may—

Powers of Commission and Company as to electricity.

- (a) purchase electricity in bulk from the Company on terms and conditions agreed upon between itself and the Company ; and
- (b) on terms and conditions so agreed resell and distribute such electricity to retail consumers within the town of Whyalla.

(2) The Company may generate electricity and sell and distribute it to the Commission, and to other consumers within the town of Whyalla or who can conveniently be supplied with electricity from the Company's mains: Provided that if any agreement is made under subsection (1) of this section the powers granted by this subsection shall be exercised subject to the terms of that agreement.

(3) For the purpose of enabling the Company to exercise the powers granted to it by this section, sections 496, 497, 498, 500, 501, 502, 503, 504, subsection (1) of section 504a, section 505, subsection (1) of section 507, sections 508, 509, 510, 511 and 512 of the Local Government Act shall apply to the Company in the same way as they apply to a Council and shall be read as if every reference to a council therein included a reference to the Company.

(4) The mention of the specific powers of the Company in subsection (3) of this section shall not be taken to imply any limitation of the powers of the Commission under this Act or the Local Government Act.

22. Subject to section 23 of this Act the Commission may purchase or take on lease and maintain and operate any dairy farm, dairy, or abattoirs, whether within or outside the town of Whyalla and may sell or otherwise dispose of any products or by-products produced at any such dairy farm, dairy, or abattoirs.

Power of Commission as to dairies and abattoirs.

23. (1) The Commission shall not—

- (a) purchase, resell and distribute electricity ; or

Mode of obtaining consent of ratepayers.

- (b) purchase or take on lease any dairy farm, dairy, or abattoirs,

unless the consent of the ratepayers has been first obtained as required by this section.

(2) The consent of the ratepayers shall be obtained by submitting to them the proposition that "the Commission shall have power to purchase, resell and distribute electricity [or as circumstances may require, to purchase or lease a dairy farm, dairy, or abattoirs]".

(3) Sections 226 and 227 and Part XLIII. of the Local Government Act shall apply in relation to obtaining the consent of ratepayers under this section in the same way as they apply to obtaining the consent of ratepayers to a special rate.

Rating by the Commission.

Rates payable
by Company.

24. (1) The Commission may in the period between the establishment of the Commission and the first day of July, 1949, assess and levy against the Company rates to the following amounts :—

- (a) In the financial year ending on the thirtieth of June, 1945—seven thousand pounds :
- (b) In each of the financial years between the thirtieth of June, 1945, and the first of July, 1949—five thousand seven hundred and fifty pounds.

(2) If in any financial year before the first of July, 1949, the amount of rates which would be payable by the Company if it were assessed in the same way as other ratepayers on its property in the town of Whyalla, is more than that payable under subsection (1) of this section, the Company shall be liable to pay the excess.

(3) After the thirtieth day of June, 1949, the Company shall be liable to pay rates assessed against it by the Commission in accordance with the Local Government Act.

Rates payable
by other
ratepayers.

25. The Commission may assess and levy rates against ratepayers other than the Company in accordance with the Local Government Act.

Basis of
rating.

26. All rates in the town of Whyalla shall be assessed and levied on land value as defined in the Local Government Act and Division III. of Part X. of that Act shall be deemed to have been brought into force in that town.

Application of Local Government Act and other Acts to Whyalla.

27. (1) Subject to the exceptions mentioned in this subsection, the Local Government Act shall apply in and in relation to the Commission and the town of Whyalla. The provisions of the Local Government Act which shall not so apply are Part IV., Division IV. of Part X., section 55, and all provisions which are inconsistent with this Act.

Application of
Local
Government
and other
Acts.

(2) Subject to this Act, the Commission shall be deemed to be a municipal council, and the town of Whyalla shall be deemed to be a municipality, within the meaning of the Local Government Act, the Road Traffic Act, 1934-1943, the Impounding Act, 1920-1935, the Registration of Dogs Act, 1924-1929, the Health Act, 1935-1943, the Food and Drugs Act, 1908-1943, the Building Act, 1923-1940, and the Weights and Measures Act, 1934-1941.

(3) Subject to this Act—

(a) the Chairman shall be deemed to be the mayor and the town clerk of the town of Whyalla, within the meaning of and for all purposes of the said Acts ; and

(b) the Commissioners shall be deemed to be councillors within the meaning of and for all purposes of the said Acts.

Miscellaneous.

28. If the Commission is of opinion that the Chairman, by reason of his duties as Chairman, cannot conveniently exercise or perform any power or duty conferred or imposed on him as town clerk, it may appoint some other person to exercise or perform that power or duty.

Provision for
performance of
powers and
duties of
town clerk.

29. A Commissioner shall not be precluded from taking part in any discussion before the Commission or from voting on any question before the Commission by reason only of the fact that he is a member, director, manager or servant of the Company and that the Company is directly or indirectly interested in the contract or dealing which is under discussion or is the subject of the question voted upon.

Right of
Commissioners
to discuss and
vote on
certain
matters.

30. If at a meeting of the Commission at which the Chairman is not present the votes for and against any question are equal, that question shall be adjourned to a meeting at which the Chairman is present.

Provision for
equality of
votes.

Provision for contingencies.

31. If in connection with the establishment of the Commission or the appointment or election of the first Chairman or Commissioners—

- (a) any circumstances arise not provided for by this or any other Act; or
- (b) there is any doubt or dispute as to what should be done,

the Governor may by proclamation order what shall be done, or declare that what has been done shall be deemed proper; and any such proclamation shall be sufficient authority for the action therein referred to.

Provision for petition to alter the system of local government.

32. (1) A majority of the ratepayers of the town of Whyalla may at any time after the expiration of five years from the first day of July, nineteen hundred and forty-five, present a petition to the President of the Legislative Council or to the Speaker of the House of Assembly, praying that Parliament will make legislative provision for dissolving the Commission and establishing in Whyalla a local governing body in accordance with the provisions of the Local Government Act. Any such petition may specify any transitional or incidental provisions which the ratepayers desire to be included in the legislation.

(2) If, upon receipt of such a petition, either House of Parliament carries a resolution that the petition be granted, the Minister of Local Government shall prepare and introduce into Parliament a Bill in accordance with the prayer contained in the petition.

(3) This section shall not be deemed to restrict the right of any person to introduce any Bill into Parliament.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor.

THE FIRST SCHEDULE.**BOUNDARIES OF THE MUNICIPALITY OF WHYALLA.**

Comprising that portion of the hundred of Randell, bounded as follows:—Commencing at the south-western corner of section 70; thence easterly along the southern boundary of the said section and production to the south-western boundary of section 35; south-easterly along said boundary of section 35 and portion of the north-eastern boundary of McBryde Terrace, town of Whyalla, to the south-eastern boundary of Jamieson Street; south-westerly along said boundary of Jamieson Street to the north-eastern boundary of Gay Street; south-easterly along said boundary of Gay Street; south-westerly and south-easterly along the north-western and south-western boundaries of section 2 and production of latter boundary to the sea coast; generally west-south-westerly along said sea coast to intersect the production southerly of western boundary of Rudall Avenue, town of Whyalla; northerly along said production and boundary of Rudall Avenue to the south-western boundary of Bradford Street; north-westerly along said boundary of Bradford Street, to the southern boundary of Nicolson Avenue; westerly along said boundary of Nicolson Avenue and production to the north-western corner of section 37; north-north-westerly across road closed 25th September, 1941, to the south-western corner of section 39 and along the western boundary of said section and the production of that boundary to the point of commencement.

THE SECOND SCHEDULE.**BOUNDARIES OF THE WARDS OF WHYALLA.**

Centre Ward.—Comprising that portion of the hundred of Randell, bounded as follows:—Commencing at the north-eastern corner of section 40; thence south-south-easterly along the eastern boundary of said section 40 and production to the sea coast; generally west-south-westerly along said sea coast to intersect the production southerly of the western boundary of Rudall Avenue, town of Whyalla; northerly along said production and portion of said boundary of Rudall Avenue, to intersect (near the north-eastern corner of section 24) the production south-westerly of centre of said Rudall Avenue; north-easterly along latter production and centre of Rudall Avenue and production to the southern boundary of section 35; south-easterly along said boundary of section 35 and portion of the north-eastern boundary of McBryde Terrace to intersect the production north-easterly of the centre of Essington Lewis Avenue; south-westerly along said production and centre of Essington Lewis Avenue and production to the southern boundary of Broadbent Terrace; easterly along said boundary of Broadbent Terrace to the point of commencement.

East Ward.—Comprising that portion of the hundred of Randell bounded as follows:—Commencing at the northern corner of section 2; thence south-westerly and south-easterly along the north-western and south-western boundaries of said section and production of latter boundary to the sea coast; generally west-south-westerly along said sea coast to intersect the production south-south-easterly of the eastern boundary of section 40; north-north-westerly along said production and boundary; westerly along portion of southern boundary of Broadbent Terrace, Town of Whyalla, to intersect the production south-westerly of the centre of Essington Lewis Avenue; north-easterly along said production and centre of Essington Lewis Avenue and production to the north-eastern boundary of McBryde Terrace; south-easterly along said boundary of McBryde Terrace to the south-eastern boundary of Jamieson Street; south-westerly along said boundary of Jamieson Street to the north-eastern boundary of Gay Street; south-easterly along said boundary of Gay Street to the point of commencement.

West Ward.—Comprising that portion of the hundred of Randell, bounded as follows:—Commencing at the south-western corner of section 70; thence easterly along the southern boundary of said section and production to the south-western boundary of section 35; south-easterly along said boundary of section 35, to intersect the production north-easterly of the centre of Rudall Avenue; south-westerly along said production and centre of portion of Rudall Avenue and production to its western boundary; northerly along latter boundary to the south-western boundary of Bradford Street; north-westerly along said boundary of Bradford Street, to the southern boundary of Nicolson Avenue; westerly along said boundary of Nicolson Avenue and production to the north-western corner of section 37; north-north-westerly across road closed 25th September, 1941, to the south-western corner of section 39 and along the western boundary of said section and the production of that boundary to the point of commencement.

C. M. HAMBIDGE, Surveyor-General.