

JUDICIAL OFFICERS ACT 1986 No. 100

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—TENURE OF JUDICIAL OFFICE

4. Tenure of judicial office

PART 3—THE JUDICIAL COMMISSION

5. The Commission
6. Staff of the Commission
7. Delegation

PART 4—FUNCTIONS OF THE COMMISSION

8. Sentencing
9. Judicial education
10. Relationship with Conduct Division
11. Other functions of the Commission
12. Committees

PART 5—THE CONDUCT DIVISION

13. The Conduct Division
14. Functions of the Conduct Division

PART 6—COMPLAINTS AGAINST JUDICIAL OFFICERS

DIVISION 1—*Making of complaints*

15. Complaints
16. References by Minister
17. Manner of making complaints

DIVISION 2—*Preliminary examination of complaints*

18. Preliminary examination
19. Action following preliminary examination
20. Summary dismissal of complaints
21. Reference of complaint to Conduct Division or head of jurisdiction

DIVISION 3—*The Conduct Division*

22. Constitution of Conduct Division
23. Examination of complaint by Conduct Division
24. Hearings by Conduct Division
25. Powers of Conduct Division concerning evidence
26. Dismissal of complaint by Conduct Division
27. Substantiation of minor complaint
28. Substantiation of serious complaint
29. Reports

DIVISION 4—*Miscellaneous*

30. Classification of complaints
31. Extension or partial dismissal of complaint
32. Non-finalisation of certain matters
33. Cases where non-judicial officers involved
34. Medical examination
35. Referral of complaint
36. Release of information
37. Disclosure of information by members or officers of Commission
38. Vexatious complainants
39. Allowances to witnesses

PART 7—SUSPENSION AND REMOVAL OF JUDICIAL OFFICERS

40. Suspension of judicial officers
41. Removal of judicial officers
42. Functions of suspended judicial officers
43. Appropriate authorities to suspend, etc.

PART 8—RETIREMENT OF JUDICIAL OFFICERS

44. Retirement of judicial officers

PART 9—MISCELLANEOUS

45. Alternate members of Commission
46. Acting judicial members of Commission
47. Counsel assisting Commission or Conduct Division
48. Liability for proceedings
49. Annual report
50. Remuneration
51. Shortened references to Commission
52. Proceedings for offences
53. Operation of certain other Acts
54. Regulations
55. Repeals

SCHEDULE 1—PROVISIONS RELATING TO THE APPOINTED MEMBERS OF THE COMMISSION

SCHEDULE 2—PROVISIONS RELATING TO THE PROCEDURE OF THE
COMMISSION
SCHEDULE 3—PROVISIONS RELATING TO THE PROCEDURE OF THE
CONDUCT DIVISION
SCHEDULE 4—REPEALS

JUDICIAL OFFICERS ACT 1986 No. 100

NEW SOUTH WALES



Act No. 100, 1986

An Act relating to the tenure of judicial office; to constitute a Judicial Commission of New South Wales; to confer on the Commission functions relating to sentencing consistency, judicial education and certain other matters; to provide for the examination of complaints against Judges and other judicial officers; to provide for their suspension, removal and retirement in certain circumstances; and for other purposes. [Assented to 18 November 1986.]

Judicial Officers 1986

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:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Judicial Officers Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Chairperson" means the Chairperson of the Conduct Division;

"Commission" means the Judicial Commission of New South Wales constituted by this Act;

"complaint" means a complaint under Part 6 about a judicial officer;

"Conduct Division" means the Conduct Division of the Commission;

"judicial officer" means—

- (a) a Judge or Master of the Supreme Court;
- (b) a Member of the Industrial Commission;
- (c) a Judge of the Land and Environment Court;
- (d) a Judge of the District Court;
- (e) a Judge of the Compensation Court; or
- (f) a Magistrate;

"legal practitioner" means a barrister or solicitor of the Supreme Court;

Judicial Officers 1986

“Magistrate” includes a special magistrate, a licensing magistrate and an industrial magistrate;

“President” means the President of the Commission;

“regulations” means regulations under this Act.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to the Chief Justice or the holder of any other judicial office includes a reference to an Acting Chief Justice or a person duly appointed to act in that other office.

(4) In this Act, a reference to the Industrial Commission or the Compensation Court is a reference to the Industrial Commission of New South Wales or the Compensation Court of New South Wales.

(5) In this Act, a reference to the relevant head of jurisdiction is a reference to—

- (a) the Chief Justice, in relation to a Judge or Master of the Supreme Court;
- (b) the President of the Industrial Commission, in relation to a Member of the Industrial Commission;
- (c) the Chief Judge of another court, in relation to a Judge of the other court; or
- (d) the Chief Magistrate, in relation to a Magistrate.

(6) In this Act, all references to the Governor are references to the Governor with the advice of the Executive Council.

(7) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

PART 2

TENURE OF JUDICIAL OFFICE

Tenure of judicial office

4. (1) Subject to this Act, every judicial officer remains in office during ability and good behaviour.

(2) A judicial officer may not be suspended or removed from office except by or in accordance with this or another Act of Parliament.

(3) This section does not apply to a person who is merely acting in a judicial office, and does not affect the provisions of any other Act relating to the vacation of office by judicial officers.

PART 3

THE JUDICIAL COMMISSION

The Commission

5. (1) There is constituted by this Act a commission to be called the "Judicial Commission of New South Wales".

(2) The Commission shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) The Commission shall consist of 8 members, of whom—

- (a) 6 are official members; and
- (b) 2 are appointed members, who shall be appointed by the Governor on the nomination of the Minister.

(4) The official members are—

- (a) the Chief Justice of the Supreme Court;
- (b) the President of the Industrial Commission;
- (c) the Chief Judge of the Land and Environment Court;
- (d) the Chief Judge of the District Court;

Judicial Officers 1986

- (e) the Chief Judge of the Compensation Court; and
- (f) the Chief Magistrate.

(5) Of the appointed members—

- (a) one shall be a legal practitioner nominated following consultation by the Minister with the President of the New South Wales Bar Association and the President of the Law Society of New South Wales; and
- (b) one shall be a person who, in the opinion of the Minister, has high standing in the community.

(6) The Chief Justice is President of the Commission.

(7) Schedule 1 has effect with respect to the appointed members of the Commission.

(8) Schedule 2 has effect with respect to the procedure of the Commission.

Staff of the Commission

6. (1) A Secretary and such other staff as may be necessary to enable the Commission to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Commission may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(3) For the purposes of this Act, a person who is employed for the purposes of subsection (1) or whose services are made use of under subsection (2) is an officer of the Commission.

Delegation

7. (1) The Commission may delegate to a member, officer or committee of the Commission the exercise of any of its functions.

(2) This section does not authorise—

- (a) the delegation of any function relating to complaints, except to a committee referred to in section 12 (2); or
- (b) the delegation of this power of delegation.

(3) A delegation—

- (a) shall be evidenced by an instrument signed by the President or another member authorised by the Commission for the purpose;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Commission.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Commission.

(6) A delegation does not prevent the exercise of a function by the Commission.

(7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

PART 4

FUNCTIONS OF THE COMMISSION

Sentencing

8. (1) The Commission may, for the purpose of assisting courts to achieve consistency in imposing sentences—

- (a) monitor or assist in monitoring sentences imposed by courts; and
- (b) disseminate information and reports on sentences imposed by courts.

(2) Nothing in this section limits any discretion that a court has in determining a sentence.

Judicial Officers 1986

(3) In this section, "sentence" includes any order or decision of a court consequent on a conviction for an offence or a finding of guilt in respect of an offence.

Judicial education

9. (1) The Commission may organise and supervise an appropriate scheme for the continuing education and training of judicial officers.

(2) In organising such a scheme, the Commission shall—

- (a) endeavour to ensure that the scheme is appropriate for the judicial system of the State, having regard to the status and experience of judicial officers;
- (b) invite suggestions from and consult with judicial officers as to the nature and extent of an appropriate scheme;
- (c) have regard to the differing needs of different classes of judicial officers and give particular attention to the training of newly appointed judicial officers; and
- (d) have regard to such other matters as appear to the Commission to be relevant.

Relationship with Conduct Division

10. (1) In addition to its functions under Part 6 in relation to complaints—

- (a) the Commission may formulate guidelines to assist the Conduct Division in the exercise of its functions; and
- (b) the Commission shall monitor in a general way the activities of the Conduct Division.

(2) Without limiting what may be included in the guidelines, they may include criteria for consideration by the Conduct Division in deciding—

- (a) whether to dismiss a complaint; or
- (b) whether to reclassify a complaint as minor or serious.

(3) The Conduct Division is not obliged to act in conformity with any guidelines of the Commission.

Other functions of the Commission

11. Other functions of the Commission are—
- (a) to give advice to the Minister on such matters as the Commission thinks appropriate; and
 - (b) to liaise with persons or organisations in connection with any of its functions.

Committees

12. (1) The Commission may establish committees to assist it in connection with the exercise of any of its functions.

(2) A committee dealing with any aspect of complaints must consist entirely of members of the Commission, at least one of whom must be an appointed member.

(3) It does not matter that any or all of the members of any other committee are not members of the Commission.

(4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Commission or (subject to any determination of the Commission) by the committee.

PART 5**THE CONDUCT DIVISION****The Conduct Division**

13. (1) There shall be a Conduct Division of the Commission.
- (2) The Conduct Division shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Conduct Division may be exercised by 3 persons in accordance with Part 6, and not otherwise.
- (4) Schedule 3 has effect with respect to the procedure of the Conduct Division.

Judicial Officers 1986

Functions of the Conduct Division

14. The functions of the Conduct Division are to examine and to deal with complaints referred to it by the Commission.

PART 6**COMPLAINTS AGAINST JUDICIAL OFFICERS****DIVISION 1—*Making of complaints*****Complaints**

15. (1) Any person may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer.

(2) The Commission shall not deal with a complaint (otherwise than to summarily dismiss it under section 20) unless it appears to the Commission that—

- (a)** the matter, if substantiated, could justify parliamentary consideration of the removal of the judicial officer from office; or
- (b)** although the matter, if substantiated, might not justify parliamentary consideration of the removal of the judicial officer from office, the matter warrants further examination on the ground that the matter may affect or may have affected the performance of judicial or official duties by the officer.

(3) The Commission shall not deal with a complaint (otherwise than to summarily dismiss it under section 20) about—

- (a)** a matter arising before the appointment of the judicial officer to the judicial office then held; or
- (b)** a matter arising before the commencement of this Act,

unless it appears to the Commission that the matter, if substantiated, could justify parliamentary consideration of the removal of the officer from office.

(4) A complaint may be made in relation to a judicial officer's competence in performing judicial or official duties, so long as the Commission is satisfied as to the matters mentioned in subsection (2) (a) or (b).

Judicial Officers 1986

(5) A complaint may be made in relation to a matter, and be dealt with, even though the matter is already or has been the subject of investigation or other action by the Commission or Conduct Division or by any other body or person.

(6) Without limiting the foregoing, a complaint may be made in relation to a matter, and be dealt with, even though the matter constitutes or may constitute a criminal offence (whether or not dealt with, or being dealt with, by a court).

(7) The Commission or Conduct Division may adjourn consideration of any matter if it is being dealt with by a court or for any other appropriate reason.

References by Minister

16. (1) The Minister may refer any matter relating to a judicial officer to the Commission.

(2) A reference under this section shall be treated as a complaint under this Act.

Manner of making complaints

17. (1) A complaint shall be made in accordance with the regulations.

(2) A complaint must be in writing and must identify the complainant and the judicial officer concerned.

*DIVISION 2—Preliminary examination of complaints***Preliminary examination**

18. (1) The Commission shall conduct a preliminary examination of a complaint.

(2) In conducting the preliminary examination, the Commission may initiate such inquiries into the subject-matter of the complaint as it thinks appropriate.

(3) The examination or inquiries shall, as far as practicable, take place in private.

Judicial Officers 1986

Action following preliminary examination

19. Following the preliminary examination, the Commission shall—

- (a) summarily dismiss the complaint;
- (b) classify the complaint as minor; or
- (c) classify the complaint as serious.

Summary dismissal of complaints

20. (1) The Commission shall summarily dismiss the complaint if it is of the opinion that—

- (a) the complaint is one that it is required not to deal with;
- (b) the complaint is frivolous, vexatious or not in good faith;
- (c) the subject-matter of the complaint is trivial;
- (d) the matter complained about occurred at too remote a time to justify further consideration;
- (e) in relation to the matter complained about, there is or was available a satisfactory means of redress or of dealing with the complaint or the subject-matter of the complaint;
- (f) without limiting paragraph (e), the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights;
- (g) the person complained about is no longer a judicial officer; or
- (h) having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.

(2) In deciding whether or not to summarily dismiss a complaint, the Commission may have regard to such matters as it thinks fit.

Reference of complaint to Conduct Division or head of jurisdiction

21. (1) A complaint made to the Commission in accordance with this Act shall, if it is not summarily dismissed, be referred to the Conduct Division.

(2) The Commission may however refer a minor complaint to the relevant head of jurisdiction if the Commission thinks that the complaint does not warrant the attention of the Conduct Division.

DIVISION 3—*The Conduct Division***Constitution of Conduct Division**

22. (1) The Commission shall appoint a panel of 3 persons to be members of the Conduct Division for the purpose of exercising the functions of the Division in relation to a complaint referred to the Division.

(2) The 3 persons shall be judicial officers, but one may be a retired judicial officer.

(3) One of the judicial officers shall be appointed by the Commission as Chairperson of the Conduct Division.

(4) It does not matter that any or all of the members of the Conduct Division are not members of the Commission.

(5) More than one panel may be constituted, and sit, at any time to deal with different complaints.

(6) One panel may deal with 2 or more complaints, if the Commission considers it appropriate in the circumstances.

Examination of complaint by Conduct Division

23. (1) The Conduct Division shall conduct an examination of a complaint referred to it.

(2) In conducting the examination, the Conduct Division may initiate such investigations into the subject-matter of the complaint as it thinks appropriate.

(3) The examination or investigations shall, as far as practicable, take place in private.

Hearings by Conduct Division

24. (1) The Conduct Division may hold hearings in connection with the complaint.

(2) If the Conduct Division decides to hold a hearing in connection with a serious complaint, the hearing shall take place in public, unless the Division (if satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason) directs that the hearing take place in private.

Judicial Officers 1986

(3) If the Conduct Division decides to hold a hearing in connection with a minor complaint, the hearing shall take place in private.

(4) If, at a hearing that takes place in public, the Conduct Division is satisfied that it is desirable to do so (because of the confidential nature of any evidence or matter or for any other reason), the Division may direct that the hearing or a part of the hearing take place in private.

(5) If a hearing or part of a hearing is to take place in private, the Conduct Division may give directions as to the persons who may be present.

(6) At a hearing—

- (a) the judicial officer complained about may be represented by a legal practitioner; and
- (b) if, by reason of the existence of special circumstances, the Conduct Division consents to any other person being represented by a legal practitioner—the person may be so represented.

(7) At a hearing—

- (a) counsel assisting the Conduct Division;
- (b) any person authorised by the Division to appear before it at the hearing; or
- (c) any legal practitioner representing a person at the hearing pursuant to subsection (6),

may, so far as the Division thinks appropriate, examine or cross-examine any witness on any matter that the Division considers relevant.

Powers of Conduct Division concerning evidence

25. (1) For the purposes of a hearing in connection with a serious complaint—

- (a) the Conduct Division and the Chairperson have the functions, protections and immunities conferred by the Royal Commissions Act 1923 on commissioners and the chairman of a commission appointed under that Act; and
- (b) that Act, with any necessary adaptations, applies to any witness summoned by or appearing before the Division in the same way as it applies to a witness summoned by or appearing before a commissioner under that Act.

Judicial Officers 1986

(2) Subsection (1) applies to and in respect of the Conduct Division and the Chairperson whether or not the Chairperson is a Judge of the Supreme Court.

(3) For the purposes of subsection (1), a reference in that subsection to the Royal Commissions Act 1923 does not include a reference to section 13, 15 (1) or 17 (4) of that Act.

(4) For the purposes of a hearing in connection with a minor complaint, the Conduct Division may take evidence on oath or affirmation, and a member of the Division may administer an oath or affirmation to a person appearing before the Division at such a hearing.

Dismissal of complaint by Conduct Division

26. The Conduct Division shall dismiss a complaint to the extent that the Division is of the opinion that—

- (a) the complaint should be dismissed on any of the grounds on which the Commission may summarily dismiss complaints; or
- (b) the complaint has not been substantiated.

Substantiation of minor complaint

27. If the Conduct Division decides that a minor complaint is wholly or partly substantiated, it shall either so inform the judicial officer complained about or decide that no action need be taken.

Substantiation of serious complaint

28. If the Conduct Division decides that a serious complaint is wholly or partly substantiated, it may form an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer complained about from office.

Reports

29. (1) The Conduct Division shall, in relation to a serious complaint, present to the Governor a report setting out the Division's conclusions.

Judicial Officers 1986

(2) If the Conduct Division decides that a serious complaint is wholly or partly substantiated and forms an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer from office, the report shall set out—

- (a) the Division's findings of fact; and
- (b) that opinion.

(3) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after the report is presented to the Governor.

(4) The Minister may present the report to the Clerks of both Houses of Parliament when Parliament is not sitting, and thereupon the report shall for all purposes be deemed to have been laid before both Houses of Parliament, but the Minister shall nevertheless lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after Parliament resumes.

(5) A report presented to the Clerk of a House of Parliament may be printed by authority of the Clerk of the House and shall for all purposes be deemed to be a document published by order or under the authority of the House.

(6) A copy of any report presented to the Governor shall also be furnished forthwith to the Commission.

(7) The Conduct Division shall, in relation to a minor complaint, furnish a report to the Commission setting out the action taken by the Division.

(8) A copy of any report referred to in this section shall also be furnished to the judicial officer concerned.

*DIVISION 4—Miscellaneous***Classification of complaints**

30. (1) An undismissed complaint shall be classified by the Commission as serious if the grounds of the complaint, if substantiated, could, in its opinion, justify parliamentary consideration of the removal of the judicial officer complained about from office.

(2) Any other undismissed complaint shall be classified by the Commission as minor.

(3) After a complaint has been referred to it, the Conduct Division may reclassify the complaint at any time before disposing of it, if that action appears appropriate.

(4) The Conduct Division shall furnish a report to the Commission setting out its reasons for reclassifying a complaint.

(5) A complaint may be classified as partly serious and partly minor, in which case it may be treated as 2 or more complaints.

(6) If the judicial officer about whom a minor complaint is made refuses to give evidence or if the Conduct Division is for any other reason of the opinion that the powers conferred by the Royal Commissions Act 1923 should be invoked in relation to the minor complaint, it may reclassify the complaint as a serious complaint.

(7) For the purposes of this Act, a complaint is serious or minor if it is classified for the time being by the Commission or Conduct Division as such.

Extension or partial dismissal of complaint

31. (1) In dealing with a complaint about a judicial officer, the Conduct Division is not limited to the matters raised initially in the complaint, and the Division may treat the original complaint as extending to other matters arising in the course of its being dealt with.

(2) If, in dealing with a complaint about a judicial officer, matters which might constitute grounds for a complaint about another judicial officer come to the attention of the Conduct Division, it may treat the original complaint as extending to the new matters.

(3) A power to dismiss a complaint (whether summarily or not) includes a power to dismiss a part of a complaint.

Non-finalisation of certain matters

32. (1) The Conduct Division shall cease dealing with a complaint about a judicial officer if the officer ceases to hold office for any reason.

(2) If the Conduct Division is dealing with more than one matter concerning a judicial officer, it need not deal with all of the matters if it is satisfied that it has dealt with one or more of the matters in a way that makes it unnecessary to finish dealing with all of them.

Judicial Officers 1986

(3) Nothing in this section prevents the referral of, or the making of a report about, a complaint.

Cases where non-judicial officers involved

33. If a complaint about a judicial officer involves, or after examination is found to involve, a person who has never been or who has ceased to be a judicial officer, the Conduct Division may exercise its functions in relation to the person to the extent necessary to deal with and finalise its deliberations about the judicial officer.

Medical examination

34. (1) If the Conduct Division is of the opinion that a judicial officer about whom a serious complaint has been made may be physically or mentally unfit to exercise efficiently the functions of a judicial office, the Division may request the officer to undergo such a medical examination as the Division specifies.

(2) If the judicial officer refuses or fails to undergo the medical examination, the Conduct Division may, having regard to that refusal or failure and to any other relevant factors, and if it considers the matter to be sufficiently serious, form an opinion that the matter could justify parliamentary consideration of the removal of the officer from office.

Referral of complaint

35. (1) If the Conduct Division decides, after examination of a complaint, that action under this section is warranted, the Division may refer the complaint or a matter arising under the complaint to any person or body considered by the Division to be appropriate in the circumstances.

(2) In referring a complaint or matter, the Conduct Division may communicate to the person or body any information that the Division has obtained during the course of examining the complaint.

(3) The Conduct Division may refer a complaint or matter to a person or body even though a similar complaint or matter has already been referred.

(4) If the Conduct Division refers a complaint or matter, the Division does not thereby become a complainant for the purposes of any other Act.

(5) This section authorises the referral of a complaint or matter even though it involves a person who has never been or has ceased to be a judicial officer.

(6) Referral of a complaint or matter does not remove any obligation that the Conduct Division has under this Act in relation to the complaint.

Release of information

36. (1) The Conduct Division may give directions preventing or restricting the publication of evidence given before the Division or of matters contained in documents lodged with the Division.

(2) A person who makes a publication in contravention of a direction under this section is guilty of an offence punishable, upon conviction, by a fine not exceeding \$10,000 or imprisonment for a period not exceeding one year, or both.

Disclosure of information by members or officers of Commission

37. (1) A member or officer of the Commission or Conduct Division, or a member of a committee of the Commission, shall not disclose any information obtained by the member or officer in the course of his or her office in relation to a complaint, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act (except sections 8 and 9);
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) with other lawful excuse.

(2) This section does not operate to render admissible in any proceedings any evidence that would not have been so admissible if this section had not been enacted.

(3) A person who contravenes this section is guilty of an offence punishable, upon conviction, by a fine not exceeding \$10,000 or imprisonment for a period not exceeding one year, or both.

Judicial Officers 1986

Vexatious complainants

38. (1) If any person habitually and persistently, and mischievously or without any reasonable grounds, makes complaints, whether about the same or different judicial officers, the Commission may declare the person to be a vexatious complainant.

(2) The Commission may disregard any complaint made by the person while the declaration is in force.

(3) The Commission may revoke the declaration, but is not obliged to have regard to any such complaint made while the declaration was in force.

Allowances to witnesses

39. (1) The regulations may prescribe a scale of allowances payable to a witness summoned to appear before the Conduct Division for travelling expenses and maintenance while absent from the witness's usual place of residence.

(2) If the regulations do not prescribe such a scale of allowances, allowances shall be payable as if the witness were a witness in proceedings in the Supreme Court.

(3) The claim to allowance of any witness referred to in this section shall be paid by the Treasurer out of money provided by Parliament.

PART 7**SUSPENSION AND REMOVAL OF JUDICIAL OFFICERS****Suspension of judicial officers**

40. (1) If—

- (a) a complaint is made about a judicial officer or a report is made by the Conduct Division setting out its opinion that a matter could justify parliamentary consideration of the removal of a judicial officer from office; or

(b) a judicial officer is—

(i) charged in New South Wales with an offence that is punishable by imprisonment for 12 months or upwards or charged elsewhere than in New South Wales with an offence that if committed in New South Wales would be an offence so punishable; or

(ii) convicted in New South Wales or elsewhere of such an offence, the appropriate authority may suspend the officer.

(2) The appropriate authority may lift the suspension at any time.

(3) A judicial officer suspended under this section is entitled to be paid remuneration as a judicial officer in respect of the period of suspension.

Removal of judicial officers

41. If a report of the Conduct Division presented to the Governor sets out the Division's opinion that a matter could justify parliamentary consideration of the removal of a judicial officer from office, the Governor may remove the officer from office on the address of both Houses of Parliament.

Functions of suspended judicial officers

42. (1) A suspended judicial officer may not exercise any judicial functions or any official functions connected with the judicial office.

(2) The appropriate authority may however authorise a suspended judicial officer to exercise functions for the purpose of completing any specified matter or class of matters.

(3) A suspended judicial officer may not exercise any functions of a member of the Commission or Conduct Division.

(4) If a suspended judicial officer does exercise any judicial or official functions in contravention of this section, the functions shall nevertheless be taken to have been performed as validly as if the officer had not been suspended.

Judicial Officers 1986

Appropriate authorities to suspend, etc.

43. For the purposes of this Part, the appropriate authority is the relevant head of jurisdiction, but, in relation to a member of the Commission, the appropriate authority is the Governor acting on the recommendation of the Commission.

PART 8**RETIREMENT OF JUDICIAL OFFICERS****Retirement of judicial officers**

44. (1) Subject to this section, a judicial officer shall retire on reaching the age of 70 years, unless granted retiring leave, in which case the officer shall retire at the end of that leave.

(2) A non-judicial Member of the Industrial Commission shall retire on reaching the age of 65 years, unless granted retiring leave, in which case the Member shall retire at the end of that leave.

(3) A Magistrate shall retire on reaching the age of 65 years.

(4) The Governor may retire a Magistrate after the Magistrate reaches the age of 60 years and before the Magistrate reaches the age of 65 years—

(a) in the case of the Chief Magistrate—on the recommendation of the Minister; or

(b) in any other case—on the recommendation of the Chief Magistrate.

(5) Nothing in this section affects the operation, with respect to the retirement of judicial officers, of any provision of any other Act.

PART 9

MISCELLANEOUS

Alternate members of Commission

45. (1) A judicial officer who is a member of the Commission may, with the approval of the Commission, appoint another judicial officer to be an alternate member of the Commission.

(2) The Governor may, on the nomination of the Minister, appoint a person to be an alternate member of the Commission for an appointed member of the Commission, and section 5 (5) applies in relation to the person.

(3) During the absence or unavailability of a member of the Commission the member's alternate—

- (a)** may act in the place of the member; and
- (b)** while acting, shall have and may exercise the member's functions as such a member and shall be deemed to be a member.

(4) An appointment of an alternate member shall be for a specified period not exceeding 12 months, but may be renewed.

(5) An appointment of an alternate member under subsection (1) may be revoked at any time by the member of the Commission who made the appointment or the Governor.

(6) An appointment of an alternate member under subsection (2) may be revoked at any time by the Governor.

Acting judicial members of Commission

46. (1) If a complaint is made about a judicial officer who is a member of the Commission, the Governor may appoint another judicial officer to act in the member's place until the complaint is resolved or until the appointment is revoked.

(2) A person appointed under this section—

- (a)** may act in the place of the member; and
- (b)** while acting, shall have and may exercise the member's functions as such a member and shall be deemed to be a member.

Judicial Officers 1986

(3) While an appointment under this section continues, neither—

- (a) the member in whose place the person was appointed; nor
- (b) an alternate of the member.

may exercise any functions as a member.

Counsel assisting Commission or Conduct Division

47. The Minister may appoint a legal practitioner to assist the Commission or Conduct Division as counsel, either generally or in relation to a particular matter or matters.

Liability for proceedings

48. (1) No matter or thing done by the Commission or Conduct Division or any member of or any person acting under the direction of the Commission or Division shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(2) In proceedings for defamation in relation to a complaint or in relation to any hearing or other matter connected with a complaint, there is a defence of absolute privilege for a publication to or by the Commission or Conduct Division or to any member or officer of the Commission or Division, as such a member or officer.

Annual report

49. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Commission shall prepare and forward to the Minister a report of its work and activities, including the work and activities of the Conduct Division, for the 12 months ending on 30 June in that year.

(2) The report shall include the following:

- (a) particulars of the number of—
 - (i) complaints made during the year;
 - (ii) complaints summarily dismissed during the year;
 - (iii) minor complaints disposed of during the year; and
 - (iv) serious complaints disposed of during the year,and the manner in which they were disposed of;

- (b) a description of the criteria adopted for classifying—
 - (i) complaints summarily dismissed during the year;
 - (ii) minor complaints disposed of during the year; and
 - (iii) serious complaints disposed of during the year;
- (c) a description, which may include statistics, of any patterns in the nature and scope of complaints made or disposed of during the year;
- (d) any recommendations for changes in the laws of the State, or for administrative action, that, as a result of the exercise of the functions of the Commission or Conduct Division, the Commission considers should be made.

(3) A report by the Commission under this section shall not identify any person against whom a complaint has been made under this Act, unless the person has been the subject of a public hearing under this Act, has been the subject of a report laid before a House of Parliament under Part 6 or has been convicted of an offence connected with the complaint.

(4) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Remuneration

50. An appointed member of the Commission, an acting appointed member, or a member of the Conduct Division who is a retired judicial officer, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Statutory and Other Offices Remuneration Tribunal may from time to time determine in respect of each of them.

Shortened references to Commission

51. In any Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the "Judicial Commission" shall be read as a reference to the Judicial Commission of New South Wales constituted by this Act.

Proceedings for offences

52. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Judicial Officers 1986

Operation of certain other Acts

53. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Commission or Conduct Division and such a member is not, as a member, 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 member of the Commission or Conduct Division or from accepting and retaining any remuneration payable to the person under this Act as an appointed member of the Commission.

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

(4) The Commission, the Conduct Division, the members of either body, the officers of the Commission, the members of any committee of the Commission and any members of the Police Force or other persons assisting either body are not subject to the Ombudsman Act 1974 or the Police Regulation (Allegations of Misconduct) Act 1978 so far as concerns anything done or omitted under or for the purposes of this Act or purporting to have been done or omitted for those purposes.

(5) The Interpretation Act 1897 does not operate so as to authorise the suspension or removal of a judicial officer from judicial office.

Regulations

54. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Repeals

55. (1) Each Act specified in Schedule 4 is, to the extent indicated, repealed.

Judicial Officers 1986

(2) The reference in section 3 of the Judges' Pensions Act 1953 to the Judges Retirement Act 1918 shall be read as a reference to the Judges Retirement Act 1918 or the Judicial Officers Act 1986.

(3) The reference in clause 3 of Schedule 1 to the Compensation Court Act 1984 to section 9 (2) of that Act shall be read as a reference to section 41 of the Judicial Officers Act 1986.

SCHEDULE 1

(Sec. 5 (7))

PROVISIONS RELATING TO THE APPOINTED MEMBERS OF THE
COMMISSION

Definition

1. In this Schedule, "member" means an appointed member of the Commission.

Age of members

2. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of an appointed member.

Terms of office

3. Subject to this Schedule, an appointed member shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Filling of vacancy in office of member

4. If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

5. (1) An appointed member shall be deemed to have vacated office if the member—
 - (a) dies;
 - (b) absents himself or herself from 4 consecutive meetings of the Commission of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
 - (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;

*Judicial Officers 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE APPOINTED MEMBERS OF THE
COMMISSION—*continued*

- (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 that is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable;
 - (f) resigns the office by instrument in writing addressed to the Minister;
 - (g) reaches the age of 70 years; or
 - (h) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove an appointed member from office for incapacity, incompetence or misbehaviour.

SCHEDULE 2

(Sec. 5 (8))

PROVISIONS RELATING TO THE PROCEDURE OF THE COMMISSION

General procedure

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

Meetings

2. No longer than 3 months shall elapse between each meeting of the Commission.

Quorum

3. The quorum for a meeting of the Commission is 5 members, of whom at least one must be an appointed member.

Presiding member

4. The President or, in the absence of the President, another member of the Commission elected to chair the meeting by the members present shall preside at a meeting of the Commission and shall have a deliberative vote only.

Judicial Officers 1986

SCHEDULE 2—*continued*

PROVISIONS RELATING TO THE PROCEDURE OF THE COMMISSION—
continued

Voting

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

Minutes

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

First meeting of Commission

7. The President shall call the first meeting of the Commission in such manner as the President thinks fit.

SCHEDULE 3

(Sec. 13 (4))

PROVISIONS RELATING TO THE PROCEDURE OF THE CONDUCT DIVISION

General procedure

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

Quorum

2. All 3 members of the Conduct Division must be present at a meeting of the Division.

Chairperson to preside

3. The Chairperson shall preside at a meeting of the Conduct Division and shall have a deliberative vote only.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Conduct Division shall be the decision of the Division.

Minutes

5. The Conduct Division shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Division.

Judicial Officers 1986

SCHEDULE 3—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE CONDUCT
DIVISION—*continued***First meetings**

6. The Chairperson shall call the first meeting of the Conduct Division held in relation to a complaint in such manner as the Chairperson thinks fit.

SCHEDULE 4

(Sec. 55)

REPEALS

Compensation Court Act 1984 No. 89—section 9 (1)–(3).

District Court Act 1973 No. 9—section 14 (1)–(3).

Industrial Arbitration Act 1940 No. 2—section 14 (2B), (2C) and (2D).

Judges Retirement Act 1918 No. 9—the whole Act.

Land and Environment Court Act 1979 No. 204—section 9 (1) and (3); and the words “, and shall be removable from office in the same manner only as a Judge of the Supreme Court is by law liable to be removed from his office” in section 9 (2).

Liquor Act 1982 No. 147—section 8 (6).

Local Courts Act 1982 No. 164—sections 18, 19 and 20 (e), (f) and (h).

Supreme Court Act 1970 No. 52—sections 27 and 115 (1) (b) and (2).
