

ETHNIC AFFAIRS COMMISSION ACT 1979 No 23

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Reprinted as at 20 October 1997

[STATE ARMS]

New South Wales

Ethnic Affairs Commission Act 1979 No 23

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[STATE ARMS]

New South Wales

Ethnic Affairs Commission Act 1979 No 23

An Act to constitute the Ethnic Affairs Commission of New South Wales as a corporation; to specify its responsibilities, powers, authorities, duties and functions; to repeal the *Ethnic Affairs Commission Act 1976*; and for other purposes.

Part 1 Preliminary

1Name of Act

This Act may be cited as the *Ethnic Affairs Commission Act 1979*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (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 Principles of cultural diversity

- (1) Parliament recognises and values the cultural diversity of the people of New South Wales. It does so by supporting and promoting the following principles of cultural diversity:
 - (a) **Principle 1**

All individuals in New South Wales should have the greatest possible opportunity to contribute to, and participate in, all aspects of public life.
 - (b) **Principle 2**

All individuals and public institutions should respect and accommodate the culture, language and religion of others within an Australian legal and institutional framework where English is the primary language.
 - (c) **Principle 3**

All individuals should have the greatest possible opportunity to make use of and participate in relevant activities and programs provided or administered by the Government of New South Wales.
 - (d) **Principle 4**

All public institutions of New South Wales should recognise the linguistic and cultural assets in the population of New South Wales as a valuable resource and promote this resource to maximise the development of the State.
- (2) The principles of cultural diversity are the policy of the State.
- (3) Accordingly, each public authority must

observe the principles of cultural diversity in conducting its affairs.

(4) It is the duty of the chief executive officer of each public authority to implement the provisions of this section within the area of his or her administration.

(5) The cultural diversity of the people of New South Wales reflects the whole population of New South Wales, which comprises people from a range of cultural, ethnic, linguistic and religious backgrounds. The expression **cultural diversity** is to be construed accordingly.

4 Repeal of Act No 76, 1976

(1) The *Ethnic Affairs Commission Act 1976* is repealed.

(2) (Repealed)

5 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

(_) **appointed commissioner** means a commissioner appointed under section 7 (1) (b).

(_) **Chairperson** means the Chairperson of the Commission holding office as such under Part 2 of the *Public Sector Management Act 1988*.

(_) **Commission** means the Ethnic Affairs Commission of New South Wales constituted under this Act.

(_) **commissioner** means the Chairperson or any other member of the Commission.

(_) **cultural diversity** - see section 3 (5).

(_) **Deputy Chairperson** means the Deputy Chairperson of the Commission appointed under section 7 (4).

(_) **ethnic affairs** means matters pertaining to the existence of different ethnic groups in the community.

(_) **full-time commissioner** means the Chairperson and any person appointed as a full-time commissioner in the instrument of his or her appointment as a commissioner.

(_) **functions** includes responsibilities, powers, authorities and duties.

(_) **part-time commissioner** means a person appointed as a

part-time commissioner in the instrument of his or her appointment as a commissioner.

(_)**public authority** means any public or local authority constituted by or under an Act, and includes:

- (a) any Department as defined in the *Annual Reports (Departments) Act 1985*, and
- (b) any statutory body as defined in the *Annual Reports (Statutory Bodies) Act 1984*, and
- (c) any body or class of bodies prescribed by the regulations for the purposes of this definition.

(_)**regulation** means a regulation made under this Act.

Part 2 Constitution of the Commission

6 Constitution of the Commission

- (1) There is hereby constituted a corporation under the corporate name of 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 attainment of its objects and the exercise and performance of its functions (except in relation to the contents of a report or recommendation made by it or any advice given by it to the Minister), be subject to the control and direction of the Minister.

*7 The commissioners

* See the Notes on p 16.

- (1) The Commission is to consist of not more than 15 commissioners, being:
 - (a) the Chairperson, and

- (b) not more than 14 other commissioners appointed by the Governor.
- (2) Of the appointed commissioners:
 - (a) (Repealed)
 - (b) such number (if any) as may, from time to time, be fixed by the Minister shall, by the instruments of their respective appointments, be appointed as full-time commissioners, and
 - (c) the remainder shall, by the instruments of their respective appointments, be appointed as part-time commissioners.
- (2A) The employment of a full-time commissioner other than the Chairperson is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (3) (Repealed)
- (4) A commissioner (other than the Chairperson) may, by the instrument of his or her appointment or by a subsequent instrument executed by the Governor, be appointed as Deputy Chairperson of the Commission and, where:
 - (a) the Chairperson and any person appointed to act in the office of the Chairperson under the *Public Sector Management Act 1988* are absent from their respective offices through illness or other unavoidable cause or the office of the Chairperson is vacant, the Deputy Chairperson shall, if the Minister so approves in writing, act as Chairperson, or
 - (b) the Chairperson, any person so appointed, the Deputy Chairperson and any person appointed to act in the office of the Deputy Chairperson under subsection (7) are absent from their respective offices through illness or other unavoidable cause or the offices of the Chairperson and the Deputy Chairperson are vacant, the remaining full-time commissioner (if any) shall, if the Minister so approves in writing, act as Chairperson or, if there is more than one, such one of them as is approved by the Minister shall so act.
- (5) A commissioner (other than a full-time commissioner) shall, subject to this Act, be appointed

for such term, not exceeding 5 years, as is specified in the instrument of his or her appointment and shall be eligible for re-appointment from time to time for such term, not exceeding 5 years, as is specified in the instrument of his or her re-appointment.

(6) If the office of an appointed commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

(7) The Minister may appoint a person (other than a commissioner) to act in the office of an appointed commissioner while that commissioner is absent from his or her office through illness or other unavoidable cause or while that office is vacant and that person while so acting shall have and may exercise and perform the functions of a commissioner and, where the person is appointed to act in the office of the Deputy Chairperson, the functions of the Deputy Chairperson.

(8) Part 2 of the *Public Sector Management Act 1988* does not apply to the appointment of a part-time commissioner.

***8 Provisions relating to commissioners generally**

* See the Notes on p 16.

(1) The Chairperson shall be the chief executive officer of the Commission.

(2), (3) (Repealed)

(4) A 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 or her.

(5) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his or her time to the duties of his or her office, that provision shall not operate to disqualify him or her 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 (4).

(6) 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.

***9 Vacation of office**

* See the Notes on p 16.

- (1) The office of a part-time commissioner becomes vacant:
- (a) if the commissioner dies,
 - (b) (Repealed)
 - (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, allowances or estate for their benefit,
 - (d) (Repealed)
 - (e) if the commissioner is absent from 4 consecutive ordinary meetings of the Commission of which reasonable notice has been given to him or her, either personally or in the course of post, except on leave granted in writing by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the commissioner is excused in writing by the Minister for his or her absence from those meetings,
 - (f) if the commissioner becomes a mentally incapacitated person,
 - (g) if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
 - (h) if the commissioner resigns his or her office by writing under his or her hand addressed to the Governor,
 - (i) if the commissioner declines office, or
 - (j) (Repealed)

(k) if the commissioner is removed from office by the Governor.

(l) (Repealed)

(2) The Governor may remove a part-time commissioner from office at any time.

(3) (Repealed)

10 Meetings of the Commission

(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) Notwithstanding section 7 (4) but subject to subsection (3), at a meeting of the Commission:

(a) the Chairperson,

(b) in the absence of the Chairperson - the Deputy Chairperson,

(c) in the absence of the Chairperson and the Deputy Chairperson - the remaining full-time commissioner (if any) or, if there is more than one, the full-time commissioner elected by the commissioners present at the meeting, or

(d) in the absence of the Chairperson, the Deputy Chairperson and the remaining full-time commissioner (if any) or all of the remaining full-time commissioners (if any), a part-time commissioner elected by the commissioners present at the meeting,

shall preside.

(3) Except with the prior written approval of the Minister, a meeting of the Commission shall not be held unless there is present at the meeting the Chairperson, the Deputy Chairperson or a person appointed to act in the office of the Chairperson or the Deputy Chairperson under section 7 (7).

(4) Five commissioners or such other number as may, for the time being, be fixed by the Minister is 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, 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.

***11-13(Repealed)**

* See the Notes on p 16.

14 Staff establishment of the Commission

(1) Such staff as may be necessary to assist the Commission may be employed under Part 2 of the *Public Sector Management Act 1988*.

(2) For the purposes of exercising and performing its functions, the Commission may, with the approval of the Minister and of the 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 public authority.

Part 3 Objects and functions of the Commission

15 Objects of the Commission

The objects of the Commission are:

(a) to encourage the full participation of persons comprising ethnic groups in the community in all aspects of life in New South Wales, such as the social, economic, public and cultural life of the community, and

(b) to promote the unity of all ethnic groups in

the community as a single society consistently with the recognition of their different cultural identities, and

- (c) to promote liaison and co-operation between bodies concerned in ethnic affairs, and
- (d) to promote the social, cultural and economic benefits of a culturally diverse society.

16 **Functions of the Commission**

The functions of the Commission are:

- (a) to investigate, and report and make recommendations to the Minister on, any aspect of ethnic affairs which is referred to it by the Minister or which it considers requires action,
- (b) to examine, and advise the Minister on, any representations made to the Minister by or on behalf of any persons forming or forming part of any ethnic group in the community and referred to it by the Minister,
- (c) to provide to any persons (whether or not forming or forming part of any ethnic group in the community) services approved by the Minister,
- (d) to advise the Minister on the most effective use of funds appropriated by Parliament for expenditure in relation to ethnic affairs,
- (e) to arrange and co-ordinate meetings, discussions, seminars and conferences with respect to ethnic affairs,
- (f) to consult with governmental, business, industrial, educational, and community bodies or groups for the purpose of ascertaining a means of improving conditions affecting ethnic affairs,
- (g) to report and make recommendations to the Anti-Discrimination Board constituted under the *Anti-Discrimination Act 1977* on matters relating to the avoidance of discrimination on the basis of ethnic origin,
- (h) to initiate, negotiate, enter into and where appropriate assist in implementing ethnic

affairs agreements between public authorities and the Commission, and

- (i) to assess the effectiveness of public authorities in implementing the Government's ethnic affairs policies.

17 Ethnic affairs reports

(1) The Commission is to prepare a report on the status of ethnic affairs in the State in respect of each calendar year (commencing with 1997). The report may include recommendations of the Commission in relation to any relevant matters.

(2) The report is to be prepared during or as soon as possible after the calendar year to which it relates. The report is to be furnished to the Minister before the end of the month of February that follows that year.

(3) The Minister is to lay, or cause to be laid, a copy of the report before each House of Parliament within 14 sitting days of the House after receiving the report.

(4) If a House of Parliament is not sitting when the Minister seeks to have a copy of the report laid before the House, the Minister may present a copy of the report to the Clerk of the House.

(5) The report, if presented to the Clerk:

- (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, and
- (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after presentation of the report to the Clerk.

18 Public authorities to assist Commission

In so far as any investigation conducted by the Commission under this Act affects the functions of a public authority or of an officer of a public authority, that public authority or officer, 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 her or its functions as the Commission may require for the purposes of that investigation.

19 Delegation

(1) The Commission, with the written approval of the Minister, may, by resolution, from time to time delegate to the Chairperson the exercise or performance of such of the Commission's functions with respect to any matter (other than this power of delegation) as are specified in the resolution, and may, by resolution, revoke wholly or in part any such delegation.

(2) A function with respect to any matter, the exercise or performance of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise or performance of the function delegated, or as to time or circumstance, as are specified in the resolution.

(4) Notwithstanding any delegation under this section, the Commission may continue to exercise or perform the function delegated.

(5) Any act or thing done or suffered by the Chairperson while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Commission and shall be deemed to have been done or suffered by the Commission.

(6) An instrument purporting to be signed by the Chairperson in his or her capacity as a delegate of the Commission shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commission under seal and, until the contrary is proved, shall be deemed to be an instrument signed by the Chairperson as a delegate of the Commission under this section.

20 Commission may establish committees

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.

Part 4 General

21 Cost of administration of Act

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

21A Legal consequences of principles of cultural diversity

Nothing in section 3 gives rise to, or can be taken into account in, any civil cause of action.

22 Regulations

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.

Notes

The following abbreviations are used in the tables of Acts and amendments:

Am	amended	pp	pages
cl	clause	Rep	repealed
cll	clauses	Sch	Schedule
Div	Division	Sec	section
GG	Government Gazette	Secs	sections
Ins	inserted	Subdiv	Subdivision
No	number	Subst	substituted
p	page		

Sections 7-9 and 11-13 apply to the Deputy Chairperson of the Ethnic Affairs Commission as if they had not been amended or repealed by the *Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989*. See the Proclamation pursuant to the *Public Sector Management Act 1988* in Gazette No 98 of 29.9.1989, p 7744.

Table of Acts

Ethnic Affairs Commission Act 1979 No 23. Assented to 24.4.1979. Date of commencement, secs 1 and 2 excepted, 1.12.1979, sec 2 and GG No 163 of 30.11.1979, p 5974. This Act has been amended as follows:

1980	No 187	Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980. Assented to 17.12.1980.
1987	No 288	Ethnic Affairs Commission (Amendment) Act 1987. Assented to 16.12.1987. Date of commencement, 28 days after assent.
1989	No 105	Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989. Assented to 15.8.1989 Date of commencement of the provisions of Sch 1 relating to the Ethnic Affairs Commission Act 1979, 1.10.1989, sec 2 and GG No 98 of 29.9.1989, p 7742.
1992	No 111	Statute Law (Miscellaneous Provisions) Act (No 3) 1992. Assented to 8.12.1992. Date of commencement of the provisions of Sch 1 relating to the Ethnic Affairs Commission Act 1979, assent, Sch 1.
1993	No 46	Statute Law (Miscellaneous Provisions) Act 1993. Assented to 15.6.1993. Date of commencement of the provision of Sch 2 relating to the Ethnic Affairs Commission Act 1979, assent, Sch 2.
1995	No 36	Public Sector Management Amendment Act 1995. Assented to 25.9.1995. Date of commencement, 13.10.1995, sec 2. Amended by Statute Law (Miscellaneous Provisions) Act (No 2) 1995 No 99. Assented to 21.12.1995. Date of commencement of Sch 2.15, assent, sec 2 (2).

1996	No 88	Ethnic Affairs Commission Amendment Act 1996. Assented to 25.11.1996. Date of commencement, 7.2.1997, sec 2 and GG No 15 of 7.2.1997, p 363.
1999	No 94	Crimes Legislation Amendment (Sentencing) Act 1999. Assented to 8.12.1999. Date of commencement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.

Table of amendments

Sec 3	Rep 1992 No 111, Sch 1. Ins 1996 No 88, Sch 1 [1]
Sec 4	Am 1992 No 111, Sch 1.
Sec 5	Am 1995 No 36, Sch 6.4 [1]; 1996 No 88, Sch 1 [2] [3].
Sec 7	Am 1987 No 288, sec 2 (a); 1989 No 105, Sch 1; 1992 No 111, Sch 1; 1995 No 36, Sch 6.4 [2]-[9].
Sec 8	Am 1989 No 105, Sch 1; 1992 No 111, Sch 1.
Sec 9	Am 1980 No 187, Sch 1; 1989 No 105, Sch 1; 1992 No 111, Sch 1; 1993 No 46, Sch 2; 1999 No 94, sec 7 (1) and Sch 5, Part 1.
Sec 10	Am 1987 No 288, sec 2 (b).
Secs 11-13	Rep 1989 No 105, Sch 1.
Sec 14	Am 1992 No 111, Sch 1; 1996 No 88, Sch 1 [4].
Sec 15	Am 1992 No 111, Sch 1; 1996 No 88, Sch 1 [5].
Sec 16	Am 1996 No 88, Sch 1 [6]-[8].
Sec 17	Rep 1992 No 111, Sch 1. Ins 1996 No 88, Sch 1 [9]
Sec 18	Am 1996 No 88, Sch 1 [10].
Sec 21A	Ins 1996 No 88, Sch 1 [11].
The whole Act (except sec 4)	Am 1992 No 111, Sch 1 ('`Chairman'' omitted wherever occurring, ``Chairperson'' inserted instead).
The whole Act	Am 1992 No 111, Sch 1 (after ``his'' wherever occurring, ``or her'' inserted).