

Judicial Officers Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

(a) to amend the *Judicial Officers Act 1986* so as:

(i) to make further provision with respect to the handling of complaints against judicial officers and the investigation of judicial officers who have suspected impairments, and

(ii) to clarify the powers of the Judicial Commission to enter into certain kinds of contractual arrangements, and

(iii) to include persons who are acting in judicial office as judicial officers for the purposes of that Act, and

(iv) to make other minor, consequential and ancillary amendments, and

(b) to amend the *Judges' Pensions Act 1953* so as to ensure that any leave without pay that is taken by a judge is not counted towards the judge's period of service for the purpose of calculating the judge's pension entitlements.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Judicial Officers Act 1986* set out in Schedules 1 and 2.

Clause 4 amends the *Judges' Pensions Act 1953* to give effect to the object referred to in paragraph (b) of the Overview above.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Principal amendments

Suspected impairment of judicial officers

Schedule 1 [18] inserts a new Part 6A. The proposed Part contains the following provisions:

(a) a provision defining certain expressions for the purposes of the Part (**proposed section 39A**),

(b) a provision empowering the relevant head of jurisdiction to request the Judicial Commission to investigate a judicial officer's suspected impairment (**proposed section 39B**),

(c) a provision enabling the Judicial Commission to conduct a preliminary examination of a judicial officer's suspected impairment (**proposed section 39C**),

(d) a provision enabling the Judicial Commission to require a judicial officer to undergo a medical or psychological examination (**proposed section 39D**),

(e) a provision requiring the Judicial Commission, if it is of the opinion that an impairment exists that may affect a judicial officer's performance of judicial or official duties, to refer the question of the judicial officer's suspected impairment to the Commission's Conduct Division (**the Conduct Division**) or to the relevant head of jurisdiction or, if it is not of that opinion, to summarily dismiss the request (**proposed section 39E**),

(f) a provision requiring the Conduct Division to examine any matter that is referred to it under proposed section 39E, and giving it the same functions in relation to its examination of the matter as it has in relation to the examination

of a complaint (**proposed section 39F**),
(g) a provision requiring the Conduct Division, if it is of the opinion that a judicial officer is physically or mentally unfit to exercise efficiently the functions of a judicial office, to present a report to the Governor as to its conclusions or, if it is not of that opinion, to send a report as to its conclusions to the relevant head of jurisdiction (**proposed section 39G**).

Schedule 1 [7] substitutes section 14 as a consequence of the enactment of the proposed Part.

Referral of complaints back to head of jurisdiction

Schedule 1 [12] substitutes section 28. The proposed section enables the Conduct Division not only to form an opinion that a substantiated complaint could justify parliamentary consideration of the judicial officer's removal from judicial office, as is presently the case, but also to form an opinion that, although substantiated, the complaint does not justify such consideration and may therefore be referred to the relevant head of jurisdiction.

Action by heads of jurisdiction following investigation of complaints and formal requests

Schedule 1 [19] inserts a new section 43AA. The proposed section applies if a reference or report contains recommendations from the Judicial Commission or the Conduct Division as to how a complaint against a judicial officer, or as to how a judicial officer's impairment, should be dealt with. Under the proposed section, the head of jurisdiction will be empowered to give effect to any such recommendation by counselling the judicial officer or by taking other appropriate steps in relation to the administration of the court or courts for which he or she is responsible.

Judicial Commission guidelines

Schedule 1 [2] and [3] amend section 10 (1) so as to enable guidelines under section 10 to be formulated not only for the Conduct Division, as is currently the case, but also for the Judicial Commission itself.

Schedule 1 [4] omits section 10 (2) and (3) and replaces those subsections with a new subsection (2) that extends the matters for which guidelines for the Conduct Division may be made.

Hearings before the Conduct Division

Schedule 1 [11] amends section 24 so as to give the Conduct Division unfettered discretion as to whether a hearing before it is to be held in public or in private.

Consideration of matters not raised by complaint

Schedule 1 [15] and [16] amend section 31 so as to allow not only the Conduct Division, as is presently the case, but also the Judicial Commission to treat a complaint as extending to other matters arising in the course of the complaint's being dealt with.

Substantiation of complaints

Schedule 1 [8] and [9] amend sections 20 and 21 to make it clear that the Judicial Commission may dismiss a complaint, or refer a complaint to the relevant head of jurisdiction and not to the Conduct Division, even if the complaint appears to be substantiated.

Psychological examinations

Schedule 1 [17] amends section 34 so as to enable the Conduct Division, when investigating a complaint against a judicial officer, to request the judicial officer to undergo a psychological examination. Failure to comply with such a request will allow the Conduct Division to form an opinion that parliamentary consideration of the removal of the judicial officer from office is justified, as is the case in relation to a judicial officer's failure to undergo a medical examination.

Reports to Minister

Schedule 1 [10] inserts a new section 21A. The proposed section requires the Minister to be notified of the Judicial Commission's decision with respect to any

matter that the Minister has referred to it under section 16.

Reports to the Governor

Schedule 1 [13] and [14] amend section 29 so as to require copies of a report on a complaint against a judicial officer that is presented to the Governor to be furnished both to the Minister and to the complainant.

Annual reports

Schedule 1 [20] amends section 49 so as to clarify the annual reporting requirements in relation to complaints that are summarily dismissed. The new requirement makes it clear that the report must state how many complaints have been dismissed in accordance with each of the criteria for dismissal set out in section 20 (1).

Contractual arrangements

Schedule 1 [5] amends section 11 so as to enable the Judicial Commission to enter into and carry out certain contractual arrangements, including arrangements for the provision by the Commission of property and services that comprise or make use of information technology, expertise or other things developed by the Commission in the exercise of its functions.

Schedule 1 [6] further amends section 11 so as to enable the Judicial Commission to exercise its liaison and contractual functions both within New South Wales and elsewhere.

Definition of “judicial officer”

Schedule 1 [1] amends section 3 so as to ensure that the *Judicial Officers Act 1986* extends to acting appointments to a judicial office, whether made with or without a specific term.

Savings and transitional provisions

Schedule 1 [21] amends clause 1 of Schedule 6 so as to enable regulations of a savings or transitional nature to be made in connection with the enactment of the proposed Act.

Schedule 1 [22] inserts a new Part 4 into Schedule 6. The proposed Part contains a clause that applies the proposed Part 6A (to be inserted by Schedule 1 [18]) to existing impairments.

Schedule 2 Amendments relating to classification of complaints

Complaints are currently required to be classified as “minor” or “serious”, and the procedure for dealing with complaints varies according to their classification.

Schedule 2 repeals sections 19, 27 and 30, and amends sections 25, 29, 34 and 49, so as to abolish the requirement for complaints to be classified and omit the variations in procedure.