

Chapter 33 Removal of Judicial Officers and Independent Statutory Officers

33.1 Removal of Judicial Officers

Under section 53(2) of the *Constitution Act 1902*, the holder of a judicial office is able to be removed from the office by the Governor, on an address from both Houses of Parliament in the same session. A judicial officer may be removed on the ground of proved misbehaviour or incapacity. In addition to the provisions of section 53, section 41(1) of the *Judicial Officers Act 1986*, also requires that a judicial officer may not be removed from office in the absence of a report from the Conduct Division of the Judicial Commission to the Governor. The report must set out the Division's opinion as to whether the matters referred to in the report could justify Parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity.

In 1998, a judicial officer, who had been the subject of a report of the Conduct Division, dated 15 May 1998, was ordered to appear before the Bar of the House in the Legislative Council. Justice Bruce subsequently appeared on 16 June 1998 and addressed members of the Legislative Council in relation to the report of the Conduct Division and to show cause why he should not be removed from office.¹

A question on notice was asked of the Premier on what process and procedures the Premier intended to put in place within the Parliament, and particularly the Legislative Assembly, to deal with the report from the Judicial Commission concerning complaints against Justice Bruce. The Premier replied that, if the Upper House carried a motion that an address be sent to the Governor requesting the removal of Justice Bruce, the resolution would come to the lower House for consideration and the judge would then be able to address members.

A motion was subsequently moved in the Legislative Council that (a) an address be adopted and presented to his Excellency the Governor seeking the removal of a judge of the Supreme Court under section 53 of the Constitution Act; and (b) that a message be sent to the Legislative Assembly requesting that they adopt an address in similar terms. However, the motion was resolved in the negative (Ayes 16, Noes 24).²

33.2 Removal of Independent Statutory Officers

A number of holders of independent statutory offices are able to be removed by the Governor following an address from both Houses.³ These include:

- The Electoral Commissioner;
- The Ombudsman;
- The Auditor-General;
- The Commissioner of the Independent Commission Against Corruption;
- The Inspector of the Independent Commission Against Corruption;

¹ Legislative Council PD 27/05/1998, pp. 5207-8; PD 16/06/1998, pp. 5865-6.

² Minutes of the Proceedings of the Legislative Council, 25/05/2000, p. 601-2.

³ Other independent statutory officers can be removed by the Governor without any involvement from the Parliament.

- The Commissioner of the Police Integrity Commission; and
- The Inspector of the Police Integrity Commission.

The conduct for which such officers may be removed is usually noted in the legislation establishing the office and includes incapacity, incompetence and misbehaviour.

There have not been any occasions where an independent statutory officer has been removed by the Governor following an address of both Houses. However, if the occasion should arise it is important that the House ensure procedural fairness is given to an independent statutory officer before a resolution is passed by the House to remove that officer. This would involve for example inviting the officer to address the House or both Houses to answer questions.⁴

⁴ See *Annetts v McCann* (1990) 170 CLR 596 where the High Court emphasised that where a statute confers on a person a power or authority to make decisions or "findings" in an inquiry which may affect an individual's rights, interest or reputation, the rules of natural justice regulate the exercise of that power.