

TASMANIA

JUDICIAL COMMISSIONS BILL 2024

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JUDICIAL COMMISSIONS BILL 2024

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*
17 October 2024

(Brought in by the Minister for Justice, the Honourable Guy Barnett)

A BILL FOR

An Act to provide for the examination of complaints in relation to certain judicial officers, to provide for their suspension or removal from office in certain circumstances and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Judicial Commissions Act 2024*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

(1) In this Act –

Associate Judge has the same meaning as in the *Supreme Court Act 1959*;

authorised person means –

- (a) in relation to the council – a person declared in writing by the head of the council to be an authorised person under this Act; and
- (b) in relation to a commission – a person declared in writing by the presiding member of the commission to be an authorised person, under this Act, while the commission is in operation;

Chief Magistrate has the same meaning as in the *Magistrates Court Act 1987*;

commission means a judicial commission appointed under section 31;

commission member, in relation to a commission, means a person appointed under section 15 as a member of the commission;

complaint, in relation to a judicial officer, means –

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-
- (a) a complaint made under section 27 in respect of the judicial officer; or
 - (b) a resolution of both Houses of Parliament, in accordance with section 28, in respect of a matter relating the judicial officer;

council means the judicial council established by section 6;

council member means a person specified in section 6(2) as a member of the council, including a person acting as, or the delegate of, such a person;

head of jurisdiction means –

- (a) for a judge of this State – the Chief Justice; or
- (b) for a magistrate – the Chief Magistrate; or
- (c) for a presidential member of TASCAT – the President of the Tribunal appointed under section 12(2) of the *Tasmanian Civil and Administrative Tribunal Act 2020*;

head of the council – see section 6;

judge, of this State, includes –

- (a) a judge of the Supreme Court;
and

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- (b) the Associate Judge; and
- (c) a person who is appointed as an acting judge under section 3 of the *Supreme Court Act 1887*;

judicial officer means –

- (a) a judge of this State; or
- (b) a magistrate; or
- (c) a presidential member of TASCAT;

magistrate means a magistrate within the meaning of the *Magistrates Court Act 1987*;

premises includes all or any part of –

- (a) a building or other structure; and
- (b) an aircraft, vehicle or vessel; and
- (c) a place, whether or not enclosed or built on;

presidential member of TASCAT includes –

- (a) the person appointed as President of the Tribunal under section 12(2) of the *Tasmanian Civil and Administrative Tribunal Act 2020*; and
- (b) each person appointed as a Deputy President of the Tribunal

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under section 26(2) of the
Tasmanian Civil and
Administrative Tribunal Act
2020;

presiding member, in relation to a
commission, means the presiding
member of the commission appointed
under section 15;

relevant judicial officer, in relation to a
complaint, means the judicial officer who
is the subject of the complaint;

supervisory entity, in relation to a judicial
officer, means –

- (a) if the judicial officer is a head of
jurisdiction, the council; or
- (b) in any other case, the relevant
head of jurisdiction for the
judicial officer;

TASCAT means the Tasmanian Civil and
Administrative Tribunal.

- (2) In this Act, a reference to a complainant in
respect of a complaint includes a reference to –
- (a) the person who made the complaint to
the council; and
 - (b) if the complaint is made anonymously or
is referred to the council by a third party,
the person whom the council considers to
be the most appropriate person to be

deemed to be the complainant in respect of the complaint.

4. Tenure of judicial office

A judicial officer may only be suspended or removed from office in accordance with –

- (a) this Act; or
- (b) in the case of the removal of a judge of the Supreme Court, the *Supreme Court (Judges' Independence) Act 1857*; or
- (c) in the case of the suspension or removal of the Associate Judge, the *Supreme Court Act 1959*; or
- (d) in the case of the removal of an acting judge appointed under section 3 of the *Supreme Court Act 1887* –
 - (i) the terms and conditions of the acting judge's appointment under that Act; or
 - (ii) the *Supreme Court (Judges' Independence) Act 1857*; or
- (e) in the case of the suspension or removal of a magistrate, the *Magistrates Court Act 1987*; or
- (f) in the case of the suspension or removal of a presidential member of TASCAT, the *Tasmanian Civil and Administrative Tribunal Act 2020*.

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5. Application of Act

This Act applies to the conduct of a judicial officer regardless of whether the conduct occurred before, or after, the commencement of this Act.

PART 2 – JUDICIAL ENTITIES

Division 1 – Judicial council

6. Establishment of council

- (1) The judicial council is established.
- (2) The membership of the judicial council consists of –
 - (a) the Chief Justice; and
 - (b) the Chief Magistrate; and
 - (c) one member, appointed by the Minister, who is an Australian lawyer jointly nominated by –
 - (i) the Council of the Law Society, continued under section 621 of the *Legal Profession Act 2007*; and
 - (ii) the Tasmanian Bar within the meaning of the *Legal Profession Act 2007*; and
 - (d) one member, appointed by the Minister –
 - (i) who is not, and has not been for the last 5 years, an Australian legal practitioner; and
 - (ii) who is not, and never has been, a member of a Parliament of a

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State, a Territory or the Commonwealth; and

- (iii) who has, in the Minister's opinion, the qualifications and experience to assist the council in the performance of its functions, or the exercise of its powers, under this Act.
- (3) Before appointing a person as a council member under subsection (2)(c) or (d), the Minister must consult with the Chief Justice and the Chief Magistrate.
- (4) The Chief Justice is the head of the council.
- (5) Despite subsection (4), if the Chief Justice is unable to perform the functions of the head of the council –
- (a) the Chief Magistrate is to be the head of the council; or
 - (b) if the Chief Magistrate is also unable to perform the functions of the head of the council, the delegate of the Chief Justice is to be the head of the council.
- (6) Schedule 1 applies in respect of the appointment of a council member appointed under subsection (2)(c) or (d).

7. Functions and powers of council

- (1) The council has the following functions:

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- (a) to receive complaints in relation to judicial officers;
 - (b) to examine complaints in relation to judicial officers;
 - (c) to refer certain complaints to a commission, the relevant head of jurisdiction or any other relevant reviewing or disciplinary entity;
 - (d) to make guidelines, in accordance with subsection (2);
 - (e) to give information and education about the process for complaints in relation to judicial officers;
 - (f) to provide recommendations in respect of professional development, education or training for judicial officers;
 - (g) any other function given to the council under this Act or any other Act.
- (2) The council may make guidelines in respect of the following matters:
- (a) the practices and procedures of the council;
 - (b) the practices and procedures of a commission;
 - (c) the practices and procedures in relation to persons who are vulnerable, or persons with a disability, including but not limited to –

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- (i) the making of complaints under this Act; and
 - (ii) the supports, and adjustments, that are to be offered in respect of a hearing, or other matter, under this Act;
- (d) the procedures that may be used to determine, if required, the reasonable costs of a party including, but not limited to, by reference to rules, guidelines or other processes of one or more judicial entities;
- (e) the factors that may be considered when determining whether a hearing under this Act should be held in public or in private;
- (f) the roles, and functions, of a person or class of persons under this Act;
- (g) any other matter in respect of which the council considers guidelines may be necessary or convenient.
- (3) The council is to ensure that guidelines made under subsection (2) –
- (a) are published on a website that –
 - (i) is operated by, or on behalf of, the council; and
 - (ii) is accessible by members of the public; and

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- (b) are published in any other manner that the council considers appropriate; and
 - (c) remain published under paragraph (a) while the guidelines remain in effect.
- (4) The council has all the powers necessary to perform its functions under this Act.

8. Council members not to perform functions or exercise powers in certain circumstances

- (1) A council member who is the complainant, or relevant judicial officer, in relation to a complaint may not perform a function, or exercise a power, as a council member in relation to that complaint.
- (2) If a majority of council members reasonably believe that another council member has a known, or perceived, bias in respect of a complaint or the relevant judicial officer, the majority of council members may determine that the other council member may not perform a function, or exercise a power, as a council member in relation to that complaint.

9. Staff and facilities of council

- (1) The council may arrange with the Secretary of the Department for one or more of the following to be made available to the council to assist the council in the performance of its functions and the exercise of its powers:

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- (a) the services of one or more State Service employees or other persons employed or engaged by the Department;
 - (b) facilities and goods of the Department, or such other facilities and goods as may reasonably be required by the council.
- (2) Subject to and in accordance with the *State Service Act 2000*, a person may be employed for the purpose of enabling the council to perform its functions or exercise its powers.
- (3) For the avoidance of doubt, State Service employees, or other persons, made available to the council under subsection (1), or employed under subsection (2), may serve the council, in any capacity, in conjunction with their existing State Service employment.

10. Delegation by certain council members

- (1) The Chief Justice may delegate a function or power of the Chief Justice under this Act to a judge of this State other than this power of delegation.
- (2) The Chief Magistrate may delegate a function or power of the Chief Magistrate under this Act to a magistrate other than this power of delegation.
- (3) A function or power delegated under this section may only be performed or exercised by the delegate if the delegator is unable, for any reason, to perform the function or exercise the power.

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- (4) For the purposes of subsection (3), a delegator is not unable to perform a function, or exercise a power, if the delegator –
- (a) has a discretion as to whether to perform the function or exercise the power; and
 - (b) has elected to use that discretion by not performing the function or exercising the power.

11. Delegation by council

The council may delegate a function or power of the council under this Act to a member of the council's staff other than the following functions:

- (a) the dismissal of a complaint, other than its function under section 35(2)(a)(i), (2)(c)(ii) or (d);
- (b) the referring of a complaint;
- (c) the appointing of a commission in respect of a complaint.

12. Attorney-General may request certain information from council

- (1) If requested to do so by the Attorney-General, the council is to provide the Attorney-General with the following information in relation to a specified judicial officer:

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- (a) whether a complaint has been made, when a complaint was made or when the matter about which a complaint was made is alleged to have happened;
 - (b) the allegations that form the subject matter of the complaint;
 - (c) the stage of the procedure for dealing with a complaint that the complaint has reached;
 - (d) if a complaint has been disposed of, the way in which the complaint was disposed of;
 - (e) other information that the council considers relevant.
- (2) Despite subsection (1), the council is not required under that subsection to provide information about a complaint against a specified judicial officer if –
- (a) a commission has not yet been appointed in respect of the complaint; and
 - (b) the council considers it is not in the public interest to provide the information to the Attorney-General.

13. Annual reports of council

- (1) Within 3 months after the end of a financial year, the council must prepare a report in respect of the work and activities of the council in that financial year and give the report to the Minister.

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- (2) A report under subsection (1) must include the following in respect of the relevant financial year:
- (a) the number of complaints –
 - (i) received by, or referred to, the council;
 - (ii) dismissed under section 35;
 - (iii) referred to the relevant head of jurisdiction under section 37;
 - (iv) dismissed under section 41;
 - (v) substantiated under section 42;
 - (b) the number of commissions established under this Act;
 - (c) if a complaint is dismissed by the council under section 35, or referred by the council to the relevant head of jurisdiction under section 37, a summary of the grounds for that dismissal or referral;
 - (d) a description, which may include statistics, of any patterns in the nature and scope of complaints made to or dealt with by the council.
- (3) The report under subsection (1) may include –
- (a) recommendations for changes, or any other matter that the council considers relevant, to one or more of the following:

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- (i) this Act;
 - (ii) a function or power of the council, or a commission, under this Act;
 - (iii) related administrative matters arising from the performance of the functions, or the exercise of the powers, of the council; and
- (b) an analysis of the nature and scope of complaints received, investigated, referred, dismissed or substantiated under this Act.
- (4) The report under subsection (1) must not identify the relevant judicial officer in respect of a complaint that has been made under this Act, unless the person –
- (a) has been identified in the public domain, and is widely recognised, in connection with the complaint of the person’s behaviour that was the basis of the complaint; or
 - (b) has been convicted of an offence connected with the complaint.
- (5) The Minister must, as soon as practicable after receiving a report under subsection (1), table the report in each House of Parliament.

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Division 2 – Judicial commissions

14. Potential membership of judicial commissions

- (1) The council must establish a pool of at least 6 persons –
 - (a) who are, or have previously been, judicial officers or hold, or have previously held, an equivalent office in another jurisdiction; and
 - (b) in the opinion of the council, where each person holds the appropriate skills, or qualifications, to enable the person to be a member of a judicial commission established under this Act; and
 - (c) who, as far as practicable, reflects the diversity of persons within the community.
- (2) The Minister must establish a pool of at least 6 persons –
 - (a) who are not, and have never been, judicial officers and who do not hold, and have never previously held, an equivalent office in another jurisdiction; and
 - (b) in the opinion of the Minister, where each person holds the appropriate skills, or qualifications, to enable the person to be a member of a judicial commission established under this Act; and

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- (c) who, as far as practicable, reflect the diversity of persons within the community.
- (3) A member of Parliament, or a former member of Parliament, in any jurisdiction –
 - (a) is not to be a member of either pool established under this section; and
 - (b) is not eligible to be a commission member.

15. Membership of judicial commissions

- (1) If the council appoints a judicial commission under section 31, the council is to –
 - (a) appoint, as members of the judicial commission –
 - (i) 2 persons from the pool of potential members established under section 14(1); and
 - (ii) one person from the pool of potential members established under section 14(2); and
 - (b) in making those appointments, have regard to the diversity of members of the judicial commission, as far as it is reasonably practicable to do so; and
 - (c) appoint one member of the judicial commission to be the presiding member of the commission.

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- (2) If a commission member dies or resigns, or is suspended or removed from office under clause 5 of Schedule 1 –
 - (a) the council may appoint a new member of the judicial commission in accordance with subsection (1)(a); or
 - (b) if the council elects not to appoint a new member to the commission under paragraph (a) –
 - (i) the remaining members constitute the commission; and
 - (ii) this Act has effect as if subsection (1)(a) required only two members to be appointed.
- (3) If the presiding member of a commission dies or resigns, or is suspended or removed from office under clause 5 of Schedule 1, the council must, in writing, appoint one of the commission members to be the new presiding member.
- (4) Schedule 1 applies in respect of the appointment of a commission member appointed under this section.

16. Proceedings of commission

- (1) A question arising before a commission must be decided –
 - (a) if the commission is constituted by 3 commission members – in accordance

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with the opinion of a majority of the commission members; or

- (b) if the commission is constituted by 2 commission members and those members are divided in opinion – in accordance with the opinion of the presiding member.
- (2) If, in relation to a question arising before a commission, the commission members are not unanimous in opinion, there must be recorded in the report of the commission under section 49, if a commission member so requires, particulars of the opinions of the commission members on that question.

17. Staff and facilities of commissions

The council is to ensure that each judicial commission, established under this Act in respect of a judicial officer, has the staff and facilities necessary to perform the functions, and exercise the powers, of the commission.

18. Cessation of commissions

- (1) A judicial commission is completed when whichever of the following last occurs:
- (a) when the commission’s report of its inquiry into the complaint has been submitted to the Attorney-General in accordance with section 49;

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- (b) if section 52 applies to the commission, when the commission notifies the Attorney-General in accordance with that section that the outstanding matters have been finalised.
- (2) A person's appointment as a commission member, in respect of a commission, ends –
- (a) if –
 - (i) the person dies; or
 - (ii) the person resigns in writing to the council; or
 - (iii) the person is removed from the office of commission member under clause 5 of Schedule 1; or
 - (b) when the commission is completed.

Division 3 – Powers and procedures of council and commissions

19. Procedural rules for council or commissions

- (1) In conducting its proceedings, the council or a commission –
- (a) is not bound by the rules of evidence but may inform itself of any matter in such manner as it considers appropriate; and
 - (b) may do whatever it considers necessary or expedient for the fair and expeditious

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conduct of the examination of, or the inquiry into, the complaint.

- (2) The council or a commission may appoint an Australian legal practitioner to assist it, either generally or in relation to a particular matter.

20. Inspection and retention of documents

- (1) A council member, a member of the staff of the council or an authorised person may –
- (a) inspect a document or thing produced before, or delivered to, the council; and
 - (b) retain possession of the document or thing for the period necessary for the purposes of the examination of the complaint to which the document or thing relates including, but not limited to, by any commission appointed in respect of the complaint; and
 - (c) make copies of, or take extracts from, such parts of the document, or thing, as are relevant to the examination of the complaint to which the document relates.
- (2) If a document is retained under subsection (1)(b) –
- (a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a council member to be a true copy, and the certified copy

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- must be received in all courts as evidence as if it were the original; and
- (b) until the certified copy is supplied, the council must, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- (3) A commission member, a member of the staff of a commission or an authorised person may –
- (a) inspect a document or thing produced before, or delivered to, the commission including, but not limited to, a document or thing provided to the commission by the council; and
- (b) retain possession of the document or thing for such period as is necessary for the purposes of the inquiry into the complaint to which the document or thing relates; and
- (c) make copies of, or take extracts from, such parts of the document, or thing, as are relevant to the inquiry into the complaint to which the document relates.
- (4) If a document is retained under subsection (3)(b) –
- (a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with

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- a copy certified by a commission member to be a true copy and the certified copy must be received in all courts as evidence as if it were the original; and
- (b) until the certified copy is supplied, the commission must, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- (5) The council or commission must return to a person a document, or thing, retained by the council, or commission, under this Act if –
- (a) the person requests the return of the document or thing; and
- (b) the document or thing is no longer necessary for the purposes of an examination of, or inquiry into, a complaint under this Act; and
- (c) the council, or commission, is reasonably satisfied that the person is entitled to possession of the document or thing.

21. Medical examinations of judicial officers

- (1) If, in the course of proceedings under this Act in respect of a complaint, the council or a commission reasonably believes that the relevant

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judicial officer may be physically or mentally unable, or unfit, to effectively perform the functions of the relevant judicial office, the council may request the judicial officer to –

- (a) undergo a specified medical examination within a reasonable specified period; and
 - (b) give the council a copy of any report of the medical examination.
- (2) A medical examination requested under subsection (1) must relate only to the physical or mental fitness of the judicial officer to perform effectively the functions of the relevant judicial office.
- (3) If the judicial officer fails, without reasonable excuse, to comply with the request, a statement to that effect must be included in any report given by the council, or commission, in relation to the judicial officer under this Act.

22. Search warrants

- (1) The presiding member of a commission may issue a search warrant, in respect of the matter into which the commission is inquiring, if the presiding member is satisfied that –
- (a) there are reasonable grounds for suspecting that there may be, at that time or within the next following 72 hours, in or on any premises, a thing of a particular kind connected with the matter (the *relevant item*); and

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- (b) if a search warrant were not issued for the production of the relevant item, that item might be concealed, lost, mutilated, destroyed or disposed of.
- (2) A search warrant authorises a police officer, or an authorised person named in the warrant, with such assistance and by such force as is necessary and reasonable –
- (a) to enter the premises; and
 - (b) to search the premises for the relevant items specified in the warrant; and
 - (c) to request assistance from any person on the premises to unlock, or open, any thing in or on the premises; and
 - (d) to seize any relevant items specified in the warrant that are found in or on the premises; and
 - (e) to deliver anything so seized to the commission.
- (3) A search warrant must –
- (a) state the purpose for which it is issued; and
 - (b) name the person, or class of persons, who are authorised to execute the warrant; and
 - (c) specify particular hours during which the entry is authorised or state that the entry

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is authorised at any time of the day or night; and

- (d) include a description of the relevant items in respect of which the powers under the warrant may be exercised; and
 - (e) specify the date, being a date not later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant may be executed, in accordance with its terms, at any time during the period commencing on the date of issue of the warrant and ending at the end of the date specified for subsection (3)(e).
- (5) If, in the course of searching under a search warrant for a relevant item –
- (a) the person executing the warrant finds a thing that the person believes on reasonable grounds to be connected with the matter into which the commission is inquiring, although not a relevant item specified in the warrant; and
 - (b) the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent it from being concealed, lost, mutilated, destroyed or disposed of –

the person may seize that thing and must deliver the thing so seized to the commission.

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- (6) A person executing a search warrant must, on request by an occupant of the premises to which the warrant relates, show –
- (a) the warrant to that occupant; and
 - (b) provide evidence that the person is a person who may execute the warrant.

23. Persons may appear by audio or audio visual links

- (1) The council, or a commission, may give a direction for the use of an audio link or audio visual link, both within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1999*, at the hearing of a complaint to enable one or more of the following persons to appear in that hearing and participate or give evidence:
- (a) a person who is required or entitled to appear personally at the hearing, whether as a party or as a witness;
 - (b) a person who is entitled to appear for another person at the hearing.
- (2) A person who uses an audio link or audio visual link to appear in a relevant hearing in accordance with this section is taken to be before the council or commission that is holding the hearing.
- (3) Part 2 of the *Evidence (Audio and Audio Visual Links) Act 1999* applies in respect of a hearing of the commission as if –
- (a) a reference to a Tasmanian court were a reference to the council or commission

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who gave the direction under this section; and

- (b) a reference to a courtroom, or other place at which the court is sitting, were a reference to a place where the council or commission is holding a hearing under this Act.

24. Council or commissions may disclose certain allegations

- (1) In this section –

allegations of criminal behaviour means information that has been obtained in the course of an examination, inquiry, or hearing, under this Act that –

- (a) relates, or may relate, to the commission of an offence against a law of the State, the Commonwealth, another State or a Territory; and
 - (b) is, or may be, evidence of the commission of an offence against a law of the State, the Commonwealth, another State or a Territory.
- (2) The council or a commission may disclose, to the following persons, allegations of criminal behaviour if the council or commission is satisfied that the disclosure of the allegations is appropriate in the circumstances:

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- (a) the Attorney-General or the appropriate Minister of State for the Commonwealth, the other State or the Territory; or
- (b) the Commissioner of Police.

25. Council or commissions may determine costs in certain circumstances

- (1) The council or a commission, in its discretion, may award costs to the relevant judicial officer in respect of a complaint if –
 - (a) the complaint is dismissed, other than under section 29; or
 - (b) the complaint is referred to the relevant head of jurisdiction under section 37; or
 - (c) the council or commission considers the awarding of costs to the judicial officer, and the amount of the costs to be awarded, to be reasonable in the circumstances.
- (2) An award of costs under subsection (1) is to be in accordance with any guidelines made under section 7(2).
- (3) The council may –
 - (a) determine the amount of the following costs and allowances that may be payable to a person who appears before the council, or a commission, as a witness:

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- (i) the legal costs incurred by the person as a witness;
 - (ii) an allowance for meals;
 - (iii) an allowance for travelling;
 - (iv) an allowance for accommodation; and
 - (b) make guidelines under section 7(2) as to the circumstances under which such costs and allowances may be paid to such a witness.
- (4) After considering any relevant guidelines made under section 7(2), the council, or a commission, in its discretion may award the witness a cost or allowance determined under subsection (3)(a).
- (5) Costs awarded under this section are to be taxed by a taxing officer of the Supreme Court.

26. Costs and expenses of council and commissions

The following costs and expenses incurred in, or in connection with, the conduct of the council or a commission under this Act are a charge on the Public Account and are payable out of the Public Account without further appropriation than this section:

- (a) the costs and expenses incurred in, or in connection with, the administration of the council or a commission under this Act;

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- (b) the costs and expenses incurred in, or in connection with, an examination or inquiry held under this Act including, but not limited to an amount of costs awarded under section 25.

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PART 3 – COMPLAINTS AGAINST JUDICIAL OFFICERS

Division 1 – Types of complaints

27. Complaints generally

- (1) A person may complain to the council about a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer.
- (2) A complaint under subsection (1) must –
 - (a) be made in a manner, or format, that complies with any relevant guidelines made under section 7(2); and
 - (b) state –
 - (i) the name and address of the complainant; or
 - (ii) that the complaint is being made anonymously; or
 - (iii) that the complaint is being referred to the council on behalf of another person, regardless of whether the other person is known or anonymous; and
 - (c) identify the judicial officer concerned; and

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- (d) contain full particulars of the allegations that form the subject matter of the complaint; and
 - (e) contain the prescribed information.
- (3) For the avoidance of doubt, a complaint under this Act may not be made solely on the basis that the complainant is dissatisfied with the outcome of judicial proceedings that were presided over by the relevant judicial officer.

28. Parliamentary resolutions for commissions to be appointed

If both Houses of Parliament pass a resolution for an inquiry into a matter that relates to a judicial officer by a judicial commission –

- (a) the Minister must notify the council as soon as practicable of the resolution; and
- (b) as soon as practicable after being so notified, the council must appoint a judicial commission to examine the complaint.

29. Complaints automatically dismissed in certain circumstances

- (1) A complaint in respect of a judicial officer is automatically dismissed if the judicial officer –
- (a) dies, retires or resigns from judicial office; or

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- (b) is otherwise no longer a judicial officer for the purposes of this Act.
- (2) For the avoidance of doubt, subsection (1) does not apply to a judicial officer if the judicial officer resigns as a judicial officer for the purposes of accepting another appointment as a judicial officer.

Division 2 – Effect of making of complaints

30. Council to examine complaints &c.

As soon as practicable after receiving a complaint, the council must examine the complaint in accordance with Part 4.

31. Council to appoint judicial commissions in respect of complaints

- (1) 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 relevant judicial officer from office, the council must –
 - (a) appoint a judicial commission to examine the complaint; and
 - (b) give the Attorney-General the report mentioned in section 42.
- (2) For the purposes of determining, under subsection (1), whether a complaint might justify the removal of the relevant judicial officer from

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office, the council may take into account one or more of the following:

- (a) any relevant codes of conduct that may apply to the judicial office, whether that code of conduct applies in this jurisdiction or another jurisdiction;
 - (b) any relevant directions given by the relevant head of jurisdiction in respect of the judicial officer;
 - (c) any prescribed codes, guidelines, directions or other similar instruments or documents;
 - (d) any other matter, instrument or document that the council considers appropriate.
- (3) As soon as practicable after being notified under section 28 that both Houses of Parliament have passed a resolution for a judicial commission to be appointed in respect of a judicial officer, the council is to appoint a judicial commission to examine the judicial officer.
- (4) The council must also give written notice of the intention of the council to appoint a judicial commission, under subsection (1)(a) or subsection (3), to –
- (a) the complainant, or the member of Parliament who raised the matter to which a resolution under section 28 relates, as the case requires; and
 - (b) the relevant judicial officer; and

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- (c) if the relevant judicial officer is not a head of jurisdiction – the relevant head of jurisdiction in respect of the judicial officer.
- (5) In appointing a judicial commission under this section in respect of a complaint, the council is to also –
 - (a) specify the period within which a report of the commission is to be submitted, under section 49, in respect of the commission; and
 - (b) provide the commission with such information, and documents, held by the council in respect of the complaint, that the council considers appropriate.
- (6) A judicial commission appointed under this section in respect of a complaint must conduct an inquiry into the complaint in accordance with Part 5.

32. Judicial officer excused if judicial commission appointed

- (1) If a commission is appointed to examine a complaint in respect of a judicial officer, the judicial officer –
 - (a) is excused from the relevant judicial office; and

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- (b) is not to perform any function, or exercise any power, connected with the relevant judicial office.
- (2) Despite subsection (1), if a judicial officer has been excused from judicial office under that section, the relevant supervisory entity may, by instrument, authorise the judicial officer to perform a specified function, or exercise a specified power, of the judicial office held, for the purpose of completing a specified matter or a specified class of matters.
- (3) The performance of a function, or the exercise of a power, by a judicial officer who has been excused from judicial office under this section is taken to have been validly performed, or exercised, if the performance of the function or the exercise of the power is authorised under subsection (2).
- (4) A judicial officer who has been excused from judicial office under this section may only be returned to judicial office if –
 - (a) the commission’s report in respect of the relevant complaint is tabled in Parliament under section 50; and
 - (b) within 5 sitting-days of each House of Parliament after the report is so tabled, a resolution motion, within the meaning of section 33(2)(b) –
 - (i) has not been made in either House; or

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- (ii) if made in a House during that period, has been negated or withdrawn.

- (5) A judicial officer who has been excused from office under this section is entitled to be paid remuneration and allowances, in accordance with the instrument of appointment of the judicial officer, as a judicial officer while excused.

Division 3 – Result of examination of complaint

33. Judicial officer removed from office in certain circumstances

- (1) A judicial officer is removed from judicial office if –
 - (a) a complaint has been made, under this Act, in respect of the judicial officer; and
 - (b) a report of a commission, in respect of the complaint, has been tabled in both Houses of Parliament under section 50; and
 - (c) a resolution is passed in both Houses of Parliament, confirming the removal of the judicial officer from judicial office, in accordance with subsection (2).

- (2) A resolution confirming that a judicial officer is to be removed from office is passed by a House of Parliament if –

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- (a) the judicial officer has been given the opportunity –
 - (i) to deliver a statement to the House of Parliament in accordance with section 51 and the relevant time period for such a statement under that section has expired; and
 - (ii) to address the House of Parliament in accordance with the standing orders of that House; and
- (b) a notice of motion in respect of the resolution (the *resolution motion*) –
 - (i) is approved by the House; or
 - (ii) is laid on the table of the House and, within 5 sitting-days after the resolution motion was so laid on the table, no notice has been given of a motion to disallow the resolution motion; or
 - (iii) is laid on the table and each notice to disallow the resolution motion, that has been given within 5 sitting-days after the resolution motion was so laid on the table, has been withdrawn or has been negated.
- (3) If part of the report of the commission, tabled in Parliament in accordance with section 50, has

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been omitted by the Attorney-General under that section, an address to a House of Parliament by the judicial officer under subsection (2) in respect of the complaint must not refer to the matter in that report that has been so omitted.

**PART 4 – EXAMINATION OF COMPLAINTS BY
COUNCIL**

34. Proceedings of council

- (1) A question before the council must be decided –
 - (a) in accordance with the opinion of a majority of the council members; or
 - (b) if the council is equally divided, in accordance with the opinion of the head of the council.
- (2) If, in relation to a question before the council, council members are not unanimous in opinion, a council member may require the record of the council to reflect the different opinions of the council members on that question.
- (3) In any examination under this Part, the council may initiate the inquiries into the subject matter of the complaint that the council considers appropriate.
- (4) An examination under this Part and any inquiries under this Part must, as far as practicable, be held in private.
- (5) For the avoidance of doubt, subsection (4) does not apply to a hearing held by the council in respect of the complaint if the council decides under section 39 that the hearing is to be held in public.

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Part 4 – Examination of Complaints by Council

35. Preliminary examinations of complaints

- (1) The council must conduct a preliminary examination of a complaint.
- (2) After a preliminary examination of a complaint under subsection (1), the council may dismiss a complaint if satisfied on reasonable grounds of any of the following:
 - (a) the complaint –
 - (i) is not within the jurisdiction of the council; or
 - (ii) is frivolous, vexatious or lacking in substance;
 - (b) the subject matter of the complaint –
 - (i) is trivial; or
 - (ii) happened so far in the past that it does not justify further consideration;
 - (c) in relation to the matter complained about, there is or was –
 - (i) another satisfactory means of redress or of dealing with the complaint or the subject matter of the complaint; or
 - (ii) an existing appeal or review right in respect of the subject matter of the complaint that appears to be adequate to deal with the

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complaint or the subject matter of the complaint;

- (d) having regard to all the circumstances, the complaint does not warrant further consideration under this Act.
- (3) In deciding whether or not to dismiss a complaint, the council may have regard to any matter that the council considers relevant.
 - (4) If the council dismisses a complaint after a preliminary examination under subsection (1), the council must inform the complainant that the complaint has been dismissed.
 - (5) If the council does not dismiss a complaint after a preliminary examination under subsection (1), the council must inform the relevant judicial officer –
 - (a) that a complaint has been made in respect of the judicial officer; and
 - (b) that the council intends to conduct a substantive examination of the complaint.
 - (6) The council is not required, under subsection (5), to notify a judicial officer of a complaint if the council is satisfied that, due to the nature of the complaint, it is reasonable in the circumstances not to notify the judicial officer in accordance with that subsection.

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Part 4 – Examination of Complaints by Council

36. Examination of complaint by council

- (1) The council must conduct a substantive examination of a complaint received by the council unless –
 - (a) the complaint is dismissed under section 35; or
 - (b) after the preliminary examination is held into the complaint, the complaint is referred under section 37.
- (2) A substantive examination of a complaint by the council is for the purpose of determining if –
 - (a) there are reasonable prospects of the complaint being wholly or partly substantiated; and
 - (b) the complaint is of a nature that would justify the removal of the relevant judicial officer from office.
- (3) The council must inform the Attorney-General –
 - (a) when the council commences the examination of a complaint; and
 - (b) when, and the way in which, the complaint is dealt with by the council.

37. Complaints to be referred to head of jurisdiction in certain circumstances

- (1) After conducting an examination under this Part, the council may refer a complaint to the relevant

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head of jurisdiction if the council is satisfied on reasonable grounds that –

- (a) if the complaint were substantiated, it would not be of a nature that would justify the removal of the relevant judicial officer from office; and
 - (b) the complaint may be wholly or partly substantiated; and
 - (c) the relevant head of jurisdiction is the appropriate entity to take further action in respect of the complaint.
- (2) A reference under subsection (1) may include recommendations as to what steps might be taken by the head of jurisdiction in respect of the complaint.

38. Power of council to extend or partially dismiss complaint

- (1) In dealing with a complaint in respect of a judicial officer, the council –
- (a) is not limited to the matters raised in the initial complaint; and
 - (b) may consider other matters in relation to the judicial officer, as part of the complaint, if those other matters arise during the examination of a complaint.
- (2) If, in examining a complaint in respect of a judicial officer, a matter which might constitute grounds for a complaint in respect of another

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judicial officer comes to the attention of the council, the council may treat those grounds as a complaint in respect of the other judicial officer.

- (3) A power to dismiss a complaint includes a power to dismiss a part of a complaint.

39. Hearing of complaint by council

- (1) The council may hold hearings as part of an examination of a complaint.
- (2) A hearing must be held in private, unless the council decides on reasonable grounds that it is in the public interest for the hearing to be held in public.
- (3) If a hearing or part of a hearing is to be held in private, the council may give directions as to the persons who may be present during the hearing.
- (4) At a hearing of a complaint by the council –
- (a) the relevant judicial officer is entitled to appear and to be represented by an Australian legal practitioner; and
 - (b) a person summoned to attend, or to appear before the council as a witness, may be represented by an Australian legal practitioner; and
 - (c) any other person may, with the consent of the council, appear and may be represented by an Australian legal practitioner.

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- (5) A hearing is to be held in accordance with any relevant guidelines made under section 7(2).

40. Powers in relation to witnesses, &c., at hearings

- (1) The head of the council, or an authorised person, may issue a subpoena requiring the person to appear before the council at a hearing, at a specified time and place, to do either or both of the following:
- (a) give evidence;
 - (b) produce a specified document, or other thing, relevant to the hearing.
- (2) A person is taken to have complied with a subpoena under subsection (1)(b) if the person gives the relevant document or other thing to the council before the date specified in the subpoena for its production.
- (3) The head of the council may require a witness, appearing at a hearing before the council to give evidence, to do one or more of the following:
- (a) take an oath or give an affirmation;
 - (b) answer a question relevant to the hearing;
 - (c) produce a specified document, or other thing, relevant to the hearing.
- (4) The following persons may examine or cross-examine a witness at a hearing in respect of a matter if the council is satisfied on reasonable grounds that the matter is relevant and

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appropriate to its substantive examination of a complaint:

- (a) an Australian legal practitioner assisting the council;
 - (b) the relevant judicial officer or the Australian legal practitioner representing the relevant judicial officer;
 - (c) any other person present, whom the head of the council permits to do so.
- (5) For the purposes of a substantive examination of a complaint, the council may take into account a failure to comply with a subpoena as the council considers appropriate.

41. Council may dismiss complaints

- (1) After conducting a substantive examination under this Part in respect of a complaint, the council must dismiss a complaint if satisfied on reasonable grounds that –
 - (a) any of the grounds specified in section 35(2) apply to the complaint; or
 - (b) the complaint is unlikely to be substantiated.
- (2) If the council dismisses a complaint, the council must prepare a written report of its substantive examination of the complaint which –
 - (a) sets out the council’s findings on material questions of fact; and

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- (b) refers to the evidence or other material on which those findings were based; and
 - (c) sets out the council's reasons for dismissing the complaint.
- (3) The council must give a copy of the written report prepared under subsection (2) in respect of a complaint to –
 - (a) the relevant judicial officer; and
 - (b) if the relevant judicial officer is not the relevant head of jurisdiction – the relevant head of jurisdiction in respect of the judicial officer; and
 - (c) if the complaint was the subject of a resolution of Parliament under section 28, the member of Parliament who raised the matter to which the resolution relates.
- (4) The council may give a copy of the written report prepared under subsection (2) in respect of a complaint, or a summary of the report, to the complainant.

42. Council to report on certain actions

- (1) This section applies to the following actions of the council:
 - (a) the appointment of a commission under section 31;

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- (b) the referral of a complaint to the relevant head of jurisdiction under section 37.
- (2) After taking an action referred to in subsection (1) in respect of a complaint, the council must –
- (a) prepare a report on –
 - (i) its examination of the complaint; and
 - (ii) the action referred to in subsection (1) taken by the council in respect of the complaint; and
 - (iii) if the council did not notify the relevant judicial officer of the complaint in accordance with section 35(6), the reasons for not notifying the judicial officer of the complaint; and
 - (b) if subsection (1)(a) applies, give the report to –
 - (i) the Minister; and
 - (ii) the relevant judicial officer; and
 - (iii) if the relevant judicial officer is not the relevant head of jurisdiction – the relevant head of jurisdiction in respect of the judicial officer; and

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- (c) if subsection (1)(b) applies, give the report to –
 - (i) the relevant judicial officer; and
 - (ii) the relevant head of jurisdiction.
- (3) A report under subsection (2)(a) must –
 - (a) set out the council’s reasons for taking the relevant action under subsection (1) in respect of the complaint; and
 - (b) set out the council’s findings on material questions of fact, if any; and
 - (c) refer to the evidence or other material on which those findings were based.
- (4) If the council makes a report under subsection (2)(a), the council –
 - (a) must give a copy of the report to the relevant judicial officer and, if the complaint was the subject of a resolution of Parliament under section 28, the member of Parliament who raised the matter to which the resolution relates; and
 - (b) may give a copy of the report, or a summary of the report, to the complainant.

**PART 5 – INQUIRY INTO COMPLAINTS BY
COMMISSION**

43. Inquiry into complaint by commission

- (1) As soon as practicable after being appointed to examine a complaint, a commission must conduct an inquiry into the complaint.
- (2) In conducting an inquiry into a complaint in respect of a judicial officer, the commission –
 - (a) is to consider the specific allegations that form the subject matter of the complaint; and
 - (b) may consider any matter that the commission considers relevant to whether the judicial officer is unable, or unfit, to perform the functions of the relevant judicial office; and
 - (c) may not consider a matter arising before the appointment of the judicial officer to the relevant judicial office unless the commission considers it relevant to whether the judicial officer is unable, or unfit, to perform the functions of the relevant judicial office; and
 - (d) may initiate such inquiries into the subject matter of the complaint as the commission considers appropriate.

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- (3) Except as otherwise provided by this Act, an inquiry of the commission may be conducted in such manner as the commission determines.

44. Hearings of complaints by commission

- (1) For the purposes of conducting an inquiry into a complaint, a commission may hold hearings.
- (2) The presiding member of a commission must preside at a hearing of the commission.
- (3) Except as otherwise provided by this Act, the procedure at a hearing of the commission may be decided by the commission.
- (4) At a hearing of a commission under this Part –
 - (a) the relevant judicial officer is entitled to appear and to be represented by an Australian legal practitioner; and
 - (b) a person summoned to attend, or to appear before the commission as a witness, may be represented by an Australian legal practitioner; and
 - (c) any other person may, with the consent of the commission, appear and may be represented by an Australian legal practitioner.
- (5) Subject to section 46, a hearing must be held in public.
- (6) If, in examining a complaint in respect of a judicial officer, a matter which might constitute

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grounds for a complaint in respect of another judicial officer comes to the attention of the commission –

- (a) the commission may –
 - (i) treat those grounds as a complaint in respect of the other judicial officer; and
 - (ii) refer the complaint in respect of the other judicial officer to the council; and
 - (b) the council may deal with the referred complaint in respect of the other judicial officer as if it were a complaint made under section 27.
- (7) A hearing is to be held in accordance with any relevant guidelines made under section 7(2).

45. Vexatious complaints may be dismissed

- (1) A commission may discontinue an inquiry into a complaint if the commission considers that the complaint has been made vexatiously, frivolously or without reasonable grounds.
- (2) If a commission discontinues an inquiry under subsection (1), sections 49 and 50 apply as if the commission had completed the inquiry.

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46. Commission may direct certain matters not to be made public

- (1) A commission may give one or more of the following directions in respect of a hearing of a complaint if the commission is satisfied that it is desirable to do so because of the nature of the evidence to be considered, the subject matter of the complaint or for any other reason:
- (a) that a hearing, or part of a hearing, must take place in private and specify the people who may be present at the private hearing;
 - (b) prohibit or restrict the publication of either or both of the following:
 - (i) evidence given at a hearing whether in public or private;
 - (ii) the contents of a document lodged with, or received in evidence by, the commission;
 - (c) prohibit or restrict the disclosure to some, or all, of the people present at a hearing of either or both of the following:
 - (i) evidence given before the commission;
 - (ii) the contents of a document lodged with, or received in evidence by, the commission.

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(2) In considering whether to give a direction under subsection (1), a commission must take as the basis of its consideration –

- (a) that it is desirable that hearings be held in public; and
- (b) that evidence given before, or the contents of documents lodged with or received in evidence by, the commission should be made available to the public and to all people present at the hearing –

but must also consider any reasons given to the commission why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

(3) A person must not be present at the hearing which, in accordance with this section, is to be held in private unless the person is –

- (a) a member of the commission; or
- (b) a member of the staff of the commission directed to be present; or
- (c) the relevant judicial officer; or
- (d) an Australian legal practitioner –
 - (i) assisting the commission; or
 - (ii) representing the relevant judicial officer; or

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- (e) entitled to be present by virtue of a direction given under subsection (1)(a).

47. Powers relating to witnesses, &c., at hearing of commission

- (1) The presiding member of a commission, or a person authorised in writing by the presiding member, may issue a subpoena requiring the person to appear before the commission at a hearing, at a specified time and place, to do either or both of the following:
 - (a) to give evidence;
 - (b) to produce a specified document, or other thing, relevant to the hearing.
- (2) A person is taken to have complied with a subpoena under subsection (1)(b) if the person gives the relevant document or other thing to the commission before the date specified in the subpoena for its production.
- (3) The presiding member of a commission may require a witness, appearing at a hearing before the commission to give evidence, to do one or more of the following:
 - (a) to take an oath or give an affirmation;
 - (b) to answer a question relevant to the hearing;
 - (c) to produce a specified document, or other thing, relevant to the hearing.

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Part 5 – Inquiry into Complaints by Commission

- (4) The following persons may examine or cross-examine a witness at a hearing of a complaint if the relevant commission is satisfied on reasonable grounds that the matter is relevant and appropriate to its inquiry into the complaint:
- (a) an Australian legal practitioner assisting the commission;
 - (b) the relevant judicial officer or the Australian legal practitioner representing the relevant judicial officer;
 - (c) any other person present, whom the commission permits to do so.

48. Witnesses who fail to appear at hearings may be apprehended

- (1) If a person served with a subpoena under section 47 to appear before a commission as a witness fails to appear in accordance with the subpoena, the presiding member may, on proof of the service of the subpoena, issue a warrant for the apprehension of the person.
- (2) When issuing a warrant under subsection (1) in respect of a witness, the presiding member may –
- (a) require that the witness be held in custody until the witness –
 - (i) appears before the commission as required under the subpoena; or

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- (ii) is released by order of the presiding member, another member of the commission or such other person specified in the warrant; or
 - (b) require that the witness enter into a recognisance, on such terms as the presiding member considers appropriate, in order to secure the appearance of the witness at the hearing, and order that the witness be released from custody on entering into such a recognisance.
- (3) If, on being apprehended under a warrant issued under subsection (1), the witness enters into a recognisance in accordance with subsection (2)(b), the witness may be released, but, if the witness refuses to enter into such a recognisance, the witness may be held in custody until the witness appears before the commission as required under the subpoena.
- (4) A warrant may be executed by –
 - (a) a police officer; or
 - (b) a member of the police force of another State or a Territory; or
 - (c) the person to whom it is addressed.
- (5) The person executing a warrant may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of executing the warrant.

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- (6) The apprehension of a witness under this section does not relieve the witness from any liability incurred because of noncompliance by the witness with the subpoena.

49. Reports of commission

- (1) After completing an inquiry into a complaint, a commission must –
- (a) prepare a report of its examination; and
 - (b) submit the report to the Attorney-General.
- (2) A report under subsection (1) must –
- (a) set out the commission’s findings on material questions of fact; and
 - (b) refer to the evidence or other material on which those findings were based; and
 - (c) set out the commission’s recommendation as to whether or not, in the opinion of the commission, the behaviour or physical or mental capacity of the relevant judicial officer warrants the removal of the judicial officer from judicial office.
- (3) A commission may make a recommendation in a report under subsection (1) that a matter contained in the report is unsuitable for public release if the commission is satisfied that one or more of the following may apply if the matter were to be made public:

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- (a) a person who has been, or may be, charged with an offence may not receive a fair trial for the offence;
 - (b) an investigation of a breach or possible breach of the law may be prejudiced;
 - (c) the existence or identity of a confidential source of information in relation to the enforcement or administration of the law may be disclosed or a person may be enabled to ascertain the existence or identity of that source;
 - (d) the personal affairs, or personal wellbeing, of a person may be significantly affected;
 - (e) there may be prejudice to the safety or reputation of a person.
- (4) If a commission makes a recommendation in respect of a matter under subsection (3), the commission is to include, with the report, a statement of the reasons for making the recommendation in respect of the matter.
- (5) When submitting a report to the Attorney-General under this section, a commission must commit any documents or things (except documents or things required for the purpose of finalising matters under section 52) then in its possession to the custody of the council for safekeeping.
- (6) The Attorney-General must accept a recommendation of a commission made under

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subsection (3) unless the Attorney-General is satisfied that there are compelling reasons of public interest as to why the relevant report should be tabled in each House of Parliament, as required under section 50, without any part of the report being omitted under that section.

50. Commission reports to be tabled in Parliament

- (1) Subject to this section, the Attorney-General must, as soon as practicable after receiving a report submitted by a commission, table a copy of the report in each House of Parliament.
- (2) If the Attorney-General has accepted a recommendation of a commission made under section 49(3) in respect of a report, the Attorney-General is to omit each part of the report that relates, either directly or indirectly, to a matter to which the recommendation relates before the report is tabled in Parliament under this section.
- (3) If the Attorney-General omits a part of a report under subsection (2) –
 - (a) the omission of a part of the report is to be clearly indicated on a copy of the report tabled in Parliament; and
 - (b) a copy of the report, including any such omissions, (the *full report*) is to be lodged with the Clerk of each House of Parliament; and

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- (c) only the Clerks and members of each House of Parliament may access the copies of the full report so lodged.
- (4) If a copy of the full report is lodged with a Clerk of a House of Parliament under subsection (3)(b) –
 - (a) each Clerk has the authority to provide, and manage, access to the full report by members of that House; and
 - (b) no copies or extracts may be made of any part of the full report; and
 - (c) no person may refer to the contents of the report, or disclose the contents of the report to any other person, if that content does not form part of the report tabled under subsection (1).
- (5) If a copy of a report of a commission is lodged with a Clerk of a House of Parliament under subsection (3)(b), the Clerk is to destroy the copy of the full report when the Clerk is satisfied that the full report is no longer required by that House of Parliament.
- (6) The Attorney-General is to, as soon as practicable after tabling a copy of the report in Parliament under subsection (1), give a copy of the full report to –
 - (a) the relevant judicial officer; and

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(b) if the judicial officer is not a head of jurisdiction – the relevant head of jurisdiction.

(7) A person must not publish a report of a commission, or a part of such a report, that has not been tabled in Parliament as required under subsection (1).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding one year, or both.

51. Statements by judicial officers

(1) If a commission submits to the Attorney-General a report, under this Part, of its inquiry into a complaint in relation to a judicial officer, the judicial officer may deliver to the Attorney-General a written statement containing particulars of any matter relating to either or both of the following:

(a) the allegations that form the subject matter of the complaint;

(b) the commission’s findings, as specified in the report.

(2) A statement relating to a report that is prepared under this section must be delivered to the Attorney-General within –

(a) 14 days after the relevant judicial officer was given a copy of the report under section 50(6); or

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- (b) such longer period as is set by resolution of a House of Parliament in respect of the statement.
- (3) As soon as practicable after receiving a statement of a judicial officer under this section, the Attorney-General must table a copy of the statement in each House of Parliament.
- (4) If a statement relating to a report refers to a matter that has been omitted from the report in accordance with section 50(2), section 50(4) and (5) apply to the statement as if it were a full report lodged with a Clerk under that section.

52. Outstanding matters of commission

- (1) If –
 - (a) a commission has submitted its report to the Attorney-General in accordance with section 49; and
 - (b) there are any outstanding matters connected with the performance by the commission of its functions under this Act –

the commission must –

- (c) notify the Attorney-General that there are outstanding matters; and
- (d) for such time as is necessary, continue to perform its functions under this Act for the purpose of finalising those matters.

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- (2) When any outstanding matters have been finalised, the commission must –
- (a) notify the Attorney-General accordingly;
and
 - (b) commit any documents or things still in its possession to the custody of the council for safekeeping.

PART 6 – MISCELLANEOUS

53. Immediate suspension of judicial officers in certain circumstances

- (1) The supervisory entity for a judicial officer may suspend the judicial officer if the supervisory entity is satisfied that the judicial officer –
 - (a) is charged in Tasmania with an offence that is punishable by a term of imprisonment of 12 months or more; or
 - (b) is charged in another jurisdiction with an offence that would fall under paragraph (a) if the judicial officer had been charged in Tasmania with the offence; or
 - (c) is convicted of such an offence; or
 - (d) is physically or mentally unable, or unfit, to perform the functions of the relevant judicial office to such an extent as to require immediate suspension of the officer.
- (2) Subject to subsection (3), if a judicial officer is suspended under this section, the relevant supervisory entity for the judicial officer may take one or more of the following actions:
 - (a) specify the terms and conditions of the suspension;
 - (b) authorise the judicial officer to perform a specified function or exercise a specified

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power, of the judicial office held, for the purpose of completing a specified matter or a specified class of matters;

(c) lift the suspension, if the relevant supervisory entity is satisfied that it is reasonable in the circumstances to do so.

(3) A suspension under this section is automatically lifted 30 days after it is imposed, unless one or more of the following occurs within that 30-day period:

(a) a complaint is made under this Act in respect of the relevant judicial officer and the complaint has not been dismissed;

(b) a commission is established under this Act in respect of the relevant judicial officer;

(c) the relevant judicial officer no longer holds the judicial office.

(4) For the avoidance of doubt, this power of suspension is in addition to, and does not derogate from, any other power to suspend the judicial officer under this Act or any other Act.

54. Effect of disclosure of certain information

(1) This section applies to a person if, for the purposes of a hearing of the council or a commission, a person is required to –

(a) produce a document or other thing; or

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- (b) answer a question.
- (2) A person to whom this section applies is not excused from the requirement to produce the document or other thing, or to answer the question, solely on the grounds that the document, thing or answer may –
 - (a) incriminate the person; or
 - (b) make the person liable to prosecution for an offence against this Act or any other Act; or
 - (c) expose the person to the imposition of a civil penalty.
- (3) Despite subsection (2), the production of a document or thing, or the answer to a question, or any information obtained directly or indirectly from the document, thing or answer, is not admissible in evidence against the person in a civil or criminal proceeding, or proceedings relating to a professional or ethical sanction, other than a proceeding –
 - (a) relating to the false or misleading nature of the document, thing, answer or information; or
 - (b) for an offence against Chapter X of the *Criminal Code*.

55. Protection of members &c.

- (1) A council member or a commission member has, in the performance of a function, or the exercise

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of a power, as such a member in relation to an examination, the same protection and immunity as a judge of the Supreme Court in proceedings in that Court.

- (2) An Australian legal practitioner assisting the council or a commission, or appearing on a person's behalf at a hearing before the council or a commission, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person subpoenaed to attend or to appear before the council or a commission as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

56. Protection from liability

A person incurs no criminal, or civil, liability for any act done, or omission made, in good faith –

- (a) while performing a function, or exercising a power, under this Act; or
- (b) while complying with a requirement or request made, or purportedly made, under this Act; or
- (c) as part of proceedings or a hearing under this Act.

57. Application of *Criminal Code*

A proceeding before the council, or a commission, is a judicial proceeding for the purposes of Chapter X of the *Criminal Code*.

58. Application of *Defamation Act 2005* to certain reports

- (1) The proceedings of a hearing before the council or a commission are taken to be proceedings of public concern for the purposes of section 29 of the *Defamation Act 2005*.
- (2) Subsection (1) does not apply in relation to the publication of a report of proceedings, or a part of proceedings, if –
 - (a) a direction given under section 46(1) restricts publication of the proceedings, or part of them, and the publication of the report contravenes the direction; or
 - (b) a part of the report so published was omitted by the Attorney-General in accordance with section 50.

59. Disclosure of information by members &c.

- (1) In this section –

relevant person means –

- (a) a person who is or has been –

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- (i) a council member or a commission member; or
 - (ii) a member of the staff of the council; or
 - (iii) a member of the staff of a commission; or
 - (iv) an Australian legal practitioner assisting the council or a commission; and
 - (b) another person who has or has had access to information by virtue of that person's office or employment under or for this Act.
- (2) A relevant person must not, either directly or indirectly, except in the performance of a function, or the exercise of a power, under or for this Act –
- (a) make a record of, or divulge or communicate to another person, any information acquired by the relevant person by virtue of the relevant person's office or employment under or for this Act; or
 - (b) make use of any such information; or
 - (c) produce to another person, or permit another person to have access to, a document provided under or for this Act.

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Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

60. False or misleading information

- (1) A person must not –
- (a) give to the council or a commission information, or documents, that the person knows to be false or misleading in a material particular; or
 - (b) at a hearing of the council or a commission, give evidence, or produce a document, that the person knows to be false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding one year, or both.

- (2) Subsection (1) does not apply to information, documents or evidence if, at the time when the person gives or produces that information, document or evidence, the person –
- (a) informs the council, or commission, that the information, document or evidence is false or misleading in a material particular; and
 - (b) specifies in which respect, to the person's knowledge, it is false or misleading.

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61. Offences

- (1) A person must not hinder or obstruct a person performing a function, or exercising a power, under this Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding one year, or both.

- (2) A person must not perform an act in respect of the council or a commission that would, if the council or the commission were a court of record, constitute a contempt of that court.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding one year, or both.

62. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), regulations made under this Act may do one or more of the following:

(a) prescribe the requirements for a complaint under this Act;

(b) specify that the council or commission may waive, or exempt, one or more specified stages of the examination of, or an inquiry into, a complaint;

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- (c) specify the process for combining complaints in respect of one or more judicial officers.
- (3) Regulations made for the purposes of this Act may –
- (a) take effect on the commencement of this Act, or on a later day as is specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; and
 - (b) authorise any matter to be from time to time determined, approved or regulated by the council or such other person as is specified in the regulations.

63. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

64. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

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**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF COUNCIL AND COMMISSIONS**

Section 15(4)

1. Interpretation

In this Schedule –

appointing authority, in relation to a relevant member, means –

- (a) if the relevant member is appointed by the Minister to the council under section 6(2)(c) or (d) – the Minister; and
- (b) if the relevant member is appointed to the commission under section 15(1) – the council;

relevant member means –

- (a) in relation to the council, a person appointed by the Minister to the council under section 6(2)(c) or (d); and
- (b) in relation to a commission, a person appointed to the commission under section 15(1).

2. Terms and conditions of appointment

- (1) A relevant member is appointed for such a period, not exceeding 5 years, as is specified in

the instrument of appointment for the member and, if eligible, may be reappointed.

- (2) A relevant member is entitled to be paid such remuneration and allowances as are specified in the instrument of appointment for the member.
- (3) A relevant member holds office on such terms and conditions as are specified in this Act and in the instrument of appointment for the member.
- (4) A relevant member may not hold office as a member in conjunction with State Service employment.

3. Leave of absence

The appointing authority for a relevant member may grant a leave of absence to the relevant member, on such terms and conditions as the appointing authority determines.

4. Resignation

A relevant member may resign by signed notice, in writing, to the appointing authority for the relevant member.

5. Suspension or removal of member from office

- (1) A relevant member may, at any time, be suspended or removed from office by the appointing authority for the relevant member.

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- (2) An appointing authority may only suspend or remove a relevant member from office under subclause (1) if the appointing authority is satisfied that the member –
- (a) is incapable of properly performing the functions of the office; or
 - (b) is incompetent to perform, or has neglected to perform, the functions of the office; or
 - (c) is or has become bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the member's creditors or made an assignment of the member's remuneration or estate for their benefit; or
 - (d) has been convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more; or
 - (e) has engaged in conduct, or has been found guilty of conduct or an attempt to engage in conduct, of such a nature that the appointing authority considers that the relevant member is unsuitable to continue to hold the office.
- (3) A relevant member is not to be removed from that office other than in accordance with this clause.

6. Acting members

- (1) In the absence of a relevant member who is appointed by the Minister to the council under section 6(2)(c) or (d), the Minister may appoint a person to act in the place of the relevant member, for a term not exceeding 6 months, if the person is eligible for appointment under section 6(2)(c) or (d).
- (2) Before appointing a person under this clause, the Minister must consult with the Chief Justice and the Chief Magistrate.
- (3) Anything done by, or in relation to, a person purporting to act under this clause is not invalid solely on the grounds that –
 - (a) the occasion for the person's appointment had not occurred at the time of the appointment under this clause; or
 - (b) there is a defect or irregularity in connection with the person's appointment under this clause; or
 - (c) the person's appointment under this clause ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

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SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 64

Judicial Review Act 2000

1. Schedule 1 is amended by inserting after item 8 the following item:
 9. A decision of the council, or a commission, under the *Judicial Commissions Act 2024*.

Right to Information Act 2009

1. Section 6 is amended by inserting after subsection (2) the following subsection:
 - (2A) This Act does not apply to information that –
 - (a) is in the possession of –
 - (i) the council, or a commission, within the meaning of the *Judicial Commissions Act 2024*; or
 - (ii) a person acting for, or on behalf of, the council or a commission; and
 - (b) was given to, or received or brought into existence by, the council, the commission or a person for the purposes of an

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examination of, or inquiry into, a
complaint under that Act.

Supreme Court Act 1887

1. After section 5, the following section is inserted:

5A. Professional development

The Chief Justice is responsible for promoting the training, education and professional development of the judges, including acting judges and the Associate Judge, of the Supreme Court and may, from time to time, implement such programs for that purpose as the Chief Justice thinks fit.