

# Judicial Officers Act 1986 No 100

[1986-100]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Judicial Officers Amendment Bill 2007](#)

### Authorisation

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# Judicial Officers Act 1986 No 100



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Judicial Officers Act 1986*.

### 2 Commencement

- (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.

### 3 Definitions

- (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 associate Judge of the Supreme Court,
- (b) a member (including a judicial member) of the Industrial Relations Commission,

- (c) a Judge of the Land and Environment Court,
- (d) a Judge of the District Court,
- (e) (Repealed)
- (f) a Magistrate, or
- (g) the President of the Administrative Decisions Tribunal.

**Magistrate** includes a Children's 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 exercising the functions of or appointed to act in that other office.
- (3A) This Act extends to acting appointments to a judicial office, whether made with or without a specific term.
- (4) In this Act, a reference to the Industrial Commission is a reference to the Industrial Commission 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 associate Judge of the Supreme Court,
  - (b) the President of the Industrial Relations Commission, in relation to a member of that 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**

### **4 (Repealed)**

## **Part 3 The Judicial Commission**

### **5 The Commission**

- (1) There is constituted by this Act a commission to be called the “Judicial Commission of New South Wales”.
- (1A) The Commission is, by virtue of this subsection, a corporation.
- (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 10 members, of whom:
  - (a) 6 are official members, and
  - (b) 4 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 Court of Appeal,
  - (c) the President of the Industrial Relations Commission,
  - (d) the Chief Judge of the Land and Environment Court,
  - (e) the Chief Judge of the District Court,
  - (f) the Chief Magistrate.
- (5) Of the appointed members:
  - (a) one shall be an Australian 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) 3 are to be persons nominated following consultation by the Minister with the Chief Justice and who, in the opinion of the Minister, have 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.

## **6 Staff etc of the Commission**

(1) The Commission may employ a Chief Executive and such other staff as may be necessary to enable the Commission to exercise its functions.

(2) The Commission may, with the concurrence of the Public Service Board, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

(3) The Commission may:

(a) with the approval of the Minister responsible for the department, office or authority concerned, 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.

(4) The Commission may, on such terms and conditions as may be approved by the Public Service Board, engage any suitably qualified person to provide the Commission with services, information or advice.

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

(6) Schedule 5 has effect with respect to the rights of certain staff of the Commission.

## **7 Delegation**

(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**

### **8 Sentencing**

- (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.
- (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.

### **9 Judicial education**

- (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.

### **10 Guidelines**

- (1) In addition to its functions under Part 6 in relation to complaints:

- (a) the Commission may formulate guidelines to assist both it and the Conduct Division in the exercise of their functions, and
  - (b) the Commission shall monitor in a general way the activities of the Conduct Division.
- (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.
- (3) (Repealed)

## **11 Other functions of the Commission**

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

## **12 Committees**

- (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**

### **13 The Conduct Division**

- (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.

### **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.

## **Part 6 Complaints against judicial officers**

### **Division 1 Making of complaints**

#### **15 Complaints**

- (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).
- (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.

#### **16 References by Minister**

- (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.

#### **17 Manner of making complaints**

- (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**

#### **18 Preliminary examination**

- (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.

#### **19 (Repealed)**

## **20 Summary dismissal of complaints**

- (1) The Commission shall summarily dismiss the complaint if it is of the opinion that, whether or not it appears to be substantiated:
  - (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.

## **21 Reference of complaint to Conduct Division or head of jurisdiction**

- (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 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.

### **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).

## **Division 3 The Conduct Division**

### **22 Constitution of Conduct Division**

- (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.

### **23 Examination of complaint by Conduct Division**

- (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.

### **24 Hearings by Conduct Division**

- (1) The Conduct Division may hold hearings in connection with the complaint.
- (2) A hearing may be held in public or in private, as the Conduct Division may determine.
- (3), (4) (Repealed)
- (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 an Australian legal practitioner, and
  - (b) if, by reason of the existence of special circumstances, the Conduct Division consents to any other person being represented by an Australian 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 Australian 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.

## **25 Powers of Conduct Division concerning evidence**

(1) For the purposes of a hearing in connection with a 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.

(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) (Repealed)

## **26 Dismissal of complaint by Conduct Division**

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.

## **27 (Repealed)**

## **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.

## **29 Reports to Governor**

- (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.
- (2) (Repealed)
- (2A) A copy of the report must be furnished forthwith to the Minister.
- (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 and, after it has been laid before each House of Parliament, to the complainant.
- (7) (Repealed)
- (8) A copy of any report referred to in this section shall also be furnished to the judicial officer concerned.

## **Division 4 Miscellaneous**

### **30 (Repealed)**

### **31 Extension or partial dismissal of complaint**

- (1) In dealing with a complaint about a judicial officer, the Commission or Conduct Division is not limited to the matters raised initially in the complaint, and the Commission or 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 Commission or 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.

### **32 Non-finalisation of certain matters**

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

### **33 Cases where non-judicial officers involved**

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.

### **34 Medical or psychological examination**

- (1) If the Conduct Division is of the opinion that a judicial officer about whom a 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 or psychological examination as the Division specifies.
- (2) If the judicial officer refuses or fails to undergo the medical or psychological 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.

### **35 Referral of complaint**

- (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.

### **36 Release of information**

- (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 100 penalty units or imprisonment for a period not exceeding one year, or both.

### **37 Disclosure of information by members or officers of Commission**

- (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 100 penalty units or imprisonment for a period not exceeding one year, or both.

### **38 Vexatious complainants**

- (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.

### **39 Allowances to witnesses**

- (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 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.

## **Part 7 Suspension and removal of judicial officers**

### **40 Suspension of judicial officers**

- (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) (Repealed)

### **41 Removal of judicial officers**

- (1) A judicial officer may not be removed from office in the absence of a report of the

Conduct Division to the Governor under this Act that sets out the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity.

- (2) The provisions of this section are additional to those of section 53 of the *Constitution Act 1902*.

#### **42 Functions of suspended judicial officers**

- (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.

#### **43 Appropriate authorities to suspend etc**

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

#### **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.

#### **43A Judicial office not affected by appointment to act in another judicial office**

- (1) The doctrine of incompatibility of office does not operate to prevent the holder of a judicial office (the **original office**) from being appointed to act in another judicial office, and does not operate to effect or require the surrender or vacation of the original office as a result of such an appointment.
- (2) This section applies:
  - (a) whether or not an appeal lies from a decision of the court of the original office to the court of the acting appointment, and
  - (b) whether or not the court of the acting appointment is a court of higher status than the court of the original office, and
  - (c) even if the original office is an acting judicial office.

- (3) In this section:

**court** includes tribunal.

**judicial office** is not limited by the definition of **judicial officer** in this Act.

### **Part 8 Retirement of judicial officers**

#### **44 Retirement of judicial officers**

- (1) Subject to this section, a judicial officer shall retire on reaching the age of 72 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 Relations 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. However, if the person is duly appointed under the [Industrial Relations Act 1996](#) as such a member after that age, the member shall retire at the end of the further period or periods of appointment.
- (3) A Magistrate shall retire on reaching the age of 72 years.
- (4) (Repealed)
- (5) Nothing in this section affects the operation, with respect to the retirement of judicial officers, of any provision of any other Act.

### **Part 8A Immunity of judicial officers and others**



#### **44A Immunity of Supreme Court Judges**

The protection and immunity of a Judge of the Supreme Court (or a Judge having the same status as a Judge of the Supreme Court) performing duties as such a Judge extends to the Judge when performing ministerial duties as such a Judge.

#### **44B Immunity of certain judicial officers**

- (1) A judicial officer has, in the performance of his or her duties as a judicial officer (including ministerial duties), the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.
- (2) This section does not apply to a Judge of the Supreme Court or to a Judge having the same status as a Judge of the Supreme Court.

#### **44C Immunity of officers performing duties of judicial officers**

A registrar, an associate Judge of the Supreme Court, an assessor of the Land and Environment Court, a Commissioner of the Compensation Court, an authorised justice, an authorised officer (within the meaning of the [Criminal Procedure Act 1986](#)) or any other officer of a court has, when performing the duties of a judicial officer (including ministerial duties), the same protection and immunity as the judicial officer has in the performance of those duties.

### **Part 9 Miscellaneous**

#### **45 Alternate members of Commission**

- (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.

#### **46 Acting judicial members of Commission**

- (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.
- (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.

#### **47 Counsel assisting Commission or Conduct Division**

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

#### **48 Liability for proceedings**

- (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.

#### **49 Annual report**

- (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) complaints disposed of during the year,
    - (iv) (Repealed)and the manner in which they were disposed of,
  - (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),
  - (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.

## **50 Remuneration**

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.

## **51 Shortened references to Commission**

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.

## 52 Proceedings for offences

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

## 53 Operation of certain other Acts

- (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 1987* does not operate so as to authorise the suspension or removal of a judicial officer from judicial office.

## 54 Regulations

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.

## 55 Repeals

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

## **56 Savings and transitional provisions**

Schedule 6 has effect.

## **Schedule 1 Provisions relating to the appointed members of the Commission**

(Section 5 (7))

### **1 Definition**

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

### **2 (Repealed)**

### **3 Terms of office**

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.

### **4 Filling of vacancy in office of member**

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

### **5 Casual vacancies**

- (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,
- (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, or

(g) (Repealed)

(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 Provisions relating to the procedure of the Commission**

(Section 5 (8))

### **1 General procedure**

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.

### **2 Meetings**

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

### **3 Quorum**

The quorum for a meeting of the Commission is 7 members, of whom at least one must be an appointed member.

### **4 Presiding member**

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.

### **5 Voting**

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.

### **6 Minutes**

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

## **7 First meeting of Commission**

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

## **Schedule 3 Provisions relating to the procedure of the Conduct Division**

(Section 13 (4))

### **1 General procedure**

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.

### **2 Quorum**

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

### **3 Chairperson to preside**

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

### **4 Voting**

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

### **5 Minutes**

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

### **6 First meetings**

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 Repeals**

(Section 55)

[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).

## **Schedule 5 Provisions relating to the rights of certain staff of the Commission**

(Section 6 (6))

### **1 Definitions**

In this Schedule:

**member of staff** means an officer of the Commission employed under section 6 (1), other than a person employed on a temporary or casual basis.

**statutory body** means any body declared under clause 4 to be a statutory body for the purposes of this Schedule.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

### **2 Preservation of rights of staff previously public servants etc**

(1) If a member of staff was, immediately before being employed as a member of staff:

(a) an officer of the Public Service or the Teaching Service,

(b) a contributor to a superannuation scheme,

(c) an officer employed by a statutory body, or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she:

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person,

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff, and

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a member of staff and:

(h) his or her service as a member of staff shall be deemed to be service as an officer or employee for the purposes of any law under which those rights accrued or were



accruing, under which he or she continues to contribute or by which that entitlement is conferred, and

- (i) he or she shall be deemed to be an officer or employee, and the Commission shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (2) If a member of staff would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
- (a) he or she shall not be so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme, and
  - (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Commission in any case where he or she becomes a contributor to any such other superannuation scheme.
- (3) Subclause (2) does not prevent the payment to a member of staff on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be such an officer or employee for the purposes of the scheme.
- (4) A member of staff is not, in respect of the same period of service, entitled to claim dual benefits of the same kind through the operation of this clause.

### **3 Staff entitled to re-appointment to former employment in certain cases**

A person who:

- (a) being a member of staff, ceases to be employed by the Commission (except through dismissal on the ground of misbehaviour),
- (b) was, immediately before being employed as a member of staff:
  - (i) an officer of the Public Service or the Teaching Service, or
  - (ii) an officer or employee of a statutory body, and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being employed as a member of staff.

#### **4 Declaration of statutory bodies**

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

### **Schedule 6 Savings and transitional provisions**

(Section 56)

## **Part 1 Preliminary**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Judicial Officers Amendment Act 1998*

*Courts Legislation Amendment Act 2002*, to the extent that it amends this Act

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

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of [Judicial Officers Amendment Act 1998](#)**

### **2 Existing appointed members**

A person who, immediately before the commencement of the amendments to section 5 made by the [Judicial Officers Amendment Act 1998](#), held office as an appointed member of the Commission continues in office as if that member was appointed under that section as amended by that Act.

## **Part 3 Provisions consequent on enactment of [Courts Legislation](#)**

## **Amendment Act 2002**

### **3 Application of amendments to existing appointments**

- (1) Section 43A (Judicial office not affected by appointment to act in another judicial office) extends to apply to an appointment made before the commencement of that section, and applies to such an appointment as if that section had been in force when the appointment was made.
- (2) An amendment made to a provision of an Act by the *Courts Legislation Amendment Act 2002* extends to an appointment made or purporting to have been made under the provision before the commencement of the amendment, and applies to such an appointment as if the amendment had been in force when the appointment was made.

## **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.