



LAW REFORM COMMISSION

No. 17 of 1974

ANALYSIS

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AN ACT to establish the Law Reform Commission of Tasmania and for purposes incidental thereto.

[5 June 1974]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Law Reform Commission Act 1974*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.
Cf. N.S.W.,
No. 39 of 1967,
s. 2.
Qld. No. 37 of
1968, s. 2.
W.A., No. 59
of 1972, s. 3.

2 In this Act, unless the contrary intention appears—

“ chairman ” means the chairman of the Commission;

“ Commission ” means the Law Reform Commission of Tasmania established under this Act;

“ deputy chairman ” means the deputy chairman of the Commission;

“ executive director ” means the executive director of the Commission;

“ member ” means a member of the Commission;

“ practitioner ” has the same meaning as it has in the *Legal Practitioners Act 1959*.

Establishment
of the Law
Reform
Commission of
Tasmania.

N.S.W., ss. 3,
5, 6 (1), and
8 (2).
Qld., ss. 3, 4,
and 5.
W.A., ss. 4, 5,
6, 7, and 9 (3).

3—(1) There shall be established a commission, to be known as the Law Reform Commission of Tasmania.

(2) The Commission shall consist of seven members appointed by the Governor, of whom —

(a) one shall be a judge of the Supreme Court of Tasmania, who shall be appointed as the chairman of the Commission;

(b) one shall be a practitioner, who shall be—

(i) the executive director; and

(ii) appointed as the deputy chairman,
of the Commission;

(c) one shall be a practitioner nominated by the Council of the Law Society of Tasmania;

(d) one shall be a practitioner nominated by the Tasmanian Bar Association;

(e) one shall be a member of the full-time academic staff of the Faculty of Law of the University of Tasmania; and

(f) two shall be persons, other than practitioners, who the Attorney-General is satisfied are interested in law reform generally.

(3) Where a body that is required to nominate a person for appointment as a member under paragraph (c) or paragraph (d) of subsection (2) does not make the necessary nomination within two months after it has been requested so to do by the Attorney-General, the Governor may appoint a practitioner as a member in the place of the member so required to be appointed.

(4) The chairman shall be appointed for such term as may be specified in his instrument of appointment, and holds office on such terms and conditions as may be so specified.

(5) A member (other than the chairman or deputy chairman), unless he sooner resigns or otherwise ceases to hold office, continues in office for such term (not exceeding three years) as may be specified in his instrument of appointment, except that, when such a member dies or ceases to hold office otherwise than by reason of the effluxion of time, the member appointed to fill the vacancy ceases to hold office at the expiration of the unexpired term of office of the member in whose place he is appointed.

(6) The members of the Commission are not, as such, subject to the *Public Service Act 1973*, but an officer of the Public Service may hold office as a member (other than as the deputy chairman) in conjunction with his office in the Public Service.

4—(1) A member (other than the chairman or deputy chairman) shall be paid such remuneration and allowances as the Governor may determine.

Remuneration and allowances payable to certain members.

N.S.W., s. 8 (1).
Qld., s. 13.
W.A., s. 9 (1).

(2) The chairman shall be paid such allowances as the Governor may determine.

5—(1) The executive director, unless he sooner resigns or otherwise ceases to hold office, continues in office for such term (not exceeding five years) as may be specified in his instrument of appointment and holds office on such terms and conditions as may be so specified.

Provisions relating to the office of executive director.

N.S.W., s. 6 (3).
Tas., No. 11 of 1973, ss. 6, 7, 10, 11 (2) (b), and 13.

(2) The executive director shall be paid such remuneration and allowances as the Governor may determine.

(3) Subject to this Act, where a person who is appointed as the executive director was, immediately before his appointment, an officer of the Public Service of this State—

- (a) he retains all his existing and accruing rights; and
- (b) for the purposes of determining those rights, his service as the executive director shall be taken into account as if it were service as an officer of the Public Service of this State.

(4) The executive director shall be deemed to be an employee within the meaning of the *Superannuation Act 1938* and the *Retirement Benefits Act 1970*.

(5) The executive director is entitled to the same leave of absence for recreation or on account of sickness as if he were an officer within the meaning of the *Public Service Act 1973*.

(6) The executive director is an employee for the purposes of the *State Employees (Long-Service Leave) Act 1950*.

(7) The Governor may remove the executive director from office if he is satisfied that the executive director—

- (a) has become permanently incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has failed to comply with the terms and conditions specified in his instrument of appointment;
- (d) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
- (e) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to hold his office.

(8) The executive director shall not be removed from office otherwise than in accordance with subsection (7).

(9) Subject to subsection (10), the executive director shall not engage in the practice of his profession or in any other employment except in the performance of the functions of his office.

(10) Subsection (9) does not preclude the executive director from holding an office or engaging in employment where he is expressly authorized by the Attorney-General, in writing, to do so.

6—(1) The Governor may remove a member (other than the chairman or deputy chairman) from office if he is satisfied that that member—

- (a) has become permanently incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has, without leave of the Commission, been absent from three or more consecutive meetings of the Commission;
- (d) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or

Removal of
certain members
from office.
N.S.W.,
s. 9 (2).
Qld., s. 7.
W.A., s. 8.

(e) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to hold his office.

(2) A member to whom this section applies shall not be removed from office otherwise than in accordance with this section.

7—(1) Subject to subsection (2), the Commission shall, at the request of the Attorney-General or of its own motion—

Functions and
duties of the
Commission.
N.S.W., s. 10.
Qld., s. 10.
W.A., s. 11.

(a) undertake studies and inquiries;

(b) seek and consider representations and suggestions; and

(c) do such other acts and things as are necessary or desirable, for the systematic development, reform, and revision of the law applicable to this State.

(2) The Commission shall, before settling a programme, or undertaking the practical study of a project of law reform, under subsection (1), seek the approval of the Attorney-General, and the commencement of such a programme or project is subject to that approval and the degree of priority therefor (if any) decided on by the Attorney-General and notified by him to the Commission.

(3) Without limiting the generality of the foregoing provisions of this section, the Commission shall, by report or recommendation, advise the Attorney-General on the reform of the law applicable to this State, including, in particular—

(a) the simplification and modernization of the law, having regard to the needs of the public and so that the law may be more easily understood by persons without legal knowledge or experience;

(b) making the administration of justice more economical and efficient, and reducing the costs of legal services to the public; and

(c) where considered necessary or desirable, the consolidation, codification, revision, or restatement of the law.

(4) Where a member does not agree with the whole or any part of a report or recommendation made to the Attorney-General by the Commission, he may make a separate report or recommendation to the Attorney-General on the subject-matter of that report or recommendation, or, as the case may be, on the part thereof with which he is not in agreement.

Proceedings,
&c., of the
Commission.
N.S.W., s.12
(1)-(5).
Qld., s. 12
(1)-(8).
W.A., s. 12
(1)-(2).

8—(1) The chairman, or, if he is absent, the deputy chairman, shall preside at each meeting of the Commission.

(2) In the absence of the chairman and deputy chairman from a meeting of the Commission, the members present shall choose one of their number to preside at that meeting.

(3) The chairman or other person presiding at a meeting of the Commission has a deliberative vote only.

(4) A matter before a meeting of the Commission shall be decided on by a majority of the votes of the members who are present at the meeting and vote on the matter.

(5) In the event of an equality of votes on a matter arising at a meeting of the Commission at which all the members are not present, that matter shall be postponed until a meeting at which all the members are present.

(6) Four members of the Commission constitute a quorum at any meeting of the Commission.

(7) The Commission shall keep minutes of the proceedings of every meeting of the Commission.

(8) Subject to this Act, the Commission may regulate its own proceedings.

Delegation.

N.S.W.,
s. 12 (6).
Qld., s. 12 (9).
W.A., s. 12 (3).

9 Subject to this Act, the Commission may delegate to any of its members any of its functions and duties under this Act, except this power of delegation.

Services
to be provided
by the
Solicitor-
General and
other assistance.
N.S.W., s. 14.
Qld., s. 14.
W.A., s. 14.
Tas., s. 14.

10—(1) The Solicitor-General shall provide the Commission with such clerical, accounting, and secretarial services as may reasonably be requested by the executive director to enable the Commission to perform its functions and duties under this Act.

(2) On being requested by the Commission to do so, the Solicitor-General shall provide or procure the services of such officers of the Public Service of this State or of other persons as may reasonably be necessary for the purpose of assisting the Commission in the performance of its functions and duties under this Act.

(3) The Attorney-General may engage, under contract for services, such professional, research, and other assistance as may be necessary to assist the Commission in the performance of its functions and duties under this Act.

(4) The Attorney-General may enter into arrangements with any person for the conduct of any study or inquiry that may be necessary or desirable for the purposes of this Act.

(5) Without prejudice to the generality of subsection (4), arrangements may be entered into under that subsection with a Minister of the Crown of any State of the Commonwealth, a Minister of State of the Commonwealth, or the holder of any office or any body established under the law of the Commonwealth or any State.

(6) Where arrangements under subsection (4) are entered into with the holder of an office or with a body established under the law of this State, the holder of that office for the time being or that body, as the case may be, shall be deemed to have power to enter into and carry out those arrangements.

11—(1) The Commission shall, as soon as practicable after 31st December in each year, submit to the Attorney-General a report on the activities and proceedings of the Commission during the period of twelve months ended on that day.

Annual report
and special
reports.
N.S.W., s. 13
Qld, s. 15.
W.A., s. 13.

(2) In addition to the report mentioned in subsection (1), the Commission shall furnish the Attorney-General, as and when the Attorney-General directs, with such reports as the Attorney-General may require in relation to particular matters.

(3) The Attorney-General shall cause each report submitted to him to be laid on the table of each House of Parliament within the first ten sitting days of the House after the report is received by him.

12—(1) The expenses of the Commission shall be defrayed out of moneys provided by Parliament for the purpose.

Finances of the
Commission.
W.A., s. 15 (1).

(2) The accounts of the Commission are subject to the provisions of the *Audit Act* 1918.

13 The Governor may make regulations for the purposes of this Act.

Regulations.

14 This Act expires at the expiration of the period of five years from its commencement.

Expiry of Act.

