



New South Wales

## 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.



First print



New South Wales

# Judicial Officers Amendment Bill 2006

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New South Wales

## Judicial Officers Amendment Bill 2006

No. , 2006

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### **A Bill for**

An Act to amend the *Judicial Officers Act 1986* so as to make further provision with respect to the handling of complaints against judicial officers and the investigation of judicial officers who are suspected to be suffering from impairment; to amend the *Judges' Pensions Act 1953* so as to exclude leave without pay from a judicial officer's pensionable service; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Judicial Officers Amendment Act 2006</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Judicial Officers Act 1986 No 100</b>	6
The <i>Judicial Officers Act 1986</i> is amended as set out in Schedules 1 and 2.	7 8
<b>4 Amendment of Judges' Pensions Act 1953 No 41</b>	9
The <i>Judges' Pensions Act 1953</i> is amended by inserting after section 2 (1) the following subsection:	10 11
(1A) For the purposes of this Act, any reference to the period for which a person has served as a judge (however expressed) is taken to exclude any time for which the person has been on leave without pay, whether before or after the commencement of this subsection.	12 13 14 15 16
<b>5 Repeal of Act</b>	17
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	18 19
(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.	20 21

<b>Schedule 1</b>	<b>Principal amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 3 Definitions</b>	3
	Insert after section 3 (3):	4
	(3A) This Act extends to acting appointments to a judicial office, whether made with or without a specific term.	5 6
<b>[2]</b>	<b>Section 10 Guidelines</b>	7
	Insert “both it and” after “assist” in section 10 (1) (a).	8
<b>[3]</b>	<b>Section 10 (1) (a)</b>	9
	Omit “its”. Insert instead “their”.	10
<b>[4]</b>	<b>Section 10 (2)</b>	11
	Omit section 10 (2) and (3). Insert instead:	12
	(2) The guidelines for the Conduct Division may include provisions with respect to any one or more of the following matters:	13 14
	(a) the manner in which the Conduct Division should conduct its examination of complaints generally,	15 16
	(b) the manner in which the Conduct Division should conduct its hearings in connection with complaints,	17 18
	(c) the criteria that the Conduct Division should consider when determining whether a hearing should be held in public or in private,	19 20 21
	(d) the criteria that the Conduct Division should consider when exercising its power to consent to legal representation for persons appearing at its hearings.	22 23 24
<b>[5]</b>	<b>Section 11 Other functions of the Commission</b>	25
	Insert at the end of section 11 (b):	26
	, and	27
	(c) to enter into and carry out contractual arrangements (including commercial arrangements) for the supply by the Commission to others of property or services that comprise or make use of information technology, expertise or other things developed by the Commission in the exercise of its functions.	28 29 30 31 32 33

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<b>[6] Section 11 (2)</b>	1
Insert at the end of section 11:	2
(2) The Commission’s functions under subsection (1) may be exercised both within New South Wales and elsewhere.	3 4
<b>[7] Section 14</b>	5
Omit the section. Insert instead:	6
<b>14 Functions of the Conduct Division</b>	7
The functions of the Conduct Division are to examine and deal with complaints referred to it under Part 6 and formal requests referred to it under Part 6A.	8 9 10
<b>[8] Section 20 Summary dismissal of complaints</b>	11
Insert “, whether or not it appears to be substantiated” after “opinion that” in section 20 (1).	12 13
<b>[9] Section 21 Reference of complaint to Conduct Division or head of jurisdiction</b>	14 15
Omit section 21 (2). Insert instead:	16
(2) The Commission may however refer a complaint to the relevant head of jurisdiction if the Commission thinks that, although the complaint appears to be wholly or partly substantiated, it does not justify the attention of the Conduct Division.	17 18 19 20
(3) A reference under subsection (2) may include recommendations as to what steps might be taken to deal with the complaint.	21 22
<b>[10] Section 21A</b>	23
Insert after section 21:	24
<b>21A Reports to Minister</b>	25
After dealing with a matter referred to it under section 16, the Commission must notify the Minister as to whether the matter has been summarily dismissed under section 20 (1), referred to the Conduct Division under section 21 (1) or referred to the relevant head of jurisdiction under section 21 (2).	26 27 28 29 30
<b>[11] Section 24 Hearings by Conduct Division</b>	31
Omit section 24 (2)–(4). Insert instead:	32
(2) A hearing may be held in public or in private, as the Conduct Division may determine.	33 34

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<b>[12] Section 28</b>	1
Omit the section. Insert instead:	2
<b>28 Substantiation of complaint</b>	3
(1) If the Conduct Division decides that a complaint is wholly or partly substantiated:	4
(a) it may form an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer complained about from office, or	5
(b) it may form an opinion that the matter does not justify such consideration and should therefore be referred back to the relevant head of jurisdiction.	6
(2) If it forms an opinion referred to in subsection (1) (b), the Conduct Division must send a report to the relevant head of jurisdiction setting out the Division's conclusions.	7
(3) A report under subsection (2) may include recommendations as to what steps might be taken to deal with the complaint.	8
<b>[13] Section 29 Reports to Governor</b>	9
Insert before section 29 (3):	10
(2A) A copy of the report must be furnished forthwith to the Minister.	11
<b>[14] Section 29 (6)</b>	12
Insert "and, after it has been laid before each House of Parliament, to the complainant" after "the Commission".	13
<b>[15] Section 31 Extension or partial dismissal of complaint</b>	14
Insert "Commission or" before "Conduct Division" wherever occurring.	15
<b>[16] Section 31 (1)</b>	16
Insert "Commission or" before "Division" where secondly occurring.	17
<b>[17] Section 34 Medical or psychological examination</b>	18
Insert "or psychological" after "medical" wherever occurring.	19

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<b>[18] Part 6A</b>	1
Insert after Part 6:	2
<b>Part 6A Suspected impairment of judicial officers</b>	3
<b>39A Definitions</b>	4
In this Part:	5
<i>formal request</i> means a request about a judicial officer that has	6
been made by the relevant head of jurisdiction under section 39B.	7
<i>impairment</i> includes any physical or mental impairment.	8
<b>39B References by heads of jurisdiction</b>	9
(1) If of the opinion that a judicial officer may have an impairment	10
that affects his or her performance of judicial or official duties,	11
the relevant head of jurisdiction may request the Commission to	12
investigate the matter.	13
(2) A request made under subsection (1) is not a complaint.	14
<b>39C Preliminary examination</b>	15
(1) The Commission must conduct a preliminary examination into	16
the subject-matter of a formal request.	17
(2) In conducting the preliminary examination, the Commission may	18
initiate such inquiries into the subject-matter of the request as it	19
thinks appropriate.	20
(3) The examination or inquiries must, as far as practicable, take	21
place in private.	22
<b>39D Medical or psychological examination</b>	23
(1) For the purpose of its preliminary examination in relation to a	24
formal request, the Commission may require the judicial officer	25
concerned to undergo such medical or psychological	26
examination as the Commission specifies.	27
(2) If the judicial officer refuses or fails to undergo the medical or	28
psychological examination, the Commission may deal with the	29
matter as if the judicial officer were the subject of a complaint.	30
<b>39E Action following preliminary examination</b>	31
(1) Following its preliminary examination in relation to a formal	32
request, the Commission:	33

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(a)	if of the opinion that, having regard to the results of a medical or psychological examination, the judicial officer may have an impairment that affects his or her performance of judicial or official duties:	1 2 3 4
(i)	may refer the matter to the Conduct Division, or	5
(ii)	may refer the matter back to the relevant head of jurisdiction,	6 7
	together with a report that sets out the results of the medical or psychological examination, or	8 9
(b)	in any other case, must summarily dismiss the request.	10
(2)	In any case, the Commission must cause notice of its action to be given to the relevant head of jurisdiction.	11 12
(3)	If a matter is referred back to the relevant head of jurisdiction under subsection (1) (a) (ii), the reference may include recommendations as to what steps might be taken to deal with any impairment disclosed by the Commission's examination of the matter.	13 14 15 16 17
<b>39F</b>	<b>Examination of matter referred</b>	18
(1)	The Conduct Division must conduct an examination of a matter referred to it under section 39E.	19 20
(2)	The Conduct Division has the same functions in relation to the examination of a matter referred to it under this section as it has in relation to the examination of a complaint.	21 22 23
<b>39G</b>	<b>Report as to Conduct Division's conclusions</b>	24
(1)	If the Conduct Division is of the opinion that the judicial officer is physically or mentally unfit to exercise efficiently the functions of a judicial office, the Conduct Division is to present a report to the Governor setting out the Division's conclusions.	25 26 27 28
(2)	Section 29 applies to a report under subsection (1) in the same way as it applies to a report under section 29 (1).	29 30
(3)	If the Conduct Division is not of the opinion that the judicial officer is physically or mentally unfit to exercise efficiently the functions of a judicial office, the Conduct Division is to send a report to the relevant head of jurisdiction setting out the Division's conclusions.	31 32 33 34 35
(4)	A report under subsection (3) may include recommendations as to what steps might be taken to deal with any impairment disclosed by the Conduct Division's examination of the matter.	36 37 38

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<b>[19] Section 43AA</b>	1
Insert after section 43:	2
<b>43AA Other action following complaint under Part 6 or formal request under Part 6A</b>	3
(1) This section applies if:	4
(a) a reference under section 21 (2), or a report under section 28 (2), contains any recommendations as to what steps might be taken to deal with any complaint against a judicial officer, or	5
(b) a reference under section 39E (1) (a) (ii), or a report under section 39G (3), contains any recommendations as to what steps might be taken to deal with any impairment disclosed by the Commission's or Conduct Division's examination of a judicial officer.	6
(2) For the purpose of giving effect to any such recommendation, the relevant head of jurisdiction:	7
(a) may counsel the judicial officer, and	8
(b) may take such other steps as the relevant head of jurisdiction considers appropriate in relation to the administration of the court or courts for which he or she is responsible.	9
<b>[20] Section 49 Annual report</b>	10
Omit section 49 (2) (b). Insert instead:	11
(b) in respect of the complaints summarily dismissed during the year, how many were dismissed in accordance with each of the criteria referred to in section 20 (1) (a)–(h),	12
<b>[21] Schedule 6 Savings and transitional provisions</b>	13
Insert at the end of clause 1 (1):	14
<i>Judicial Officers Amendment Act 2006</i> , to the extent that it amends this Act	15
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<b>[22] Schedule 6, Part 4</b>	1
Insert after Part 3:	2
<b>Part 4 Provisions consequent on enactment of Judicial Officers Amendment Act 2006</b>	3 4
<b>4 Application of Part 6A</b>	5
Part 6A, as inserted by the <i>Judicial Officers Amendment Act 2006</i> , extends to impairments arising before the commencement of that Part.	6 7 8

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<b>Schedule 2</b>	<b>Amendments relating to classification of complaints</b>	1
		2
	(Section 3)	3
<b>[1] Section 19 Action following preliminary examination</b>		4
Omit the section.		5
<b>[2] Section 25 Powers of Conduct Division concerning evidence</b>		6
Omit “serious” from section 25 (1).		7
<b>[3] Section 25 (4)</b>		8
Omit the subsection.		9
<b>[4] Section 27 Substantiation of minor complaint</b>		10
Omit the section.		11
<b>[5] Section 29 Reports to Governor</b>		12
Omit section 29 (1) and (2). Insert instead:		13
(1) If the Conduct Division decides that a 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, it must present to the Governor a report setting out the Division’s findings of fact and that opinion.		14 15 16 17 18
<b>[6] Section 29 (7)</b>		19
Omit the subsection.		20
<b>[7] Section 30 Classification of complaints</b>		21
Omit the section.		22
<b>[8] Section 34 Medical or psychological examination</b>		23
Omit “serious” from section 34 (1).		24

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**[9] Section 49 Annual report**

Omit section 49 (2) (a) (iii) and (iv). Insert instead:

(iii) complaints disposed of during the year,

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