



New South Wales

Judicial Officers Amendment Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Judicial Officers Act 1986* to provide for the appointment of non-legally qualified community representatives nominated by Parliament to the Conduct Division of the Judicial Commission. The Conduct Division has the function of dealing with complaints about the ability or behaviour of judicial officers and with formal requests concerning the suspected impairment of judicial officers.

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 the date of assent to the proposed Act.

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

Clause 4 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 and 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 Amendments

The function of the Conduct Division of the Judicial Commission of New South Wales is to examine and deal with complaints referred to it under Part 6 of the *Judicial Officers Act 1986* (being complaints about the ability or behaviour of judicial officers) and formal requests referred to it under Part 6A of the Act (being requests made by the relevant head of jurisdiction to investigate a judicial officer's suspected impairment). The Act currently provides that the Division is to be constituted by a panel of 3 members who are judicial officers (but one may be a retired judicial officer). The members are appointed by the Commission.

Schedule 1 [1] and [3] provide for the appointment to a panel of the Conduct Division of a community representative nominated by Parliament to replace one of the 3 judicial officers currently required to constitute a panel. A community representative must not be legally qualified, must not be a member of the Commission and is to be a person of high standing in the community. Parliament may nominate 2 community representatives, who are to be appointed to a panel of the Division in rotation. Nominations must be made jointly by the Legislative Assembly and the Legislative Council, with provision for dealing with a disagreement about a nomination. Provision is also made for expiry of a nomination (including if the nominee becomes legally qualified, resigns or is replaced by Parliament).

Schedule 1 [2] provides for the remuneration payable to a community representative.

Schedule 1 [4] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [5] inserts provisions to ensure that any existing panel is not affected and that the requirement for a community representative will not take effect until Parliament has made the requisite nomination.

First print



New South Wales

Judicial Officers Amendment Bill 2007

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Judicial Officers Act 1986 No 100	2
4 Repeal of Act	2
Schedule 1 Amendments	3



New South Wales

Judicial Officers Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Judicial Officers Act 1986* in relation to the appointment of non-legally qualified persons in addition to judicial officers to the Conduct Division of the Judicial Commission of New South Wales; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Judicial Officers Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Judicial Officers Act 1986 No 100	6
The <i>Judicial Officers Act 1986</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 22 Constitution of Conduct Division	3
	Omit section 22 (2). Insert instead:	4
	(2) Of the panel of 3 persons so appointed:	5
	(a) 2 are to be judicial officers (but one may be a retired judicial officer), and	6 7
	(b) one is to be a community representative, being a person of high standing in the community nominated by Parliament in accordance with Schedule 2A.	8 9 10
[2]	Section 50 Remuneration	11
	Insert at the end of the section:	12
	(2) A member of the Conduct Division who is a community representative is entitled to be paid such remuneration as the Minister may from time to time determine.	13 14 15
[3]	Schedule 2A	16
	Insert after Schedule 2:	17
	Schedule 2A Provisions relating to nomination of community representative on Conduct Division	18 19 20
	(Section 22 (2))	21
1	Definition	22
	In this Schedule:	23
	<i>community representative</i> means a person nominated by Parliament for appointment to a panel of the Conduct Division under section 22 (2).	24 25 26
2	Nominee not to be legally qualified or member of Commission	27
	A person cannot be nominated as a community representative if the person:	28 29
	(a) is legally qualified (that is, the person is an Australian lawyer or has attained the academic qualifications necessary for admission as an Australian lawyer), or	30 31 32
	(b) is a member of the Commission.	33

3	Two persons may be nominated	1
	Two community representatives may be nominated by Parliament for the purposes of section 22. The appointment of one of those community representatives to a panel is to be made in rotation (subject to availability for appointment on the occasion concerned).	2 3 4 5 6
4	Procedure for nomination	7
(1)	The Legislative Assembly may by resolution nominate a community representative. If the Legislative Council by message to the Assembly concurs in that nomination, the person is duly nominated as a community representative.	8 9 10 11
(2)	If the Legislative Council rejects a nomination made by the Legislative Assembly, the Legislative Council may, by message to the Legislative Assembly, nominate another person as a community representative. If the Legislative Assembly by message to the Council concurs in that nomination, the person is duly nominated as a community representative.	12 13 14 15 16 17
(3)	If the Legislative Assembly rejects a nomination made by the Legislative Council under subclause (2) or the Legislative Council fails to nominate another person under subclause (2), the Assembly may by message to the Council:	18 19 20 21
	(a) insist on its original nomination, in which case the person nominated by the Assembly is duly nominated as a community representative, or	22 23 24
	(b) nominate instead another person as a community representative, in which case the procedure for nomination under this clause is resumed in relation to that other person.	25 26 27 28
(4)	The Legislative Council is taken to have failed to nominate another person under subclause (2) if it has not done so within 3 sitting days after the Legislative Assembly notified the Council of its nomination.	29 30 31 32
5	Expiry of nomination	33
(1)	The nomination of a community representative expires:	34
	(a) if the nominee becomes legally qualified or a member of the Commission, or	35 36
	(b) if the nominee resigns as a community representative in writing addressed to the presiding officers of the Legislative Assembly and Legislative Council, or	37 38 39

(c)	if a replacement community representative is nominated by Parliament in accordance with this Schedule, or	1 2
(d)	if the nominee 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, or	3 4 5 6
(e)	if the nominee becomes a mentally incapacitated person, or	7 8
(f)	if the nominee 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.	9 10 11 12 13
(2)	The nomination of a community representative expires on the first meeting of the Legislative Assembly following the dissolution of the Assembly.	14 15 16
(3)	If the nomination of a community representative expires after the person's appointment to a panel, the person may continue to sit on that panel as the community representative.	17 18 19
[4]	Schedule 6 Savings and transitional provisions	20
	Insert at the end of clause 1 (1):	21
	<i>Judicial Officers Amendment Act 2007</i>	22
[5]	Schedule 6, Part 5	23
	Insert after Part 4:	24
	Part 5 Provisions consequent on enactment of Judicial Officers Amendment Act 2007	25 26
	5 Definition	27
	In this Part:	28
	<i>amending Act</i> means the <i>Judicial Officers Amendment Act 2007</i> .	29
	6 Matters under Part 6 and Part 6A not finally dealt with	30
	(1) Any complaint under Part 6 or formal request under Part 6A referred to the Conduct Division, and not finally dealt with before the commencement of the amending Act, may continue to be dealt with by the Division as constituted immediately before that commencement.	31 32 33 34 35

Judicial Officers Amendment Bill 2007

Schedule 1 Amendments

- (2) The amendments made by the amending Act do not apply to a panel of the Conduct Division appointed after the commencement of the amending Act but before the first nomination by Parliament of a community representative for appointment to a panel. 1
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