

Passed by both Houses



New South Wales

Judicial Officers Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Judicial Officers Amendment Bill 2006

Act No , 2006

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Judicial Officers Amendment Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Judicial Officers Act 1986 No 100

The *Judicial Officers Act 1986* is amended as set out in Schedules 1 and 2.

4 Amendment of Judges' Pensions Act 1953 No 41

The *Judges' Pensions Act 1953* is amended by inserting after section 2 (1) the following subsection:

- (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.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Principal amendments

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (3A) This Act extends to acting appointments to a judicial office, whether made with or without a specific term.

[2] Section 10 Guidelines

Insert “both it and” after “assist” in section 10 (1) (a).

[3] Section 10 (1) (a)

Omit “its”. Insert instead “their”.

[4] Section 10 (2)

Omit section 10 (2) and (3). Insert instead:

- (2) The guidelines for the Conduct Division may include provisions with respect to any one or more of the following matters:
- (a) the manner in which the Conduct Division should conduct its examination of complaints generally,
 - (b) the manner in which the Conduct Division should conduct its hearings in connection with complaints,
 - (c) the criteria that the Conduct Division should consider when determining whether a hearing should be held in public or in private,
 - (d) the criteria that the Conduct Division should consider when exercising its power to consent to legal representation for persons appearing at its hearings.

[5] Section 11 Other functions of the Commission

Insert at the end of section 11 (b):

- , and
- (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.

[6] Section 11 (2)

Insert at the end of section 11:

- (2) The Commission's functions under subsection (1) may be exercised both within New South Wales and elsewhere.

[7] Section 14

Omit the section. Insert instead:

14 Functions of the Conduct Division

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] Section 20 Summary dismissal of complaints

Insert “, whether or not it appears to be substantiated” after “opinion that” in section 20 (1).

[9] Section 21 Reference of complaint to Conduct Division or head of jurisdiction

Omit section 21 (2). Insert instead:

- (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.
- (3) A reference under subsection (2) may include recommendations as to what steps might be taken to deal with the complaint.

[10] Section 21A

Insert after section 21:

21A Reports to Minister

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).

[11] Section 24 Hearings by Conduct Division

Omit section 24 (2)–(4). Insert instead:

- (2) A hearing may be held in public or in private, as the Conduct Division may determine.

[12] Section 28

Omit the section. Insert instead:

28 Substantiation of complaint

- (1) If the Conduct Division decides that a complaint is wholly or partly substantiated:
 - (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
 - (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.
- (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.
- (3) A report under subsection (2) may include recommendations as to what steps might be taken to deal with the complaint.

[13] Section 29 Reports to Governor

Insert before section 29 (3):

- (2A) A copy of the report must be furnished forthwith to the Minister.

[14] Section 29 (6)

Insert "and, after it has been laid before each House of Parliament, to the complainant" after "the Commission".

[15] Section 31 Extension or partial dismissal of complaint

Insert "Commission or" before "Conduct Division" wherever occurring.

[16] Section 31 (1)

Insert "Commission or" before "Division" where secondly occurring.

[17] Section 34 Medical or psychological examination

Insert "or psychological" after "medical" wherever occurring.

[18] Part 6A

Insert after Part 6:

Part 6A Suspected impairment of judicial officers

39A Definitions

In this Part:

formal request means a request about a judicial officer that has been made by the relevant head of jurisdiction under section 39B.

impairment includes any physical or mental impairment.

39B References by heads of jurisdiction

- (1) If of the opinion that a judicial officer may have an impairment that affects his or her performance of judicial or official duties, the relevant head of jurisdiction may request the Commission to investigate the matter.
- (2) A request made under subsection (1) is not a complaint.

39C Preliminary examination

- (1) The Commission must conduct a preliminary examination into the subject-matter of a formal request.
- (2) In conducting the preliminary examination, the Commission may initiate such inquiries into the subject-matter of the request as it thinks appropriate.
- (3) The examination or inquiries must, as far as practicable, take place in private.

39D Medical or psychological examination

- (1) For the purpose of its preliminary examination in relation to a formal request, the Commission may require the judicial officer concerned to undergo such medical or psychological examination as the Commission specifies.
- (2) If the judicial officer refuses or fails to undergo the medical or psychological examination, the Commission may deal with the matter as if the judicial officer were the subject of a complaint.

39E Action following preliminary examination

- (1) Following its preliminary examination in relation to a formal request, the Commission:

- (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:
 - (i) may refer the matter to the Conduct Division, or
 - (ii) may refer the matter back to the relevant head of jurisdiction,
together with a report that sets out the results of the medical or psychological examination, or
- (b) in any other case, must summarily dismiss the request.
- (2) In any case, the Commission must cause notice of its action to be given to the relevant head of jurisdiction.
- (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.

39F Examination of matter referred

- (1) The Conduct Division must conduct an examination of a matter referred to it under section 39E.
- (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.

39G Report as to Conduct Division's conclusions

- (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.
- (2) Section 29 applies to a report under subsection (1) in the same way as it applies to a report under section 29 (1).
- (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.
- (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.

[19] Section 43AA

Insert after section 43:

43AA Other action following complaint under Part 6 or formal request under Part 6A

- (1) This section applies if:
 - (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
 - (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.
- (2) For the purpose of giving effect to any such recommendation, the relevant head of jurisdiction:
 - (a) may counsel the judicial officer, and
 - (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.

[20] Section 49 Annual report

Omit section 49 (2) (b). Insert instead:

- (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),

[21] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Judicial Officers Amendment Act 2006, to the extent that it amends this Act

[22] Schedule 6, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Judicial Officers Amendment Act 2006**

4 Application of Part 6A

Part 6A, as inserted by the *Judicial Officers Amendment Act 2006*, extends to impairments arising before the commencement of that Part.

Schedule 2 Amendments relating to classification of complaints

(Section 3)

[1] Section 19 Action following preliminary examination

Omit the section.

[2] Section 25 Powers of Conduct Division concerning evidence

Omit “serious” from section 25 (1).

[3] Section 25 (4)

Omit the subsection.

[4] Section 27 Substantiation of minor complaint

Omit the section.

[5] Section 29 Reports to Governor

Omit section 29 (1) and (2). Insert instead:

- (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.

[6] Section 29 (7)

Omit the subsection.

[7] Section 30 Classification of complaints

Omit the section.

[8] Section 34 Medical or psychological examination

Omit “serious” from section 34 (1).

[9] Section 49 Annual report

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

(iii) complaints disposed of during the year,