

# CITY OF SYDNEY ACT 1987 No. 12

NEW SOUTH WALES



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**CITY OF SYDNEY ACT 1987 No. 12**

NEW SOUTH WALES



**Act No. 12, 1987**

An Act to provide for the appointment of Commissioners to administer the City of Sydney; to confirm the removal from office of the members of the Council of the City of Sydney; and for other purposes. [Assented to 3 April 1987]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "City of Sydney Act 1987".

**Principal Act**

2. (1) The Local Government Act 1919 is referred to in this Act as the Principal Act.

(2) This Act shall be read and construed with, and as if it formed part of, the Principal Act.

**Appointment of Commissioners**

3. (1) The Governor may by proclamation appoint 3 Commissioners, who shall, in accordance with this Act, be administrators of the City of Sydney.

(2) Two of the Commissioners so appointed shall, by the instruments of their appointment, be appointed respectively as the Chief Commissioner and the Deputy Chief Commissioner.

- (3) Schedule 1 has effect with respect to the Commissioners.

**Functions of Commissioners etc.**

4. (1) On and from a day to be appointed by the Governor for the purposes of this section and notified by proclamation—

- (a) the Commissioners shall be deemed to be the Council of the City of Sydney;
- (b) the Commissioners, in the name and on behalf of the corporation, the Council of the City of Sydney, shall, in respect of the City of Sydney, have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed—
  - (i) on a council of a municipality and on the Council of the City of Sydney; and
  - (ii) on them, by or under this Act;

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- (c) the Chief Commissioner shall have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed on the mayor of a municipality and on the Lord Mayor of Sydney; and
- (d) the Commissioners shall be deemed to be aldermen of the City of Sydney for the purpose of electing councillors of the Sydney County Council, but otherwise the Commissioners shall not be regarded as being members of the Council of the City of Sydney.

(2) On that day, the Administrator of the City of Sydney then holding office as such under section 86 of the Principal Act shall cease to hold office as such.

(3) For the purposes of the exercise and discharge of their responsibilities, liabilities, rights, powers, authorities, duties and functions, the Commissioners shall hold meetings, which shall be convened by the Chief Commissioner or the Minister at least once in each month.

(4) Schedule 2 has effect with respect to the meetings of the Commissioners.

**Termination of responsibilities of Commissioners**

5. (1) On a day to be appointed by the Governor for the purposes of this section and notified by proclamation—

- (a) the persons then holding office as Commissioners shall cease to hold office as such;
- (b) no further appointments shall be made under section 3; and
- (c) section 4 (1), (3) and (4) shall cease to have effect.

(2) If there are or will be no members of the Council of the City of Sydney on that day, the Governor may by proclamation appoint an administrator as for a defaulting area and make such orders as in the circumstances the Governor may deem necessary.

(3) On or after the day appointed and notified under section 4 (1), the Governor may by proclamation—

- (a) order the compilation of fresh lists and rolls of electors for the City of Sydney;
- (b) order the holding of a fresh election of a council for the City of Sydney; and

- (c) make such further orders as in the circumstances the Governor may deem necessary,

and no election of members of the Council of the City of Sydney shall be held until so ordered by a proclamation under this subsection.

**Provisions relating to the removal of the Council**

**6. (1)** By force of this Act, and with effect on and from 26 March 1987—

- (a) the Lord Mayor and all other members of the Council of the City of Sydney are removed from office;
- (b) Sir Eric Neal is appointed as Administrator of the City of Sydney;
- (c) the said Administrator shall have the powers, duties and liabilities of the Council of the City of Sydney; and
- (d) Sir Eric Neal is appointed a councillor of the Sydney County Council, as if duly elected at an extraordinary election to be the councillor elected to represent the First Constituency, and the person holding office immediately before 26 March 1987 as councillor elected to represent the First Constituency ceases to hold that office.

(2) Without limiting subsection (1), the proclamation published in Gazette No. 59 of 26 March 1987 on page 1555 in relation to the Council of the City of Sydney is, to the extent (if any) of any invalidity, validated with effect on and from 26 March 1987.

(3) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in connection with—

- (a) the validity, making or publication of the proclamation;
- (b) any recommendation, advice or decision for the making or publication of the proclamation;
- (c) the removal of the Lord Mayor and all other members of the Council of the City of Sydney from office;
- (d) the appointment of Sir Eric Neal as Administrator of the City of Sydney;
- (e) the conferring and imposing of the powers, duties and liabilities of the Council of the City of Sydney on Sir Eric Neal as Administrator;

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(f) the appointment or election of Sir Eric Neal as the councillor of the Sydney County Council to represent the First Constituency, or the vacation of office by the person holding office immediately before 26 March 1987 as councillor elected to represent the First Constituency; or

(g) any associated matters.

(4) This section has effect notwithstanding that any such proceedings were commenced before the date of assent to this Act, and has effect notwithstanding any decision in any such proceedings.

(5) Any such proceedings pending in any court immediately before the date of assent to this Act are terminated.

(6) Except in so far as the parties to any such proceedings (being proceedings pending immediately before the date of assent to this Act) otherwise agree, the costs of or incidental to the proceedings incurred by a party to the proceedings shall be borne by the party, and shall not be the subject of any contrary order of any court.

(7) It is declared that there was no obligation to afford any members or employees of the Council of the City of Sydney or any other persons an opportunity to be heard, or to give reasons, in connection with any of the matters referred to in subsection (3) (a)-(g).

(8) Anything may be done under the Principal Act or any other Act or law (whether before or after the commencement of this Act) as if paragraphs (a)-(d) of subsection (1) were embodied in a proclamation duly made under section 86 of the Principal Act and published in the Gazette on 26 March 1987.

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SCHEDULE 1

(Sec. 3(3))

THE COMMISSIONERS

**Acting Commissioners**

1. (1) During the illness or absence of the Chief Commissioner, the Deputy Chief Commissioner shall act in the office of the Chief Commissioner, and, while so acting, shall have and may exercise and discharge all the responsibilities, liabilities, rights, powers, authorities, duties and functions of the Chief Commissioner.

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(2) The Governor may, from time to time, appoint a person to act in the office of a Commissioner during the illness or absence of the Commissioner, and the person, while so acting, shall have and may exercise and discharge all the responsibilities, liabilities, rights, powers, authorities, duties and functions of the Commissioner and be deemed to be a Commissioner.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) For the purposes of this clause—

(a) a vacancy in the office of a Commissioner shall be deemed to be an absence from office of the Commissioner; and

(b) a Commissioner shall be deemed to be absent from his or her office as Commissioner during any period when the Commissioner acts in the office of another Commissioner.

(5) No person shall be concerned to inquire whether any occasion has arisen requiring or authorising the Deputy Chief Commissioner to act in the office of the Chief Commissioner or any person to act in the office of a Commissioner.

(6) All acts or things done or omitted to be done by the Deputy Chief Commissioner or such a person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done by the Chief Commissioner or a Commissioner, as the case may be.

**Remuneration of Commissioners**

2. (1) Each of the Commissioners is entitled to receive such remuneration and allowances as the Governor may from time to time determine in respect of them.

(2) The remuneration and allowances shall be paid out of the General Fund of the Council of the City of Sydney.

**Effect of certain other Acts**

3. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a Commissioner and a Commissioner is not, as a Commissioner, subject to that Act.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a Commissioner or from accepting and retaining any remuneration payable to the person under this Act.

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(3) The office of a Commissioner shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

(4) For the purposes of section 94 of the Superannuation Act 1916, a Commissioner shall be deemed not to be employed in the service of the State.

**Oath of allegiance and declaration of office**

4. (1) Each Commissioner shall, before entering on the duties of office, and any person appointed under clause 1 to act as a Commissioner shall, before so acting, take an oath of allegiance under and in accordance with the provisions of the Oaths Act 1900 and shall make and subscribe the following declaration of office:

I . . . . ., having been appointed to [act in] the office of Commissioner under the City of Sydney Act 1987, do hereby declare that I will truly and faithfully fulfil the duties of that office according to the best of my judgment and ability.

(2) If a person, after having been afforded an opportunity of taking the oath and making and subscribing the declaration, neglects to do so for—

- (a) the period of one month after the date on which the person is appointed; or
- (b) such extended period after that date as the Governor may appoint under this clause,

the person shall, at the end of that period of one month or that extended period, as the case may be, be deemed to have declined to accept office.

(3) If the Governor is satisfied that the delay in taking the oath is unavoidable, the Governor may extend the time for taking the oath and making and subscribing the declaration for any period not exceeding one month.

**Filling of vacancy in office of Commissioner**

5. If the office of any Commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

6. (1) A Commissioner shall be deemed to have vacated office if the Commissioner—

- (a) dies;
- (b) without leave granted by the Minister, absents himself or herself from 3 consecutive meetings, convened under section 4, of the Commissioners;
- (c) 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;



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- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
  - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
  - (f) resigns the office by instrument in writing addressed to the Governor; or
  - (g) is removed from office by the Governor.
- (2) The Governor may remove a Commissioner from office.

**Liability of Commissioners**

7. No matter or thing done by the Commissioners or any person acting under the direction of the Commissioners shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a Commissioner or a person so acting personally to any action, liability, claim or demand.

## SCHEDULE 2

(Sec. 4(4))

## MEETINGS OF THE COMMISSIONERS

**General procedure**

1. The procedure for the calling of meetings of the Commissioners and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Commissioners.

**Application of Ordinance No. 1 (Council Meetings and General Business)**

2. Ordinance No. 1 under the Principal Act applies to and in respect of the Commissioners in the same way as it applies to and in respect of members of a council, other than such of the provisions of the Ordinance as the Commissioners determine by order in writing should be excluded.

**Quorum**

3. The quorum for a meeting of the Commissioners is 2 Commissioners.

**Presiding Commissioner**

4. (1) The Chief Commissioner shall preside at a meeting of the Commissioners.

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SCHEDULE 2—*continued*MEETINGS OF THE COMMISSIONERS—*continued*

(2) At a meeting of the Commissioners, the Chief Commissioner has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

5. A decision supported by a majority of the votes cast at a meeting of the Commissioners at which a quorum is present shall be the decision of the Commissioners.

**Minutes**

6. The Commissioners shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Commissioners.