

FACT SHEET

Judicial Commissions Bill 2024

The Judicial Commissions Bill 2024 establishes a framework for the management of judicial complaints in Tasmania. The framework in this Bill will operate in addition to, not instead of, existing avenues for the suspension or removal of judicial officers. The Bill establishes a fair, efficient and transparent process for gathering information and appropriately handling complaints in relation to judicial officers in Tasmania.

Judicial commissions (in some form) exist in several other Australian jurisdictions as well as overseas. This Bill has tailored elements of various models to the Tasmanian context.

The Bill applies to 'judicial officers', defined in this bill as judges, magistrates, and presidential members of the Tasmanian Civil and Administrative Tribunal (being the President and Deputy Presidents, as other members of the Tribunal are appointed for fixed periods and have sufficiently clear processes for removal from office).

Complaints can be made in relation to a judicial officer's behaviour or physical or mental capacity. Complaints can be made by a person or entity and can be made anonymously. A complainant does not have to have been a party to a proceeding or a person affected directly by the conduct.

The Council and any commission will measure the behaviour of judicial conduct against accepted standards of judicial behaviour as outlined in common law and also in key codes of conduct, such as the *Guide to Judicial Conduct* as published by the Australian Institute of Judicial Administration.

Complaints can not be made solely on dissatisfaction with the decision of a judicial officer, such as the outcome of a legal proceeding.

Judicial Council

The Bill establishes the Judicial Council ('the Council'), with the important function of receiving, examining and either dismissing or referring complaints about judicial officers. Under the Bill, the council consists of the following four people:

- The Chief Justice of the Supreme Court (who is the head of the Council);
- The Chief Magistrate of the Magistrates Court;
- An Australian legal practitioner appointed by the Minister for Justice on the joint nomination of the Law Society of Tasmania and the Tasmanian Bar; and
- A member appointed by the Minister for Justice who:
 - Is not, and has not been in the last five years, an Australian lawyer;
 - Is not, and has never been, a member of any Australian parliament; and
 - In the Minister's opinion, has the qualifications and experience to assist the council.

As part of examining complaints, the Council is to conduct a 'preliminary examination' of the complaint, during which the council may dismiss complaints that, for example, are not within the jurisdiction of the council, raise trivial matters, or otherwise do not warrant further consideration for certain identified reasons (clause 35).

If the complaint is not dismissed, the council must then proceed with a 'substantive examination' of the complaint. If necessary, the council may hold hearings as part of this process (but is not required to), and is not limited to the matters raised in the initial complaint. Generally, these hearings must be held in private.

In conducting this examination, the Council must determine, firstly, whether there are reasonable prospects of the complaint being wholly or partly substantiated. If the complaint is unlikely to be substantiated, the council must dismiss the complaint, and prepare a written report of its substantive examination.

The council must then proceed to consider, secondly, whether the complaint is of a nature that would justify the removal of the judicial officer from office.

The council is able to refer a complaint to the head of the jurisdiction relevant to the judicial officer if of the view that the complaint, while substantiated, does not justify the removal of the judicial officer from office, and the head of jurisdiction is the appropriate entity to take further action in respect of the complaint. The council must provide a report to the Attorney-General outlining the relevant evidence and reasons for the decision to make such a referral.

Judicial Commissions

The Bill provides that the Judicial Council will appoint a judicial commission to examine a complaint in two scenarios:

- if the Council is satisfied on reasonable grounds that there are reasonable prospects of a complaint being wholly or partly substantiated, and the complaint is of a nature that might justify the removal of the judicial officer; or
- if both Houses of Parliament pass a resolution for the examination of a complaint in relation to a judicial officer by a judicial commission.

A judicial commission will consist of three people, two of whom are appointed from a pool of potential members established by the Council, and one from a pool of potential members established by the Minister for Justice. The Council is required to nominate one of the members as the presiding member.

The people within the Council's pool must be, or have previously been, judicial officers (or an equivalent office in another jurisdiction), and in the opinion of the Council, hold the appropriate skills or qualifications to enable them to be a member of a judicial commission.

The people within the Minister's pool must not be, or have ever been, a judicial officer or a member of any Parliament, and must have, in the opinion of the Minister, appropriate skills or qualifications to enable them to be a member of a judicial commission.

As soon as practicable after being appointed, a commission must conduct an inquiry into the complaint. This may involve holding hearings. Subject to certain exceptions (see clause 46), a hearing of a judicial commission must be held in public.

After completing an examination of a complaint, a commission must prepare a report of its examination, and submit it to the Attorney-General. The Attorney-General is required to table the report in Parliament. Both Houses of Parliament are able to use this report to inform themselves as to whether the judicial officer should be removed from office. The work of the commission is complete upon submission of its report to the Attorney-General.

In carrying out their functions, neither the Council or commission are bound by the rules of evidence, and may inform themselves as they consider appropriate, and do whatever is necessary or expedient for the fair and expeditious examination of the complaint. There are a number of procedural provisions in the Bill regarding the Council and/or commission's processes, including relating to the inspection and retention of documents, medical examinations of judicial officers, search warrants, awards of costs, and restrictions on the publication or disclosure of certain materials.

At any point in the consideration of the complaint by either the Council or a commission, a complaint is automatically dismissed if the judicial officer dies, retires or resigns from office, or is otherwise no longer a judicial officer. In such a case, TASCAT or the relevant Court may still address any systemic matters arising.

Suspension or Removal from Office

The Bill also provides an avenue for judicial officers to be immediately suspended from office in certain circumstances, including where they have been charged with an offence that is punishable by a term of imprisonment of 12 months or more (clause 53).

This is in addition to the provision that a judicial officer is automatically excused from office upon a judicial commission being appointed.

And finally, clause 33 provides that a judicial officer is permanently removed from office if:

1. A complaint has been made about the judicial officer; and
2. A report of a judicial commission has been tabled in both houses of Parliament, whether or not the report contains a recommendation that the behaviour or physical or mental capacity of the judicial officer warrants their removal from office; and
3. A resolution is passed (or laid on the table and not withdrawn) in both Houses of Parliament confirming the removal of the judicial officer from office.

The Bill sets out the procedure for the Houses of Parliament to consider such a resolution, including providing the judicial officer with an opportunity to make a statement to Parliament.