

**1993**

**AUSTRALIAN CAPITAL TERRITORY  
LEGISLATIVE ASSEMBLY**

**JUDICIAL COMMISSIONS BILL 1993**

**EXPLANATORY MEMORANDUM**

**CIRCULATED BY AUTHORITY OF**

**TERRY CONNOLLY MLA**

**ATTORNEY GENERAL**

# JUDICIAL COMMISSIONS BILL 1993

## OUTLINE

The Bill provides a mechanism for the removal from office of a Judge, other than an additional Judge (see below), and the Master of the Supreme Court, a Magistrate (including a Special Magistrate) and a member of the Administrative Appeals Tribunal (other than a person who is also a member of the Commonwealth Administrative Appeals Tribunal).

An "additional Judge" is a Judge of another Court, but who, on occasions, undertakes judicial duties in the Supreme Court of the A.C.T. The present additional Judges are members of the Federal Court of Australia.

Judicial officers may be removed from office by the Executive by instrument following passage by the Legislative Assembly of a motion requiring the judicial officer's removal on the grounds of misbehaviour or physical or mental incapacity (subclause 5(1)).

Sections 48C and 48D of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) require a Judicial Commission process before a judicial officer may be removed.

## FINANCIAL IMPLICATIONS

The referral of a matter of a Commission would have significant cost implications for the Territory. The cost would need to be met from the Treasurer's Advance. By way of illustration, the costs incurred by the Parliamentary Commission of Inquiry in Queensland into the conduct of Justice Vasta and Judge Pratt were \$1,920,000 and \$815,000 respectively.

## OUTLINE OF CLAUSES

### PART I - PRELIMINARY

**Clause 1** provides that the short title of the Bill, when enacted, is to be the *Judicial Commissions Act 1993*.

**Clause 2** provides that the Bill will commence on the day is notified as an Act in the *Gazette*.

**Clause 3** is an interpretation provision.

### PART II - TENURE OF JUDICIAL OFFICE

#### Tenure of and removal from office of judicial officers

**Clause 4** protects judicial tenure by providing that a judicial officer shall not be removed from office except in accordance with the Bill.

**Clause 5** specifies the procedure for the removal from office of a judicial officer.

A motion of the Assembly to remove a judicial officer will only be valid where:

- a Judicial Commission has investigated allegations of misbehaviour or physical and mental incapacity on the part of the judicial officer concerned, and concludes that the allegations could amount to misbehaviour or incapacity such as to warrant removal from office (clauses 5(3)(a) and 21(2));

- the Commission has submitted its Report to the Attorney General who has laid the Report before the Legislative Assembly as soon as practicable after receiving it (clauses 5(3)(a) and 22(1));

- the judicial officer has delivered to the Attorney General a statement relating to the Report and the Attorney General has laid that statement before the Legislative Assembly or the period for delivering the statement has expired and no statement has been delivered to the Attorney General by the judicial officer (clauses 5(3)(b) and 24);

the judicial officer has been given a reasonable opportunity to address the Legislative Assembly ((clause 5(3)(c))) but the address must not contain any references to persons or things that are inconsistent with the Commission's reasons for submitting a confidential report in accordance with subclause 22(4) (clause 5(4)));

the Legislative Assembly has, within 15 sitting days of the Report being laid before the Assembly, passed a motion requiring the Executive to remove the judicial officer (clauses 5(2)(a) and (2)(b)); and

the Assembly has determined that the findings by the Commission amount to misbehaviour or incapacity identified by the Commission (clause 5(3)(d)).

Where a removal motion is passed, the Executive shall, by instrument, remove the judicial officer (clause 5(1)). A majority of Assembly members present and voting is required for the passage of a removal motion (clause 5(3)(c)).

### **PART III - JUDICIAL COMMISSIONS**

#### **Judicial Commissions - formal matters**

**Clause 6** empowers the Executive to appoint a Judicial Commission consisting of a presiding member and two other members.

**Clause 7** deals with members.

**Subclause 7(1)**, read together with the definition of "Judge" in **clause 3**, stipulates that the members of a Commission are to be drawn from persons who are, or have been, Judges of the Federal Court, Family Court, a Supreme Court of a State or of the Northern Territory, including Judges who hold commissions on the Supreme Court as additional Judges, and former Judges of the Supreme Court of the A.C.T. and former Justices of the High Court of Australia. A person who is an acting Judge of the Supreme Court is excluded from being a member of a Commission.

**Subclause 7(2)** provides that where a Commission is constituted by two or more persons and one of those persons dies, resigns or is removed from office, the remaining members shall constitute the Commission.

**Subclause 7(3)** provides that where a Commission is constituted by more than two persons and the presiding member dies, resigns or is removed from office under clause 12, the Executive shall appoint one of the remaining members to be the presiding member.

**Subclause 7(4)** provides that an appointment of a member is not to be invalidated by a defect or irregularity in the appointment of the member.

**Clause 8** provides that a member of a Commission is to hold office on such terms and conditions, in relation to matters not provided for in the Bill, as are determined by the Executive.

**Clause 9** deals with the remuneration and allowances of a member.

**Subclause 9(1)** provides that a member shall be paid such remuneration and allowances as are prescribed.

**Subclause 9(2)** provides that a member shall not be paid such remuneration as is prescribed if there is a subsisting determination relating to the remuneration to be paid to the member or an allowance of a particular kind if there is a subsisting determination relating to the allowance of that kind to be paid to the member.

**Subclause 9(3)** provides that if a person who is a Judge (as defined in clause 3) is appointed as a member, that person is not entitled to receive remuneration under the Bill while receiving a salary as a Judge but may be paid allowances under the Act.

**Subclause 9(4)** provides that the word "determination" used in subclause 9(2) means a determination of the Commonwealth Remuneration Tribunal.

**Clause 10** provides that a member ceases to hold office as a member when the Commission's Report has been submitted to the Attorney General as provided for in the Bill, or when clause 30 applies, the Commission notifies the Attorney General in accordance with clause 30 that outstanding matters have been finalised.

**Clause 11** provides for the resignation of a member or the presiding member by writing signed by the member and delivered to the Attorney General.

**Clause 12** provides that the Executive may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

**Clause 13** provides for the staff of a Commission to be public servants made available by the Head of Administration. The staff shall be subject to the direction of a member a Commission only.

#### **PART IV - COMPLAINTS AGAINST JUDICIAL OFFICERS**

**Clause 14** relates to the procedure for making complaints about the behaviour or physical or mental capacity of a judicial officer.

**Subclause 14(1)** provides that such complaints may be made to the Attorney General.

**Subclause 14(2)** provides that a complaint must be in writing, state the complainant's full name and address, identify the judicial officer concerned and contain full particulars of the subject matter of the complaint.

**Subclause 14(3)** provides that a complaint may also may be raised by a member in the Assembly in the form of a motion to refer to a Commission a specific allegation, made in precise terms, provided the member has given not less than seven sitting days' notice of the motion to the Attorney General and the Attorney General has not, within that period, requested the Executive to appoint a Commission to examine the complaint.

**Clause 15** requires the Attorney General, unless the Attorney General declines to take any action, as provided for by subclause 17(1), to notify, as soon as practicable, the judicial officer concerned, together with the relevant head of jurisdiction, if the judicial officer is not a head of jurisdiction, of the nature of the complaint.

**Clause 16** relates to the Attorney General's duty to request the Executive to appoint a Judicial Commission.

**Subclause 16(1)** stipulates that, if the Attorney General is satisfied, on reasonable grounds, that a complaint could, if substantiated, justify the Legislative Assembly's consideration of a resolution

requiring the judicial officer's removal from office, request the Executive to appoint a Judicial Commission to examine the complaint

Subclause 16(2) requires the Attorney General to notify the complainant or the member of the Legislative Assembly who raised the issue in the Assembly, the judicial officer concerned, together with the relevant head of jurisdiction, if the judicial officer is not a head of jurisdiction, whether or not the Executive has been requested to appoint a Commission to examine the complaint.

Subclause 16(3) obliges the Executive to appoint a Commission following a request by the Attorney General under subclause 16(1). (Clause 18 requires the Executive to appoint a Judicial Commission in response to a resolution of the Legislative Assembly for the examination of a complaint).

Clause 17 empowers the Attorney General to decline to take any action in respect of the complaint.

Subclause 17(1) empowers the Attorney General to decline to take action on a complaint if the Attorney considers that it has been made vexatiously, frivolously or without reasonable grounds, where the complaint contains insufficient relevant detail or where, even if the complaint were proved, it could not amount to misbehaviour or incapacity warranting removal from office. (A Commission is also given discretion to discontinue its examination of a complaint if it considers that it has been made vexatiously, frivolously or without reasonable grounds (clause 57)).

Subclause 17(2) requires the Attorney General to inform the complainant or the member of the Legislative Assembly of his or her decision to decline to take any action.

Clause 18 requires the Executive to appoint a Judicial Commission to examine a complaint in response to a resolution of the Legislative Assembly and for the Commission to report within the period specified (or subsequently extended by) the Executive.

Clause 19 relates to the excusal from duty of a judicial officer.

Subclause 19(1) excuses a judicial officer, in respect of a complaint against whom a Judicial Commission has been appointed, from performing any function connected with his or her judicial office.

Subclause 19(2) provides that an excused judicial officer shall not resume the performance of any judicial function unless the Commission has submitted to the Attorney General a report which exonerates the judicial officer or where a removal motion requiring the removal from office of the judicial officer is withdrawn or not called on or negatived within 15 sitting days after the Attorney General has laid the Commission's report before the Legislative Assembly.

Subclause 19(3) makes it clear that a judicial officer who has been excused from office is entitled to be paid remuneration and allowances as a judicial officer during the period of excusal.

Clause 20 specifies the conditions for enabling an excused judicial officer to complete outstanding work.

Subclause 20(1) prohibits, subject to subclause 20(2), an excused judicial officer from performing any function connected with that judicial office.

Subclause 20(2) permits the Executive to authorise, by instrument, an excused judicial officer to complete a specified matter or class of matters.

Subclause 20(3) safeguards the situation of litigation where an excused judicial officer has performed a function connected with that judicial office when excused.

Clause 21 relates to the procedure for the examination of a complaint.

Subclause 21(1) requires a Commission to examine the complaint as soon as practicable after appointment.

Subclause 21(2) provides that a Commission shall consider only specific allegations made in precise terms and shall not consider a matter arising before the judicial officer's appointment unless this course is necessary and desirable for the full and proper examination of a complaint. A Commission is also empowered to initiate its own inquiries into the subject matter of the complaint.



Subclause 21(3) provides that, subject to the Act, an examination or inquiry shall be conducted in such a manner as the Commission determines.

Clause 22 deals with a report of a Commission.

Subclause 22(1) provides that after completing an examination, a Commission shall prepare a report of the examination and submit that report to the Attorney General.

Subclause 22(2) specifies a Commission's report following an examination must set out the Commission's findings on material questions of fact and refer to the evidence or other material on which those findings are based. The report must also set out the Commission's conclusions as to whether or not the behaviour or mental or physical or mental capacity of the judicial officer could amount to proved misbehaviour or incapacity such as to warrant removal from office.

Subclause 22(3) stipulates that a Commission shall submit its report to the Attorney General where the Legislative Assembly has fixed a date for the submission of a report, on or before that date, or otherwise, as soon as is practicable after completion of the inquiry.

Subclause 22(4) provides that a Commission may submit with its report a separate report containing a recommendation that, for the reasons specified in the recommendation, the separate report should not be published. This action must be taken if the Commission is of the opinion that if any of its findings or evidence given before the Commission in respect of a person (other than the judicial officer the subject of the complaint) were to be laid before the Legislative Assembly, a person charged with an offence might not receive a fair trial, the conduct of investigations might be prejudiced, a confidential source of information disclosed or there may be possible prejudice to the safety or reputation of a person. In these circumstances, the Commission may include those findings or evidence in a separate report which will be submitted to the Attorney with a statement of the Commission's opinion and a recommendation that the report not be laid before the Legislative Assembly.

Subclause 22(5) provides that on the submission of a report to the Attorney General, or on the completion of any outstanding matters as is provided for under clause 30, a Commission shall commit any documents or things in its possession to the custody of the Attorney General for safekeeping.

**Clause 23** deals with the tabling of a report submitted by a Commission.

**Subclause 23(1)** provides that the Attorney General shall lay a copy of a report, other than a report submitted under clause 22(4), before the Legislative Assembly.

**Subclause 23(2)** provides the Attorney General shall, on laying the report before the Assembly, give a copy to the judicial officer concerned and, where the judicial officer is not a head of jurisdiction, to the relevant head of jurisdiction.

**Subclause 23(3)** provides that the Attorney General may give a judicial officer a copy of a confidential report submitted in accordance with subclause 22(4).

**Subclause 23(4)** absolves the Attorney General from the need to inquire whether a condition precedent has been satisfied in relation to a report prepared under the Bill.

**Subclause 23(5)** makes it an offence to publish a report or part of a report that has not been laid before the Assembly. A fine of \$20,000 or imprisonment for two years, or both is provided.

**Clause 24** relates to the procedure for the judicial officer to deliver to the Attorney General a statement in response to findings of a Judicial Commission.

**Subclause 24(1)** enables a judicial officer, about whose conduct a report has been submitted to the Attorney General, to deliver to the Attorney General a written statement relating to the Commission's findings.

**Subclause 24(2)** provides that the statement must not contain any references to persons or things that are inconsistent with the Commission's reasons for submitting a confidential report in accordance with subclause 22(4).

**Subclause 24(3)** requires that a statement by the judicial officer relating to a report to be delivered to the Attorney General where a resolution of the Legislative Assembly has fixed a period longer than 14 days after the Attorney General has laid the report before the Assembly, within the period so fixed, or otherwise within 14 days.

**Subclause 24(4)** stipulates that the Attorney General must lay a copy of the statement before the Assembly as soon as possible after its receipt.

## **PART V - PROCEEDINGS OF COMMISSIONS**

**Clause 25** deals with the determination of questions that may arise before a Commission of two or more persons.

**Subclause 25(1)** provides that a question arising before a Commission shall be decided, where the Commission consists of three members, by a majority, or where a Commission consists of two members and they are divided on the question, in accordance with the opinion of the presiding member.

**Subclause 25(2)** provides that, where the members are not unanimous in opinion on a question, if a member so requires, the opinion of the dissenting member shall be recorded in the Commission's report.

**Clause 26** provides that a Commission may appoint a legal practitioner to assist the Commission as counsel.

**Clause 27** deals with the protection of a member, a legal practitioner assisting a Commission and the protection and liabilities of a witness before a Commission.

**Subclause 27(1)** provides that a member is to have, in the exercise of powers and functions under the Bill, the same protection and immunity as a Judge of the Supreme Court.

**Subclause 27(2)** provides that a legal practitioner assisting a Commission or appearing before a Commission on a person's behalf has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

**Subclause 27(3)** provides that, subject to the Bill, a person summoned to attend or appear before 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.

**Clause 28** creates an offence relating to the disclosure, recording, use or provision to another person of information or material acquired by a person who is or who has been a member, a member of the staff of a Commission or counsel assisting a Commission or any person who has, or has had, access to information or material but no authority, except in the performance of a duty or exercise of power under the Bill, to deal with that information or material. A failure to comply attracts a penalty of \$5,000 or imprisonment for 6 months, or both.

**Clause 29** provides that where, in the course of an inquiry, a Commission obtains information that relates or may relate to the commission of an offence or evidence of the commission of an offence against a law of the Territory, the Commonwealth, a State or another Territory, the Commission may communicate the information or furnish the evidence to the Attorney General or appropriate Minister of State for the Commonwealth, a State or another Territory or the Chief Police Officer for the A.C.T.

**Clause 30** provides that where a Commission has submitted its report in accordance with clause 22 and there are matters outstanding in connection with the Commission, the Commission shall notify the Attorney General that there are outstanding matters and it may exercise its powers for the purpose of finalising the outstanding matters. When the matters are finalised, the Commission shall notify the Attorney General accordingly and commit any documents or things still in its possession to the Attorney for safekeeping.

**Clause 31** provides for the procedure of a Commission. A Commission is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and may do whatever the Commission considers necessary for the fair and expeditious examination of the complaint.

**Clause 32** provides that a statement or disclosure made or evidence given or produced before a Commission by a witness before a Commission, is not, except in proceedings for an offence against this Bill, admissible in evidence against the witness in any civil or criminal proceedings.

**Clause 33** deals with search warrants.

**Subclause 33(1)** provides that the presiding member of a Commission may issue a search warrant where the presiding member has reasonable grounds for suspecting that there may be then or within the next 24 hours in or on any premises, a thing of a particular kind connected with a matter into which the Commission is inquiring and the presiding member believes on reasonable grounds that, if a search warrant were not issued for the production of the thing, it might be concealed, lost, mutilated, destroyed or disposed of.

**Subclause 33(2)** provides that a search warrant shall authorise a police officer or an authorised person named in the warrant, with such assistance and force as is necessary and reasonable, to enter and search the specified premises and to seize any things of the relevant kind and deliver any thing so seized, to the Commission.

Subclause 33(3) provides that a search warrant shall state the purpose for which it is issued; specify particular hours during which the entry is authorised or state that entry is authorised at any time of the day or night; include a description of the kind of things in relation to which the powers under the warrant may be used and 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.

Subclause 33(4) provides that 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 expiration of the date specified as that on which the warrant ceases to have effect.

Subclause 33(5) provides that, if, in searching under a search warrant, the person executing the warrant finds a thing relevant to the inquiry although not a thing of a kind specified in the search warrant and the person believes on reasonable grounds that it is necessary to seize the thing in order that it not be concealed, lost, mutilated, destroyed or disposed of, the person may seize the thing and shall deliver it to the Commission.

Subclause 33(6) provides that a person executing a search warrant shall, on request by an occupant of the premises to which the warrant relates, show the warrant to the occupant.

Subclause 33(7) provides that a reference in subclause 33(1) to the presiding member is to be read as including a reference to a member authorised by the presiding member to act under the subclause.

Clause 34 deals with the inspection and retention of documents.

Subclause 34(1) provides that a Commission, a member, a member of the staff of a Commission or an authorised person may inspect a document or thing produced before or delivered to a Commission; retain possession of the document or thing for such a period as is necessary for the purposes of the inquiry to which the document or thing relates; and, in the case of a document produced before or delivered to the Commission, make copies of or take extracts from such parts of the document as are relevant to a matter the subject of the inquiry.

Subclause 34(2) provides that where a document is retained under subclause 34(1), the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a member to be a true copy and the certified copy shall be received by all courts as evidence as if it were the original and until

the certified copy is supplied, the Commission shall, at times and places 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.

Subclause 34(3) provides that where the retention of a document or other thing by a Commission ceases to be necessary for the purposes of an inquiry, the Commission shall cause the document or thing to be delivered to a person, if the person appears to the Commission to be entitled to the document or thing and if the person so requests.

Clause 35 relates to the obligatory medical examination of a judicial officer.

Sub-clause 35(1) empowers the Commission to request a judicial officer to undergo such medical examination as the Commission specifies in order to determine whether a judicial officer is physically or mentally unfit to exercise efficiently the functions of office.

Subclause 35(2) provides that if a judicial officer refuses or fails to comply with the Commission's request, that fact will be included in the Commission's report.

Clause 36 gives a Commission power to do all things necessary or incidental to the performance of its functions.

Clause 37 deals with the power of a Commission to hold hearings.

Subclause 37(1) provides a general power for the Commission, for the purposes of an inquiry, to hold hearings.

Subclause 37(2) provides that, subject to subclause 37(3), a hearing shall be in public.

Subclause 37(3) provides that, where a Commission is satisfied that it is desirable to do so, the Commission may direct that a hearing shall be in private and give directions as to the persons who may be present; give directions prohibiting or restricting the publication of evidence given at a hearing, whether public or private, or of matters contained in documents received by the Commission at a hearing and give directions prohibiting or restricting the disclosure to some or all of the persons present at a hearing of evidence given, or the contents of a document lodged with or received in evidence by, the Commission at the hearing.

Subclause 37(4) provides that in considering whether to give a direction under subclause 37(3), a Commission shall take as the basis

of its consideration the principle that it is desirable that hearings be in public and that evidence or material before Commission at a hearing should be available to all persons present at the hearing and to the public, but shall pay due regard to any reasons given to the Commission why the hearing should be held in private or why publication or disclosure of evidence or material before the Commission should be prohibited or restricted.

**Clause 38** provides that the presiding member shall preside at a hearing.

**Clause 39** provides that, except as otherwise provided for by the Bill, the procedure at a hearing shall be determined by the Commission.

**Clause 40** deals with appearance and representation before a Commission.

**Subclause 40(1)** provides that, at a hearing, the judicial officer the subject of the complaint is entitled to appear and to be represented by a legal practitioner, a person summoned to attend or appear as a witness may be represented by a legal practitioner and any other person who, in the opinion of the Commission has a sufficient interest in the inquiry, may appear and be represented by a legal practitioner.

**Subclause 40(2)** extends the meaning of the word "person" in paragraph 40(1)(b) to include an unincorporated association.

**Clause 41** specifies the six categories of persons who are entitled to be present at a private hearing of the Commission. These comprise a member of the Commission, a member of the Commission's staff who has been directed to be present, counsel assisting the Commission, the judicial officer who is the subject of the complaint and that officer's legal practitioner or a person directed to be present under paragraph 37(3)(a).

**Clause 42** provides that, at a hearing counsel assisting the Commission or any other person present who is permitted by the presiding member to do so may, as the Commission thinks appropriate, examine or cross-examine a witness on any matter the Commission considers relevant to its inquiry.

**Clause 43** provides power for a Commission to summon witnesses and to take evidence.

**Subclause 43(1)** provides that, for the purposes of a hearing, the presiding member, or a member authorised by the presiding member, may summon a person to appear before the Commission, on

a date specified in the summons, to produce documents or other things referred to in the summons or at a hearing to give evidence or to give evidence and to produce documents or things referred to in the summons.

Subclause 43(2) provides that a person shall be taken to have complied with a summons to produce documents and things if the person delivers the documents or things to the Commission before the date specified in the summons.

Subclause 43(3) provides that the summons shall be in the prescribed form and served on the person in the prescribed manner.

Subclause 43(4) provides that at a hearing, the Commission may take evidence on oath or affirmation and, for that purpose a member may require a witness at the hearing either to take an oath or make an affirmation and a member or authorised person may administer an oath or affirmation to a witness at a hearing.

Subclause 43(5) provides that at a hearing, the presiding member may require a witness to answer a question put to the witness and require a person summoned to appear at the hearing to produce a document specified in the summons.

Clause 44 provides for the arrest of a witness who fails to appear when summoned.

Subclause 44(1) provides that if a person served with a summons fails to appear and attend as required by the summons, the presiding member may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

Subclause 44(2) provides for the warrant of apprehension to authorise the apprehension of the witness; the bringing of the witness before the Commission and the detention of the witness for the purpose of bringing the witness before the Commission.

Subclause 44(3) provides that a warrant may be executed by a police officer; a member of the police force of a State or another Territory and the person to whom the warrant is addressed.

Subclause 44(4) provides that the person executing the warrant may, with such assistance and by such force, as is necessary and reasonable, enter any premises for the purpose of executing the warrant.



Subclause 44(5) provides that the apprehension of a witness under this clause does not relieve the witness from liability incurred by reason of the witness' non-compliance with the summons.

## **PART VI - OFFENCES**

Clause 45 makes it an offence for a person, without reasonable excuse, to obstruct or hinder a police officer or an authorised person in the exercise of the powers of that officer or person in the execution of a search warrant and provides a penalty for non-compliance of \$5,000 or imprisonment for 6 months, or both.

Clause 46 deals with the failure of a witness to attend before, or to produce documents to, a Commission.

Subclause 46(1) provides that a person served with a summons to appear before a Commission shall not, without reasonable excuse, fail to appear as required by the summons or fail to attend from day to day unless excused or released by a member and provides a penalty for non-compliance of \$5,000 or imprisonment for 6 months, or both.

Subclause 46(2) provides that a person appearing as a witness before a Commission shall not, without reasonable excuse, refuse to, or fail to produce a document or other thing as required by the summons or by the presiding member, and provides a penalty for non-compliance of \$5,000 or imprisonment for 6 months, or both.

Subclause 46(3) provides that it is a defence to a prosecution for an offence against subclause 46(2) that the document or thing required to be produced by the summons was not relevant to the matter into which the Commission was inquiring.

Subclause 46(4) provides that it is not a reasonable excuse for the purposes of subclause 46(2) for a person who refuses or fails to produce a document or thing that the production of the document or thing might tend to incriminate the person.

Clause 47 deals with the refusal of a person to be sworn or to give evidence.

Subclause 47(1) provides that a person appearing as a witness at a hearing shall not, without reasonable excuse, refuse or fail to comply with a requirement under paragraph 43(4)(a) to take an oath or affirmation or to answer a question the person is required by the presiding member to answer, and provides a penalty for non-compliance of \$5,000 or 6 months imprisonment, or both.

**Subclause 47(2)** provides that each act or omission that constitutes an offence against subclause 47(1) done on the same day constitutes a separate offence.

**Subclause 47(3)** provides that it is not a reasonable excuse to an offence under paragraph 47(1)(b) for a person to refuse or to fail to answer a question that to answer the question might tend to incriminate the person.

**Clause 48** creates an offence of knowingly giving evidence that is false or misleading in a material particular and provides a penalty of \$50,000 or imprisonment for 5 years, or both.

**Clause 49** creates an offence of improper dealing with documents and provides that a person, knowing or having reasonable grounds for believing that a document or other thing is or may be required in evidence before a Commission, shall not wilfully conceal, mutilate, destroy or alter the document or thing; render the document or thing incapable of identification or render a document illegible or indecipherable. A penalty of \$20,000 or imprisonment for 2 years, or both is provided.

**Clause 50** deals with the intimidation or dismissal of a witness.

**Subclause 50(1)** provides that a person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person because the person appeared or is to appear as a witness before a Commission; because of any evidence given, or any document or other thing produced, by the person before a Commission or because of any thing that was seized or delivered to a Commission under a search warrant. A penalty of \$50,000 or imprisonment for 5 years, or both is provided.

**Subclause 50(2)** provides that an employer shall not dismiss an employee from employment or prejudice an employee in employment because the employee appeared or is to appear before a Commission; because of any evidence given, or any document or other thing produced, by an employee before a Commission or because of any thing that was seized or delivered to a Commission under a search warrant. A penalty of \$50,000 or imprisonment for 5 years, or both is provided.

**Subclause 50(3)** provides that, if all the elements of an offence under subclause 50(2), other than the reason for the employer's action, are proved, the onus of proving that the dismissal or prejudice to an employee was not because the employee appeared or was to appear as a witness before a Commission is on the employer.

**Clause 51** creates an offence of preventing a witness from attending before a Commission and provides that a person shall not wilfully prevent a person who has been summoned to attend as a witness before a hearing from so attending; from answering a question that the presiding member requires the person to answer or from producing a document or other thing referred to in the summons. A penalty of \$10,000 or imprisonment for 1 year, or both is provided.

**Clause 52** provides that a person shall not provide a benefit of any kind to any person called or to be called as a witness before a Commission on any agreement or understanding that the person will give false testimony; or withhold true testimony induce a person called or to be called as a witness before a Commission to give false testimony or withhold true testimony or seek or agree to receive a benefit of any kind, for any person, on any agreement or understanding that any person called or to be called as a witness before a Commission will give false testimony or withhold true testimony. A penalty of \$50,000 or imprisonment for 5 years, or both is provided.

**Clause 53** creates an offence for any person to practise any fraud or deceit on any person called or to be called as a witness before a Commission with intent to affect the testimony of the person and provides a penalty of \$20,000 or imprisonment for 2 years, or both.

**Clause 54** creates the offence of the wilful contempt of a Commission and provides a penalty of \$10,000 or imprisonment for 1 year, or both.

**Clause 55** creates an offence of the false representation by a person that that person is an officer of a Commission and provides a penalty of \$10,000 or imprisonment for 1 year, or both. Subclause 55(2) defines "an officer of a Commission".

**Clause 56** provides that certain offences may be dealt with summarily.

**Subclause 56(1)** provides that, notwithstanding that an offence against either clause 48 or clause 49 is an indictable offence, proceedings in respect of such an offence may be heard and determined by a court of summary jurisdiction where the court is satisfied that it is proper to do so and the defendant and prosecution both consent to the offence being so dealt with.

**Subclause 56(2)** provides that where a person is convicted of an offence that has been dealt with as provided in subclause 56(1), the penalty that the court may impose is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

## **PART VII - MISCELLANEOUS**

**Clause 57** empowers a Commission to discontinue its examination of a complaint if it considers that the complaint has been made vexatiously, frivolously or without reasonable grounds. A report relating to an investigation which has been so discontinued must be submitted to the Attorney General and be dealt with in accordance with clause 22.

**Clause 58** provides for the protection of a person, who is or has been the Attorney General, a public servant or a person acting under the direction of a member of a Commission, against personal liability to any action or proceeding in relation to an act done in good faith in performance or purported performance of any function pursuant to the Bill.

**Clause 59** relates to the reimbursement of costs and expenses.

Subclause 59(1) provides expenses of a witness before a Commission will be in accordance with the Supreme Court scale.

Subclause 59(2) provides that where a Commission does not conclude that the behaviour or physical or mental capacity of a judicial officer could amount to proved misbehaviour or incapacity such as to warrant removal from office or where an examination is discontinued under subclause 57(1), the judicial officer is entitled to be paid the reasonable costs and expenses incurred by the judicial officer in connection with his or her appearance and representation before the Commission.

**Clause 60** excludes judicial review of the specified decisions. (The Judicial Commissions (Consequential Amendments) Bill 1993 amends the *Administrative Decisions (Judicial Review) Act 1989* to exclude from judicial review under that Act specified decisions made under the Judicial Commissions Bill 1993.)

**Clause 61** confers protection upon a person who publishes a fair and accurate report of proceedings before a Commission except the publication of material subject to a prohibition imposed by a Commission of its publication or disclosure.

**Clause 62** provides that the Executive may make regulations, not inconsistent with the Act, prescribing matters for the purposes of the Act's effective implementation.