

1993

**AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY**

JUDICIAL COMMISSIONS (CONSEQUENTIAL AMENDMENTS) BILL 1993

EXPLANATORY MEMORANDUM

**CIRCULATED BY AUTHORITY OF
TERRY CONNOLLY MLA
ATTORNEY GENERAL**

JUDICIAL COMMISSIONS (CONSEQUENTIAL AMENDMENTS) BILL 1993

OUTLINE

The Bill amends existing legislation in order to make provision for the new law contained in the Judicial Commissions Bill 1993 which provides a mechanism for the removal from office of judicial officers of the Territory.

FINANCIAL IMPLICATIONS

The Bill has no financial implications.

OUTLINE OF CLAUSES

Clause 1 provides that the short title of the Bill, when enacted, will be the *Judicial Commissions (Consequential Amendments) Act 1993*.

Clause 2 provides for commencement on the day the Bill is notified as an Act in the *Gazette*.

Clause 3 amends the *Administrative Appeals Tribunal Act 1989* in order to repeal the existing provisions relating to the removal from office of members of the Tribunal as members are judicial officers within the meaning of the Judicial Commissions Bill. Their removal is addressed by that Bill.

Subsection 14(8), which relates to retirement on the ground of invalidity, has been updated in light of the Commonwealth Government's new Public Sector Superannuation Scheme (PSS) and is re-enacted as section 14.

Clause 4 amends the *Administrative Decisions (Judicial Review) Act 1989* to exclude the specified decisions from the operation of the Act.

Clause 5 amends the *Freedom of Information Act 1989* in order to exclude a Judicial Commission from the scope of that Act.

Clause 6 amends the *Inquiries Act 1991* in order to correct a formal error in paragraph 20(1)(b) and to expand its scope to relate to material obtained under a search warrant. Similarly, the scope of section 31 will be expanded so as to refer to any document or thing made available to a Commission.

Subclause 7(1) amends the *Magistrates Court Act 1980* in order to repeal the existing provisions relating to the removal from office of magistrates as magistrates are judicial officers within the meaning of the Judicial Commissions Bill. Their removal is addressed by that Bill.

Subsection 10D(8), which relates to retirement of a magistrate on the ground of invalidity, has been updated in light of the Commonwealth Government's new Public Sector Superannuation Scheme (PSS) and is re-enacted as section 10D.

Subclause 7(2) omits section 10J, which provides that Special Magistrates hold office 'at pleasure' and substitutes a new section 10J specifies that a Special Magistrate holds office for the period specified in the instrument of appointment or until that person attains the age of 70 years. In addition, a person who has reached 70 years is not to be appointed as a Special Magistrate.

Clause 8 amends the *Ombudsman Act 1989* in order to exclude a Judicial Commission from the scope of that Act.

Clause 9 amends the *Remand Centres Act 1976* in order to permit the detention in a remand centre of a person apprehended under clause 44 of the Judicial Commissions Bill for failing to appear before a Commission.

Clause 10 amends the *Royal Commissions Act 1991* in order to alter a reference contained in subsection 8(3) to an "annual allowance" to an allowance.

A new subsection 15(4) will harmonise the requirements for the safekeeping of documents and exhibits imposed by this Act and the Judicial Commissions Bill 1993.

A new subsection 22(2) will harmonise the requirements for the finalisation of outstanding matters imposed by this Act and the Judicial Commissions Bill 1993.

An incorrect reference to "summons" in paragraph 25(1)(b) will be replaced by one to "search warrant".

The scope of paragraph 34(5)(b) will be expanded by including a reference to "or other thing" after "document" in relation to what a person must produce before a Commission.

Similarly, both subsections 40(1) and 40(2) will be expanded so as to refer to any document or thing made available to a Commission under its enforcement powers.

An incorrect reference to "Board" contained in section 49 will be replaced by one to "Commission".

Subclause 11(1) repeals subsection 4(6) of the *Supreme Court Act 1933*, which is the existing removal provision relating to a Judge of the Supreme Court. Removal will be governed by the Judicial Commissions Bill.

Subclause 11(2) amends the *Supreme Court Act 1993* in order to repeal the existing provisions relating to the removal from office of the Master of the Supreme Court as the Master is a judicial officer within the meaning of the Judicial Commissions Bill. The removal of the Master is addressed by that Bill.

Subsection 44(7), which relates to retirement of the Master on the ground of invalidity, has been updated in light of the Commonwealth Government's new Public Sector Superannuation Scheme (PSS) and is re-enacted as section 44.

Subclause 11(3) repeals subsection 45(6) of the *Supreme Court Act 1933*, which is the existing removal provision relating to an acting Master. Removal will be governed by the Judicial Commissions Bill.