

JUDICIAL OFFICERS AMENDMENT BILL

PROOF

28 MARCH 2012

Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.03 a.m.]: I move:

That this bill be now agreed to in principle.

The Judicial Officers Amendment Bill 2012 will amend the Judicial Officers Act 1986 to enable the Attorney General to be provided with certain information about the existence, nature, progress and outcome of complaints before the Judicial Commission. The Act currently prohibits a member or officer of the Judicial Commission from disclosing any information in relation to a complaint before the commission, except in some limited circumstances. The Attorney General is generally unable to obtain any information about the existence of a complaint about a judicial officer before the commission. The amendment aims to ensure that certain limited information can be provided to the Attorney General. It will also ensure that the Attorney is aware of any complaints serious enough to have been referred to the Conduct Division of the Judicial Commission.

The Judicial Officers Act 1986 establishes the Judicial Commission of New South Wales and confers on it functions relating to sentencing consistency, judicial education and various other matters. The Act also provides for the examination of complaints against judges and other judicial officers and provides procedures for suspension, removal and retirement in certain circumstances. The Act enables the commission to receive a complaint about a judicial officer by a member of the public or the referral of a matter by the Attorney General, and that is then treated like a complaint. The Act sets out the procedure that must be followed by the commission upon receipt of a complaint. The Act requires the commission to conduct a preliminary examination of complaints that may be summarily dismissed, referred to the head of jurisdiction or, for more serious matters, referred to the Conduct Division.

If the commission refers a matter to the Conduct Division for investigation, the Conduct Division can decide that a complaint is wholly or partly substantiated and that the matter could justify parliamentary consideration of the removal of the judicial officer from office. The commission must then present a report to the Governor setting out the division's finding of fact and opinion and also provide a copy of the report to the Attorney General, who must then lay it before both Houses of Parliament.

Section 37 of the Act prohibits a member or officer of the commission or Conduct Division, or a member of a committee of the commission from disclosing any information in relation to a complaint except in some limited circumstances, including with the consent of the person

from whom the information was obtained, in connection with the administration or execution of the Act, for the purposes of legal proceedings arising out of the Act, or for another lawful excuse. The Act provides that when the Attorney General refers a matter relating to a judicial officer to the commission under section 16 the commission must report to the Attorney General whether the matter has been summarily dismissed, referred to the Conduct Division or referred to the relevant head of jurisdiction. However, the commission is under no obligation to provide, and is in fact prevented from providing, the Attorney General with any information about the outcome of complaints about a judicial officer by a member of the public except in those limited circumstances.

The proposed amendment will enable the Attorney General to seek and be provided with basic information from the commission about whether a judicial officer is the subject of any complaint and about the progress or resolution of that complaint. The amendment will enable the commission to disclose to the Attorney General whether a complaint has been made about a judicial officer, when a complaint was made and when the alleged matter occurred, the subject matter of the complaint, the stage of the procedure for dealing with complaint that the complaint has reached, the manner in which the complaint was disposed of—that is, whether it has been summarily dismissed, referred to the Conduct Division, referred to the relevant head of jurisdiction or dismissed by Conduct Division—and other information that the commission considers relevant.

If the complaint or referral has not been referred to the Conduct Division for examination, the commission will have a discretion not to disclose any information about the complaint or referral to the Attorney General if it considers that it is not in the public interest to do so. If the complaint or referral has been referred to the Conduct Division, the commission will be required to disclose this to the Attorney General. The commission will be required also to notify the Attorney General when the complaint is disposed of and the manner in which it was disposed of. The commission will not be required to provide the Attorney with details of the examination or investigation of a complaint by the commission.

Of concern is the inability of the Attorney General to obtain information about complaints before the commission when the existence of a complaint about a judicial officer is already in the public domain. Complainants can inform the media that they have made a complaint about a judicial officer and provide information about the substance of the complaint. Particular incidents involving judicial officers may be reported in the media by court reporters. As the Attorney General is unable to obtain any information from the commission, the Attorney General cannot advise if a complaint is being considered or has been determined by the commission. The Attorney General cannot provide any clarification if there is a misrepresentation. Under the Act the commission itself also cannot respond to such media reports and cannot confirm whether a matter or complaint was received and whether it was resolved. This lack of transparency can undermine public confidence in the Judicial Commission.

Judicial independence and the separation of legislative, Executive and judicial power are

important components of the justice system and the rule of law. It is important that the Judicial Commission in its role of receiving and considering complaints about judicial officers is completely independent. It was for this reason that it was established as a statutory corporation with its own independent staff. The commission conducts its preliminary examinations and inquiries in private as far as is practicable and, as mentioned, has limited reporting requirements. Parliamentary involvement occurs only when the Conduct Division forms the opinion that a matter could justify parliamentary consideration of the removal from office of a judicial officer and presents a report to the Governor of its findings.

This amendment is intended to enable the Attorney General to have access to information in order to advise if a complaint is being considered by the commission or has been determined by the commission, particularly when a report of a complaint about a judicial officer is already in the public domain. The proposed amendment does not impinge on the independence of the commission, and its ability to deal with complaints according to the Act will not be limited or affected in any way. The proposed amendment preserves the independence of the judiciary and the commission while allowing the Attorney General access to basic information about the existence of complaints to the commission, their progress and outcomes. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.