

ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION ACT

No. 70 of 1989

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 70 of 1989

An Act to provide for an Electoral and Administrative Review Commission and for a Parliamentary Committee for Electoral and Administrative Review and for related purposes

[ASSENTED TO 11TH AUGUST, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1.1 Short title. This Act may be cited as the *Electoral and Administrative Review Commission Act 1989*.

1.2 Interpretation. In this Act, except where a contrary intention appears—

“Chairman” means the Chairman of the Commission and includes any Commissioner temporarily performing the duties of the Chairman;

“Commission” means the Electoral and Administrative Review Commission constituted under this Act and includes one or more of the Commissioners discharging a function or exercising a power of the Commission;

“Commissioner” means any member of the Commission including the Chairman;

“electoral system” means the laws, rules, procedures and practices relating to elections and, without limiting the generality thereof, includes the laws, rules, procedures and practices relating to—

- (a) any division of the State or any part of the State into electoral zones, districts, areas or divisions;
- (b) the location of electoral boundaries;
- (c) the compilation and maintenance of complete and accurate rolls of persons entitled to vote;
- (d) voting, including absentee and postal voting;
- (e) counting votes;
- (f) declaring polls;
- (g) the observance of secrecy;
- (h) the exclusion of fraud and other misconduct; and
- (i) the regulation of behaviour, including the distribution of any documents, at or near any place appointed or provided for voting.

“investigate” includes examine and consider;

“Legislative Assembly electoral system” means the electoral system relating to elections for the Legislative Assembly;

“Minister” means the Minister of the Crown who holds the office of Premier and includes a Minister of the Crown temporarily performing the duties of that office;

“Parliamentary Committee” means the Parliamentary Committee for Electoral and Administrative Review referred to in Part IV;

“unit of public administration” means—

- (a) the Parliamentary Service;
- (b) every department of government of the State within the meaning of the *Public Service Management and Employment Act 1988*;
- (c) the Police Force;
- (d) the Railway Department;
- (e) every body or authority constituted by or pursuant to an Act, and every service provided for by an Act, that in any case is funded wholly or partially with moneys of the Crown, or is assisted in a financial respect (by any means) by the Crown;
- (f) the registries and other administrative offices of the courts of the State of whatever jurisdiction.

PART II—THE COMMISSION

Division I—Constitution and Membership

2.1 Constitution. (1) There is hereby constituted a corporation called the “Electoral and Administrative Review Commission”, having perpetual succession and an official seal.

(2) Judicial notice must be taken of the official seal of the Commission, and all courts and persons acting judicially must presume the seal to have been duly affixed to any document until the contrary is proved.

2.2 Composition of Commission. The Commission consists of five members, being a Chairman and four other members, appointed by the Governor-in-Council, on the recommendation of the Minister, by notification published in the *Gazette*, and having the qualification prescribed.

2.3 Qualification for membership. (1) A person qualified for appointment as a member of the Commission is one who has extensive knowledge and experience in one or more of the following areas—

- commercial enterprise;
- community affairs;
- electoral matters;
- industrial affairs;
- law;
- public administration;
- trade union affairs;

and who in any such case is not disqualified by subsection (2).

(2) A person is disqualified for appointment as a member of the Commission if—

(a) he holds an appointment or has associations;

or

(b) at a material time, he held an appointment or had associations,

such that upon consultation had pursuant to section 2.4 he is considered unsuitable for appointment.

2.4 Selection of persons for appointment. (1) With a view to his selection of persons for recommendation for appointment as members of the Commission, the Minister must cause notification of his intention to make such selection to be advertised nationally, calling for applications from suitably qualified persons to be considered for selection.

(2) Before proceeding to a selection of any person or persons for recommendation for appointment as a member or members of the Commission—

(a) the Minister must consult with the Parliamentary Committee, or, if at the material time there be no such committee, with the Leader of the Opposition in the Legislative Assembly and the Leader in the Assembly of any other political party represented in the Assembly by at least three members;

and

(b) if at the time selection is to be made there is a Chairman, the Minister must consult with the Chairman.

(3) Subsection (1) does not apply in relation to a recommendation for appointment to fill a vacancy that has occurred in the office of a Commissioner during his term of office, in which case the person recommended for appointment must, wherever practicable, possess the same prescribed qualification for appointment as that had by his predecessor.

(4) It is declared that the advertisement nationally of a notification such as is referred to in subsection (1) before the commencement of this Act is a sufficient compliance with that subsection for the purpose of the first constitution of the Commission and that subsection is not to be construed to require a further advertisement of such notification for that purpose.

2.5 Tenure of office. (1) A member of the Commission must be appointed for a term of not less than two years or more than five years and is eligible for re-appointment.

(2) No more than two members of the Commission may be appointed for the same term on the initial appointment of the Commission.

(3) The office of a Commissioner becomes vacant if the Commissioner—

- (a) dies;
- (b) resigns his office by writing signed by him and given to the Minister;
- (c) becomes a patient within the meaning of the *Mental Health Services Act 1974-1987*;
- (d) is convicted in the State of an indictable offence (whether on indictment or summarily) or is convicted elsewhere of an offence that, had it been committed in the State, would be an indictable offence;
- (e) is absent, without prior leave of absence granted by the Commission, from three consecutive meetings of the Commission of which due notice has been given to him;
- (f) is removed from office by the Governor upon the address of the Legislative Assembly.

2.6 Chairman of Commission. (1) Appointment of the Chairman may be made independently of the appointment of the other members of the Commission, or any of them.

(2) The chairman must preside at meetings of the Commission.

In the temporary absence of the Chairman, another Commissioner appointed by the Commission must preside and otherwise act as Chairman in his stead.

While so acting, the Commissioner appointed has the powers and authorities of the Chairman.

2.7 Casual vacancy in membership. (1) A person appointed to fill a vacancy occurring in the office of a Commissioner during his term of the office must be appointed as prescribed for the balance of the term of his predecessor, and is eligible for re-appointment.

(2) If the vacancy has occurred in the office of Chairman, the person appointed to fill the vacancy will not necessarily be Chairman, but the Governor-in-Council must, by notification published in the *Gazette*, appoint a Commissioner to be Chairman for the balance of the term of the Commission.

2.8 Quorum and proceedings. (1) A quorum of the Commission consists of three members, present and voting provided that at least four members must be present and vote on the adoption of any report by the Commission.

(2) Business of the Commission must be decided by majority vote of the members present and voting.

The person presiding at the meeting has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(3) Subject to subsections (1) and (2), the Commission may conduct the business before its meetings in such manner as it determines from time to time.

(4) The Chairman may at any time summon a meeting of the Commission and must, upon the receipt of the written request of at least three members, summon a meeting.

(5) The Chairman must ensure that full and accurate Minutes of the proceedings of each meeting of the Commission are recorded and kept.

Division 2—Functions of Commission

2.9 Immediate Function of Commission. (1) The immediate function of the Commission is to forthwith investigate the Legislative Assembly electoral system and to furnish a report or reports by 31 March 1990 concerning the following matters—

- (a) whether the State should be divided into any and if so how many and what zones of representation;
- (b) the name or other means of identification of each such zone (if any);
- (c) the number of electoral districts into which each zone (if any) should be divided;
- (d) the 89 electoral districts into which the State and each zone (if any) should be divided;
- (e) the name or other means of identification of each such electoral district;
- (f) the distribution of electoral districts throughout the State and each zone (if any);
- (g) the location of the boundaries of each electoral district and each zone (if any);
- (h) the compilation of electoral rolls of the electors of each electoral district;
- (i) the margin of allowance (if any) between the numbers of electors in each electoral district.

(2) The provisions of the *Electoral Districts Act 1985* have no application in relation to the discharge by the Commission of its function prescribed by subsection (1).

(3) In discharge of its function in accordance with subsection (1) the Commission must initially cause to be advertised state-wide notices calling for submissions to be made to it by persons wishing to make submissions with respect to the matter specified in subsection (1) (a).

(4) Upon receipt of submissions in writing within the time specified in the notice under subsection (3) the Commission must consider the submissions and, after making such investigations as the Commission considers necessary or desirable, the Commission must furnish a report on 12 December 1989, on the matter specified in subsection (1) (a)

together with a map or maps of any proposed zones of representation (if any) into which the state should in its opinion be divided.

(5) Upon furnishing a report in accordance with subsection (4) the Commission must then cause to be advertised state-wide notices calling for submissions to be made to it with respect to the final boundaries of the zones of representation (if any) contained in such report and with respect to the boundaries of all electoral districts into which the zones (if any) are proposed to be divided and any other matter specified in subsection (1).

(6) Upon receipt of submissions in writing within the time specified in the notice under subsection (5) the Commission must consider any submission received and, after making such investigations as the Commission considers necessary or desirable, the Commission must give notice of the proposed distribution in accordance with section 2.10.

2.10 Notice of proposed distribution. (1) The Commission must cause to be prepared a map, or maps, showing the names and boundaries of each zone (if any) or electoral district proposed by it.

A map may relate to—

- (a) all proposed zones or electoral districts;
- (b) two or more proposed zones or electoral districts;
- or
- (c) one only proposed zone or electoral district.

(2) To the extent that the boundaries of a zone of representation (if any) that the Commission proposes to recommend are coterminous with the boundaries of any proposed electoral district, such boundaries must be delineated on the map relating to that proposed district.

(3) At a time sufficiently before 31 March 1990 to allow compliance with section 2.11, the Commission—

- (a) must cause to be publicly exhibited in a conspicuous place at the court house at every place appointed under the *Justices Act 1886-1988*, or that Act as amended, for holding Magistrates Courts and at every police station in a proposed zone (if any) or electoral district, a copy of the map relating to that proposed zone or electoral district;
and
- (b) must cause to be lodged in each such court house and police station a copy of a statement prepared by authority of the Commission showing—
 - (i) the name of each electoral district proposed by it, showing the name in relation to the zone of representation (if any) for which the district is proposed;
 - (ii) the description of the boundaries of each proposed electoral district;

and

(iii) the approximate number of electors in each proposed electoral district.

(4) If in relation to a particular proposed electoral district subsection (3) cannot be complied with, the subsection is deemed to have been complied with if the Commission causes a copy of the map to be publicly exhibited, and a copy of the statement to be lodged in the court house at a place so appointed for holding Magistrates Courts and the police station that, in the Commission's opinion, is nearest to that proposed electoral district.

(5) The copy map or statement must, for a period of one month, be available for inspection by any person at all times when the court house or police station is open for transacting public business.

2.11 Objections and suggestions. Objections or suggestions in writing with respect to a proposed zone or electoral district that are lodged with the Commission within one calendar month after the copy map is first publicly exhibited in accordance with section 2.10 (3) must be considered by the Commission before making its final report pursuant to section 2.9.

2.12 Effect of Commission's recommendations. (1) In discharge of its function prescribed by section 2.9 with a view to reporting by 31 March 1990, the Commission must allow the number of electoral districts in the State to stand at 89.

(2) Recommendations contained in the Commission's report pursuant to section 2.9, to the extent that they are not effectively implemented by this section, must be implemented forthwith upon presentation of the report, under the Commission's supervision.

(3) The boundaries of each electoral district proposed by the Commission in its final report pursuant to section 2.9—

- (a) are the boundaries of the electoral district for the purposes of an election of the whole number of members of the Legislative Assembly held between the furnishing of the report and 8 July 1990;
- (b) are the boundaries of the electoral district for the purposes of a by-election of a member for that electoral district held after 8 July 1990 and before any further review of the electoral system by the Commission;
- (c) continue to be the boundaries of the electoral district until a further review of the electoral system by the Commission.

(4) Upon presentation of the Commission's report pursuant to section 2.9 the recommendations contained therein, to the extent that they are not translated into laws by appropriate enactment prevail over any inconsistent provisions of an Act in force at the date of such presentation to the extent necessary to give force and effect in law to such recommendations, and all such provisions must be read and construed so as to give force and effect in law to such recommendations.

2.13 Electoral rolls. (1) The principal electoral officer for the purposes of the *Elections Act 1983-1985* must cause to be prepared an electoral roll of electors in each electoral district recommended by the Commission.

(2) There must be for each electoral district general rolls and supplemental rolls to the general rolls, which must be prepared under and in accordance with the *Elections Act 1983-1985* and that Act, subject to this section, applies and extends accordingly.

(3) The first such general roll for an electoral district recommended by the Commission must contain the names of electors registered as living in the district on the date of presentation of the Commission's final report pursuant to section 2.9.

(4) The principal electoral officer is empowered to issue such orders and directions as he considers necessary or expedient for the purpose of complying with this section.

Such orders and directions have the force of law and must be obeyed.

(5) The general roll prepared for an electoral district pursuant to this section, with any supplemented rolls for the district, must be the existing roll of electors for the district within the meaning and for the purposes of the *Elections Act 1983-1985* until a new roll of electors for the district is prepared pursuant to that Act.

2.14 Commission's reports. (1) A report of the Commission must be signed by its Chairman and must be furnished—

- (a) to the Chairman of the Parliamentary Committee if there is a committee at the time;
- (b) to the Speaker of the Legislative Assembly if there is a Speaker at the time;
- and
- (c) to the Minister.

(2) If a Commission's report is received by the Speaker when the Legislative Assembly is not sitting, he must deliver the report and any accompanying document to The Clerk of the Parliament and order that it be printed.

(3) A report printed in accordance with subsection (2) is deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and must be accorded all the immunities and privileges of a report so tabled and printed.

(4) A report received by the Chairman of the Parliamentary Committee or the Speaker, including one printed in accordance with subsection (2), must be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by him.

(5) This section does not apply to an annual report of the Commission referred to in Section 5.5.

PART III—STAFF OF COMMISSION

3.1 Employment of staff. (1) The Commission may employ an Executive Officer and such other staff as is necessary for the discharge of functions and the exercise of powers by the Commission.

(2) Subject to any relevant industrial award or industrial agreement, the Commission may, with the approval of the Minister, settle the salaries, wages, allowances, and conditions of employment of persons employed by it.

3.2 Use of officers. The Commission may, with the approval of the Minister and the consent of the Minister of the Crown responsible for the unit of public administration concerned, or in the case of the Parliamentary Service, the consent of the Chairman of the Parliamentary Service Commission, arrange for use (by secondment or otherwise) by it of the services of staff or facilities of any unit of public administration, or any office administered within such a unit.

3.3 Engagement of services. The Commission may engage suitably qualified persons to provide the Commission with services, information or advice.

3.4 Officers of Commission. (1) While a person is employed by the Commission under section 3.1, or a person's services are utilized by the Commission under section 3.2 that person is, for the purposes of this Act, an officer of the Commission.

(2) In the discharge of their duties officers of the Commission are subject to the control and direction of the Chairman and not to any other person or authority that, but for this provision, might be taken to have had control and direction of them.

(3) The *Public Service Management and Employment Act 1988* does not apply to the appointment of persons employed by the Commission and persons appointed to employment by the Commission do not thereby become officers of the public service of the State or otherwise become subject to that Act.

(4) A person who is a member of the staff of a unit of public administration, or an office administered within such a unit, whose services are for the time being utilized by the Commission under section 3.2 remains a member of the staff of that unit or office, subject to subsection (2).

(5) A person recognised by subsection (4) as remaining a member of the staff of a unit of public administration or office—

(a) retains and is entitled to all rights that have accrued to him by reason of employment as such a member, or that would accrue in the future to him by reason of employment as such a member if his services were not being utilized by the Commission;

(b) continues to be required to contribute to any superannuation scheme to which he is required to contribute by reason of

employment as such a member, regardless of utilization of his services by the Commission;

and

- (c) is to be taken to have continuous service as such a member, regardless of utilization of his services by the Commission.

3.5 Superannuation. Officers of the Commission, other than officers made available in accordance with section 3.2, are deemed to be officers for the purposes of the *State Service Superannuation Act 1972-1988* and employees for the purposes of the *Superannuation (Government and Other Employees) Act 1988*.

PART IV—THE PARLIAMENTARY COMMITTEE

Division 1—Constitution and Membership

4.1 Constitution. (1) As soon as is practicable after the commencement of this Act and as soon as is practicable after the commencement of the first session of each Parliament there must be appointed a Committee of Members of the Legislative Assembly to be called the “Parliamentary Committee for Electoral and Administrative Review”.

(2) The practice of the Legislative Assembly in relation to the appointment of members of Select Committees, to the extent that the practice does not conflict with the provisions of this Part, applies in relation to the appointment of members of the Parliamentary Committee.

4.2 Composition. (1) The Parliamentary Committee consists of seven Members of the Legislative Assembly, appointed by the Assembly, of whom—

- (a) not more than four must be nominated for appointment by the Minister of the Crown who is recognized in the Assembly as the Leader of the House;

and

- (b) not less than two must be nominated for appointment by the Leader of the Opposition in the Assembly.

(2) Where a political party other than one in Government or in Opposition, is represented in the Legislative Assembly by at least 10 Members, the remaining member of the Parliamentary Committee must be a person nominated for appointment by the leader in the Assembly of such Members.

(3) A Minister of the Crown can not be a member of the Parliamentary Committee.

4.3 Chairman and Deputy Chairman. (1) Upon each appointment of the Committee, the members must appoint a member to be chairman of the Committee and another member to be deputy chairman of the Committee.

(2) (a) The chairman must preside at all meetings of the Committee at which he is present.

(b) In the absence of the chairman, the deputy chairman must preside at meetings of the Committee at which he is present.

(c) In the absence of the chairman and the deputy-chairman at any meetings at which a quorum is present, the members in attendance may appoint one of their number then present to be temporary chairman during that absence.

(3) A person who pursuant to subsection (2) (b) or (c) presides at a meeting of the Committee may act as chairman and has all the powers of the chairman.

4.4 Application of Standing Rules and Orders. Subject to the provisions of this Part, the Standing Rules and Orders of the Legislative Assembly relating to Select Committees apply in relation to the Parliamentary Committee and the conduct of its business as they apply to any other Select Committee of the Assembly.

4.5 Term of Committee. (1) The members of the Parliamentary Committee go out of office upon the dissolution, or expiry of the term, of the Legislative Assembly.

(2) A member who so goes out of office is eligible to be re-appointed as a member of the Parliamentary Committee.

4.6 Casual vacancies. (1) The office of a member of the Parliamentary Committee becomes vacant if—

(a) he dies;

(b) he delivers to the Speaker of the Legislative Assembly, or if the office of Speaker be vacant, to The Clerk of the Parliament his resignation in writing signed by him;

(c) he ceases to be a member of the Legislative Assembly;

(d) he becomes a Minister of the Crown;

(e) he is absent, without approval by resolution of the committee, from three consecutive meetings of the committee duly summoned;

or

(f) he is discharged from service on the committee by resolution of the Legislative Assembly.

(2) Subject to section 4.2, the Legislative Assembly may appoint one of its Members to a casual vacancy in the membership of the Parliamentary Committee.

4.7 Quorum in particular case. When the Parliamentary Committee meets to consider its report to the Legislative Assembly, the quorum must be not less than five members.

4.8 Meeting times. The Parliamentary Committee may sit and conduct its business on any day at any time while the Legislative

Assembly is not sitting and, with the leave of the Assembly, at any time while the Assembly is sitting.

Division 2—Functions and Powers of Parliamentary Committee

4.9 Functions and powers. (1) The functions of the Parliamentary Committee are—

- (a) to monitor and review the discharge of the Commission's functions;
- (b) to report to the Legislative Assembly, with such comments as it thinks fit, on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission, a Commissioner, or of officers of the Commission, to which the attention of the Assembly should, in the committee's opinion, be directed;
- (c) to examine the annual report and other reports of the Commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report;
- (d) to report on any matter pertinent to its functions that is referred to it by the Legislative Assembly;
- (e) to participate in the constitution of the Commission as prescribed.

(2) The Parliamentary Committee has such powers as—

- (a) are necessary to enable or assist the Committee in the proper discharge of its functions prescribed by subsection (1);
- (b) are conferred on it by the Legislative Assembly with a view to the proper discharge by the Committee of its functions prescribed by subsection (1).

PART V—MISCELLANEOUS PROVISIONS

5.1 Remuneration of Commissioners. The Commissioners are entitled to such remuneration—

- (a) by way of salary;
- or
- (b) by way of fees, and allowances and recoupment of expenses as are for the time being approved by the Minister.

5.2 Proof of Commission's actions. If in any proceedings it is relevant to prove the doing of any act or the taking of any step by the Commission or any Commissioner, a certificate purporting to be that of the Chairman in relation thereto is evidence and in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

5.3 Budget. (1) For each financial year the Commission, by or within such time as the Minister directs, must frame and adopt a budget that is consistent with funds appropriated by the Parliament to the purpose of the Commission.

Every budget is subject to the Minister's approval and, until so approved, is of no force or effect.

(2) From time to time in a financial year the Commission may frame and adopt amendments to its budget approved by the Minister for that year, consistent with funds available for the purposes of the Commission.

Every amendment is subject to the Minister's approval and, until so approved, is of no force or effect.

(3) The Commission must observe its budget as approved for the time being.

(4) Every budget must show—

- (a) estimates of the receipts (if any) and disbursements of the Commission for the year to which the budget relates;
- (b) the purposes for which disbursements will be made by the commission in the year to which the budget relates;
- (c) estimates of receipts (if any) and disbursements adopted by the Commission in respect of the previous year and the actual receipts (if any) and disbursements for that year.

5.4 Audit. For the purposes of the *Financial Administration and Audit Act 1977-1988*, the Commission is a statutory body within the meaning of that Act.

5.5 Annual Report of Commission. (1) The Commission must in each year report to the Minister in respect of the Commission's activities during the preceding period of 12 months.

(2) The Commission's annual report must be tabled in the Legislative Assembly within three sitting days after presentation of the report to the Minister.

5.6 Report under section 2.9. Should the *Constitution (Extension of Duration of Parliament) Bill 1989* not be approved by the electors qualified to vote for the election of Members of the Legislative Assembly at a referendum, the Commission must take no further action under Section 2.9 prior to an election of the whole number of Members of the Legislative Assembly held prior to 8 January 1990.

5.7 Section 2.12 not to be amended except in accordance with this section. (1) The provisions of section 2.12 are not to be amended except in the manner provided by this section.

(2) A Bill for a purpose within subsection (1) of this section must not be presented to the Governor for the Governor's Assent or be in any other way assented to until the Bill has been approved by the Electors in accordance with this section.

(3) On a day not sooner than two months after the passage of the Bill through the Legislative Assembly, the question for the approval or

otherwise of the Bill must be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the *Elections Act 1983-1985*, or any Act amending the same or in substitution therefor.

Such day must be appointed by the Governor in Council.

(4) When the Bill is submitted to the electors the vote must be taken in such manner as the Legislature prescribes.

(5) If a majority of the electors voting approve the Bill, it must be presented to the Governor for Assent.

(6) The provisions of this section extend to any Bill for the repeal or amendment of this section.