



# **Australian Law Reform Commission Act 1996**

**No. 37, 1996**

**An Act to establish the Australian Law Reform  
Commission, and for related purposes**

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# **Australian Law Reform Commission Act 1996**

**No. 37, 1996**

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## **An Act to establish the Australian Law Reform Commission, and for related purposes**

*[Assented to 9 October 1996]*

**The Parliament of Australia enacts:**

### **Part 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Australian Law Reform Commission Act 1996*.

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### 2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### 3 Definitions

In this Act, unless the contrary intention appears:

**Board** means the Board of Management of the Commission.

**Board member** means a member of the Board, and includes the President and the Deputy President.

**Commission** means the Australian Law Reform Commission.

**Commonwealth laws** means:

- (a) laws (including Territory laws) made by, or by the authority of, the Parliament; and
- (b) any other laws (including Territory laws) that the Parliament has power to repeal or amend.

**Deputy President** means the Deputy President of the Commission, and includes any person for the time being acting in the office of Deputy President.

**Division** means a Division of the Commission established under section 40.

**judicial office** means:

- (a) an office of judge or justice of a Federal Court; or
- (b) an office whose holder has, under an Act, the same status as a judge or justice of a Federal Court; or
- (c) the office of President of the Defence Force Discipline Appeal Tribunal.

**laws** includes common law and equity rules.

**member** means a member of the Commission, and includes the President and the Deputy President.

**Parliamentary Committee** means a Committee of either House, or of both Houses, of the Parliament.

**President** means the President of the Commission, and includes any person for the time being acting in the office of President.

*reference* means a reference to the Commission by the Attorney-General under this Act.

**4 Extension to external Territories**

This Act extends to the external Territories.

## **Part 2—Establishment and constitution of the Commission**

### **5 Establishment of the Commission**

- (1) This section establishes a commission called the Australian Law Reform Commission.
- (2) The Commission:
  - (a) is a body corporate with perpetual succession; and
  - (b) is to have a common seal; and
  - (c) may acquire, hold or dispose of real and personal property; and
  - (d) may sue or be sued in its corporate name.
- (3) The Commission's common seal must be kept in such custody as the Commission directs, and must not be used except as authorised by the Commission.
- (4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the Commission's common seal on a document, and presume that the document was duly sealed.

### **6 Constitution of the Commission**

- (1) The Commission consists of:
  - (a) a President; and
  - (b) a Deputy President; and
  - (c) at least 4 other members.
- (2) The performance of the Commission's functions, and the exercise of its powers, are not affected merely because of 1 or more vacancies in its membership.

### **7 Appointment of members**

- (1) All members must be appointed by the Governor-General.
- (2) A person must not be appointed as a member unless he or she:
  - (a) is a judge or justice of a Federal Court, or of the Supreme Court of a State or Territory; or
  - (b) is, and has been for at least 5 years, a legal practitioner of the High Court, or of the Supreme Court of a State or Territory; or



- (c) is a graduate in law of a university, and has experience as a member of the academic staff of a tertiary educational institution; or
- (d) is, in the Governor-General's opinion, suitable for appointment because of the person's special qualifications, training or experience.

### **8 Full-time and part-time appointments**

- (1) The President and Deputy President must be appointed as full-time members.
- (2) The other members must be appointed either as full-time or part-time members.
- (3) If the President is or becomes the holder of a judicial office, the President may carry out any of the duties of that office.
- (4) In this section:  
*judicial office* includes the office of judge of the Supreme Court of a State or Territory.

### **9 Durations, terms and conditions of appointments**

- (1) Subject to sections 17 and 18, a member holds office for the term, not longer than 7 years, specified in his or her appointment, but is eligible for re-appointment.
- (2) A member's appointment is subject to the terms and conditions (if any) set out in it.

### **10 Appointment and service not to affect a tenure or rights of judicial office holders**

- (1) If a person who holds a judicial office is appointed as a member, the appointment does not affect, and is taken never to have affected:
  - (a) the person's tenure of that office; or
  - (b) the person's rights or privileges as the holder of that office.
- (2) If a person who holds a judicial office serves as a member, that service does not affect, and is taken never to have affected:
  - (a) the person's tenure of that office; or
  - (b) the person's rights or privileges as the holder of that office.
- (3) Any service as a member by the holder of a judicial office is taken for all purposes to be, or to have been, service as the holder of that office.

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- (4) For the purposes of this section, a person's rights and privileges as the holder of a judicial office are taken to include his or her rank, title, status, precedence, salary and allowances, as the holder of that office.

**11 Arrangements for appointment of State and Territory judges**

- (1) The Governor-General may, for the purposes of appointing a judge of the Supreme Court of a State as a member, enter into any necessary arrangement with the Governor of the State.
- (2) The Attorney-General may, for the purposes of the appointment of a judge of the Supreme Court of the Australian Capital Territory or of the Northern Territory as a member, enter into any necessary arrangement with the Chief Minister of the relevant Territory.
- (3) An arrangement may provide, among other things, for the Commonwealth to reimburse the State or Territory with respect to the services of the person to be appointed.

**12 Deputy President to act as President**

- (1) The Deputy President is to act as President:
- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; and
  - (b) during all periods when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.
- (2) The Deputy President must not continue to act for longer than 12 months during a vacancy in the office of President.
- (3) While the Deputy President is acting as President:
- (a) the Deputy President has, and may exercise, all the President's powers, and must perform all the President's functions and duties; and
  - (b) this Act, and all other relevant Acts, apply to the Deputy President as if he or she were the President.
- (4) Subject to subsection (5), while the Deputy President is acting as President, he or she must be paid, in addition to the remuneration and allowances payable to the Deputy President:
- (a) an amount equal to the difference between the remuneration payable to the Deputy President and the remuneration payable to the President; and

- (b) an amount equal to the difference between any allowance payable to the Deputy President and the corresponding allowance payable to the President; and
  - (c) if an allowance is payable to the President, but no corresponding allowance is payable to the Deputy President—the allowance payable to the President.
- (5) Paragraph (4)(a) does not apply if the Deputy President is the holder of a judicial office or a judge of the Supreme Court of a State or Territory.
- (6) Anything done by the Deputy President when purporting to act as President is not invalid merely because the occasion for the Deputy President to act had not arisen or had stopped.

### **13 Acting appointments: President and Deputy President**

- (1) The Attorney-General may appoint a full-time member (other than the Deputy President) to act as President:
- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.
- (2) The Attorney-General may appoint a full-time member (other than the President) to act as Deputy President:
- (a) during a vacancy in the office of Deputy President, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.
- (3) A person appointed under this section may only act as the President during a period if:
- (a) there is a vacancy in the office of Deputy President during that period; or
  - (b) the Deputy President is, for any reason, unable to act in the office of President during that period.
- (4) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in or in connection with the appointment; or

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- (c) the appointment had stopped having effect; or
- (d) the occasion for the person to act had not arisen or had stopped.

**14 Acting appointments: full-time members**

- (1) The Attorney-General may appoint a part-time member to act as a full-time member (other than the President or Deputy President) during any period, or during all periods, when the full-time member is, for any reason, unable to perform the functions of the office.
- (2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in or in connection with the appointment; or
  - (c) the appointment had stopped having effect; or
  - (d) the occasion for the person to act had not arisen or had stopped.

**15 Directions to perform duties on a full-time basis**

- (1) The Attorney-General may, in writing, direct a part-time member to perform the duties of his or her office on a full-time basis in the circumstances, and for the period, specified in the direction.
- (2) While a part-time member performs duties on a full-time basis in accordance with a direction, the member is to be paid the same remuneration and allowances as are payable to a full-time member.

**16 Remuneration and allowances**

- (1) A member who is not the holder of a judicial office or a judge of the Supreme Court of a State or Territory is to be paid such remuneration as the Remuneration Tribunal determines.
- (2) The member is to be paid the prescribed allowances.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**17 Termination of appointments**

- (1) The Governor-General may terminate a member's appointment for misbehaviour, or physical or mental incapacity.

- (2) The Governor-General must terminate a member's appointment if:
  - (a) the member 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 for their benefit; or
  - (b) the member fails, without reasonable excuse, to comply with section 33 or 39.
- (3) If a full-time member engages in paid employment outside the duties of the member's office without the Attorney-General's approval, the Governor-General must terminate the member's appointment.
- (4) Subsections (1), (2) and (3) do not apply to a member who is the holder of a judicial office or a judge of the Supreme Court of a State or Territory.
- (5) If a member who is the holder of a judicial office, or the office of judge of the Supreme Court of a State or Territory, stops holding that office, the Governor-General may terminate the member's appointment.

## **18 Resignations**

A member may resign from the office of member by signing a written resignation and delivering it to the Governor-General.

## **19 Leave of absence for full-time members**

- (1) Subject to section 87E of the *Public Service Act 1922*, a full-time member has the recreation leave entitlements determined by the Remuneration Tribunal.
- (2) The Attorney-General may grant the President leave of absence (except recreation leave) on such terms and conditions as to remuneration or otherwise as the Attorney-General determines.
- (3) The President may grant the Deputy President or any other full-time member leave of absence (except recreation leave) on such terms and conditions as to remuneration or otherwise as the President determines.

## **Part 3—The Commission's functions, powers and reports**

### **20 Reference to the Commission**

- (1) The Attorney-General may refer a matter to the Commission, either at the Commission's suggestion or on his or her own initiative.
- (2) The Attorney-General may alter the terms of a reference.
- (3) The Attorney-General may give the Commission directions about the order in which it is to deal with references.

### **21 The Commission's functions**

- (1) The Commission has the following functions in relation to matters referred to it by the Attorney-General:
  - (a) to review Commonwealth laws relevant to those matters for the purposes of systematically developing and reforming the law, particularly by:
    - (i) bringing the law into line with current conditions and ensuring that it meets current needs; and
    - (ii) removing defects in the law; and
    - (iii) simplifying the law; and
    - (iv) adopting new or more effective methods for administering the law and dispensing justice; and
    - (v) providing improved access to justice;
  - (b) to consider proposals for making or consolidating Commonwealth laws about those matters;
  - (c) to consider proposals for the repeal of obsolete or unnecessary laws about those matters;
  - (d) to consider proposals for uniformity between State and Territory laws about those matters;
  - (e) to consider proposals for complementary Commonwealth, State and Territory laws about those matters.
- (2) It is a function of the Commission to report to the Attorney-General on the results of any review or consideration it carries out under subsection (1), and to include in the report any recommendations it wants to make.

## **22 Interim reports**

- (1) The Commission may, before making its report on a reference, make an interim report to the Attorney-General on its work on the reference.
- (2) The Attorney-General may, before the Commission makes its report on a reference, direct it to make an interim report to the Attorney-General on its work on the reference.

## **23 Reports to be tabled**

The Attorney-General must cause each report and interim report of the Commission on a matter that is the subject of a reference to be tabled in each House of the Parliament within 15 sitting days of that House after the Attorney-General receives it.

## **24 How the Commission is to perform its functions**

- (1) In performing its functions, the Commission must aim at ensuring that the laws, proposals and recommendations it reviews, considers or makes:
  - (a) do not trespass unduly on personal rights and liberties or make the rights and liberties of citizens unduly dependent on administrative, rather than judicial, decisions; and
  - (b) are, as far as practicable, consistent with the International Covenant on Civil and Political Rights.
- (2) In performing its functions in relation to a matter, the Commission must have regard to all of Australia's international obligations that are relevant to the matter.
- (3) In formulating its recommendations, the Commission must have regard to any effect they might have on the costs of getting access to, and dispensing, justice.

## **25 The Commission's powers**

The Commission has power to do everything necessary or convenient to be done for, or in connection with, the performance of its functions.

## **26 Commission to comply with certain requirements and directions**

- (1) If a House of the Parliament, or a Parliamentary Committee, requires the Commission to give it any information about the performance of the Commission's functions, or the exercise of its powers, the Commission must comply with the requirement.

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- (2) The information that may be required under subsection (1) includes information about the Commission's expenditure or proposed expenditure.**
- (3) The Commission must comply with a direction of the Attorney-General under subsection 20(3) or 22(2).**



## **Part 4—Management, meetings and staff**

### **Division 1—Management structure**

#### **27 Board of Management**

There is to be a Board of Management of the Commission.

#### **28 Function and powers of the Board**

- (1) The Board's function is to manage the Commission and, in particular, ensure that it performs its functions effectively and economically.
- (2) The Board has power to do everything necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Anything done by the Board in the Commission's name, or on its behalf, is taken to have been done by the Commission.

#### **29 Constitution of the Board**

The Board consists of:

- (a) the President; and
- (b) the Deputy President; and
- (c) the other full-time members of the Commission.

#### **30 Meetings of the Board**

- (1) The President must convene such meetings of the Board as he or she thinks necessary for the efficient performance of its function.
- (2) The President must convene a meeting on receiving a written request to do so signed by at least 2 other Board members.
- (3) The President must preside at all meetings at which he or she is present.
- (4) If the President is not present at a meeting, the Deputy President must preside.
- (5) If the President and the Deputy President are not present at a meeting, the Board members who are present must elect one of their number to preside.
- (6) A majority of Board members constitutes a quorum for the purposes of a meeting of the Board.

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- (7) Questions arising at a meeting must be determined by a majority of votes of the Board members present and voting.
- (8) The person presiding at a meeting has a deliberative vote and, if there is an equality of votes, also has a casting vote.

**31 Conduct of meetings**

The Board may regulate proceedings at its meetings as it thinks fit. It must keep minutes of those proceedings.

**32 Delegations by the Board**

- (1) The Board may, by resolution, delegate all or any of its powers to one of its members.
- (2) The delegate is, in the exercise of a delegated power, subject to the Board's directions.
- (3) A delegation of a power:
  - (a) may be revoked by resolution of the Board, whether or not constituted by the same people that constituted it when the power was delegated; and
  - (b) continues in force despite any change in the Board's membership.

**33 Members must disclose certain interests**

- (1) A Board member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest at a meeting of the Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge, and must be recorded in the minutes of the meeting.
- (3) Unless the Board or the Attorney-General otherwise determines, the member:
  - (a) must not be present during any deliberation by the Board on the matter; and
  - (b) must not take part in any decision of the Board on the matter.
- (4) For the purposes of any determination being made under subsection (3), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates:
  - (a) must not be present during any deliberation by the Board on whether to make the determination; and

(b) must not take part in making the determination.

### **34 President to be Chief Executive Officer**

- (1) The President is the Chief Executive Officer of the Commission and is, under the Board, responsible for the management of the Commission.
- (2) Anything done in the Commission's name, or on its behalf, by the President when acting as its Chief Executive Officer and in accordance with the Board's directions, is taken to have been done by the Commission.

### **35 Delegations by the President**

The President may, in writing, delegate all or any of the President's powers to a member of the Commission, or to an employee of the Commission.

## **Division 2—Meetings and proceedings of the Commission**

### **36 Meetings of the Commission**

- (1) The President must convene such meetings of the Commission as he or she thinks necessary for the efficient performance of its functions.
- (2) The President must convene a meeting on receiving a written request to do so signed by at least 3 other members.
- (3) The President must preside at all meetings at which he or she is present.
- (4) If the President is not present at a meeting, the Deputy President must preside.
- (5) If the President and the Deputy President are not present at a meeting, the members who are present must elect one of their number to preside.
- (6) 3 members constitute a quorum for the purposes of a meeting.
- (7) Questions arising at a meeting must be determined by a majority of the votes of the members present and voting.
- (8) The person presiding at a meeting has a deliberative vote and, if there is an equality of votes, also has a casting vote.

### **37 Conduct of meetings**

The Commission may regulate proceedings at its meetings as it thinks fit. It must keep minutes of those proceedings.

### **38 Commission may inform itself in any way**

For the purposes of reviewing or considering anything that is the subject of a reference, the Commission may inform itself in any way it thinks fit.

### **39 Members must disclose certain interests**

- (1) A member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Commission must disclose the nature of the interest at a meeting of the Commission.

- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge, and must be recorded in the minutes of the meeting.
- (3) Unless the Commission or the Attorney-General otherwise determines, the member:
  - (a) must not be present during any deliberation by the Commission on the matter; and
  - (b) must not take part in any decision of the Commission on the matter.
- (4) For the purposes of any determination being made under subsection (3), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates:
  - (a) must not be present during any deliberation by the Commission on whether to make the determination; and
  - (b) must not take part in making the determination.
- (5) In this section:  
*Commission* includes a Division of the Commission  
*member* includes a member who is a member of a Division.

## **Division 3—Divisions of the Commission**

### **40 Establishment of Divisions**

- (1) The Commission may establish a Division of the Commission for the purposes of a reference.
- (2) A Division must comprise at least 3 members.
- (3) If neither the President nor the Deputy President is a member of a Division, the Commission must nominate a member who is to preside at meetings of the Division.
- (4) A Division is taken to be the Commission for the purposes of performing the Commission's functions in relation to the reference for which the Division is established.

### **41 Meetings of a Division**

- (1) A meeting of a Division must be convened by:
  - (a) the President; or
  - (b) if the President is not a member of the Division—by the Deputy President; or
  - (c) if neither the President nor the Deputy President is a member of the Division—by the person nominated under subsection 40(3).
- (2) The person responsible for convening the meetings of a Division must preside at all meetings of it at which he or she is present.
- (3) If the person referred to in subsection (2) is not present at a meeting, the members who are present must elect *one* of their number to preside.
- (4) 2 members constitute a quorum for the purposes of a meeting.
- (5) Questions arising at a meeting must be determined by a majority of the votes of the members present and voting.
- (6) The member presiding at a meeting has a deliberative vote.
- (7) If more than 2 members are present at a meeting and there is an equality of votes, the presiding member also has a casting vote.
- (8) If:
  - (a) only 2 members are present at a meeting; and

(b) they differ on a question arising at the meeting;  
the presiding member must adjourn the determination of the  
question to a meeting at which all members of the Division are  
present.

#### **42 Conduct of meetings**

A Division may regulate proceedings at its meetings as it thinks fit.  
It must keep minutes of those proceedings.

## **Division 4—Staff and consultants**

### **43 Appointment of staff**

- (1) The President may, on the Commission's behalf and with the Attorney-General's approval, appoint as staff of the Commission such persons as the President thinks necessary for the purposes of this Act.
- (2) The terms and conditions of employment of the Commission's staff are to be determined by the Board and approved by the Attorney-General.

### **44 Commission may engage consultants**

- (1) The Commission may engage persons with suitable qualifications and experience as consultants to the Commission.
- (2) The terms and conditions of the engagement of a person as a consultant are to be determined by the Commission and approved by the Board.



## **Part 5—Finance**

### **45 Money payable to the Commission**

- (1) There is payable to the Commission such money as the Parliament appropriates for the purposes of the Commission.
- (2) The Minister for Finance may give directions about the amounts in which, and the times when, money referred to in subsection (1) is to be paid to the Commission.
- (3) The Commission must prepare estimates, in such form as the Attorney-General directs, of the Commission's receipts and expenditure for each financial year and, if the Attorney-General so directs, for any other period specified by the Attorney-General.
- (4) The Commission must submit the estimates to the Attorney-General not later than the date directed by the Attorney-General.
- (5) The Commission must not expend its money except in accordance with estimates of expenditure approved by the Attorney-General.

### **46 Purchase and disposal of assets**

The Commission must not, without the Attorney-General's approval:

- (a) acquire any property, right or privilege for a consideration that is more than \$250,000 in amount or value or, if a higher amount is prescribed, the higher amount; or
- (b) dispose of any property, right or privilege if the amount or value of the consideration for the disposal, or the value of the property, right or privilege, is more than \$250,000 or, if a higher amount is prescribed, the higher amount; or
- (c) enter into a contract for the construction of a building for the Commission under which the Commission is to pay an amount of more than \$250,000 or, if a higher amount is prescribed, the higher amount; or
- (d) enter into a lease of land for longer than 10 years.

### **47 Application of Commission's money**

The Commission's money must only be applied:

- (a) in the discharge of its obligations and liabilities arising under this Act; and

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(b) in the payment of any salary or allowances payable under this Act.

**48 Application of Division 3 of Part XI of Audit Act**

It is hereby declared that the Commission is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

**49 Exemption from taxation**

The Commission is not subject to taxation under any law of the Commonwealth or of a State or Territory.

## Part 6—Miscellaneous

### 50 Protection from civil actions

- (1) An action or other proceeding for damages does not lie against the Commission in relation to anything done, or not done, in good faith:
  - (a) in the performance, or purported performance, of any of the Commission's functions; or
  - (b) in the performance, or purported performance, of any of its powers.
- (2) An action or other proceeding for damages does not lie against a person who is a member, or member of the staff, of the Commission in relation to anything done, or not done, by the person in good faith in the performance, or purported performance, of his or her duties as such a member, or member of the staff.

### 51 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 20 June 1996  
Senate on 10 September 1996]*