



AUSTRALIAN CAPITAL TERRITORY

# Judicial Commissions Act 1994

No. 9 of 1994

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AUSTRALIAN CAPITAL TERRITORY

## Judicial Commissions Act 1994

No. 9 of 1994

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

*[Notified in ACT Gazette S44: 14 March 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Judicial Commissions Act 1994*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Interpretation**

3. In this Act, unless the contrary intention appears—

“authorised person” means a person, or a person included in a class of persons, declared in writing by the presiding member to be an authorised person or class of persons for the purposes of this Act;

“Chief Police Officer” means the police officer who is responsible for the day-to-day administration and control of police services in the Territory;

“Commission”—

- (a) means a Judicial Commission appointed under subsection 16 (3) or section 18; and
- (b) in relation to a complaint, means the Commission appointed to examine the complaint;

“complaint” means—

- (a) a complaint made in accordance with subsections 14 (1) and (2); or
- (b) an allegation, notice of which has been given to the Attorney-General in accordance with paragraph 14 (3) (b);

“head of jurisdiction”—

- (a) in relation to a Judge or the Master of the Supreme Court, means the Chief Justice of that Court;
- (b) in relation to a Magistrate, means the Chief Magistrate; or
- (c) in relation to a member of the Administrative Appeals Tribunal, means the President of the Tribunal;

“Judge” means—

- (a) a Judge of the Federal Court or Family Court; or
- (b) a Judge of the Supreme Court of a State or the Northern Territory;

and includes a person who is an additional Judge appointed under subsection 4 (2) of the *Supreme Court Act 1933*;

“judicial officer” means—

- (a) a Judge of the Supreme Court, other than a person who is an additional Judge appointed under subsection 4 (2) of the *Supreme Court Act 1933*;
- (b) the Master of the Supreme Court;
- (c) a Magistrate; or
- (d) a member of the Administrative Appeals Tribunal, other than a person who is also a member of the Commonwealth Administrative Appeals Tribunal;

“legal practitioner” means a legal practitioner (however described) of the High Court or of the Supreme Court of the Territory, a State or another Territory;

“Magistrate” means—

- (a) a person holding the office of Chief Magistrate; or

- (b) a person holding an office of Magistrate, including an office of special magistrate;

under the *Magistrates Court Act 1930*;

“member”, in relation to a Commission, means a member of the Commission and includes the presiding member;

“premises” includes—

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

“presiding member” means the presiding member of a Commission appointed under section 6 or subsection 7 (3).

## **PART II—TENURE OF JUDICIAL OFFICE**

### **Tenure**

**4.** A judicial officer shall not be removed from office except in accordance with this Act.

### **Removal of judicial officer**

**5. (1)** If the Legislative Assembly passes, in the appropriate manner, a resolution requiring the Executive to remove a judicial officer from office on the ground of misbehaviour or physical or mental incapacity, the Executive shall, by instrument, remove the judicial officer from the office.

**(2)** For the purposes of subsection (1), a resolution of the Legislative Assembly shall be taken to have been passed in the appropriate manner if it is passed—

- (a) pursuant to a motion of which notice was given after completion of the formal process;
- (b) within 15 sitting days after the Attorney-General has laid before the Legislative Assembly the report of the Commission appointed to examine the complaint in respect of the judicial officer; and
- (c) by a majority of the votes of the members of the Legislative Assembly present and voting.

**(3)** For the purposes of subsection (2), the formal process shall be taken to have been completed where—

- (a) the Commission has submitted to the Attorney-General in accordance with section 22 a report of its examination of the

complaint in which it concludes that the behaviour or physical or mental capacity of the judicial officer concerned could amount to proved misbehaviour or incapacity such as to warrant removal from office and the Attorney-General has laid a copy of that report before the Legislative Assembly in accordance with section 23;

- (b) following the submission of the report—
  - (i) the judicial officer has delivered to the Attorney-General in accordance with subsections 24 (1) and (3) a statement relating to the report and the Attorney-General has laid that statement before the Legislative Assembly in accordance with subsection 24 (4); or
  - (ii) the period for delivering such a statement has expired and no such statement has been delivered by the judicial officer to the Attorney-General;
- (c) the judicial officer has been given a reasonable opportunity by the Legislative Assembly to address the Assembly (whether in person or by a legal practitioner on the judicial officer's behalf) in relation to any matter relating to the Commission's findings or conclusion; and
- (d) the Legislative Assembly has determined that the findings by the Commission amount to misbehaviour or physical or mental incapacity identified by the Commission.

(4) An address to the Assembly in accordance with paragraph (3) (c) shall not contain any references to persons or things that are inconsistent with the Commission's reasons for submitting a separate report (if any) in accordance with subsection 22 (3).

### **PART III—JUDICIAL COMMISSIONS**

#### **Constitution**

6. A Judicial Commission shall consist of a presiding member and 2 other members appointed in writing by the Executive.

#### **Members**

7. (1) A person shall not be appointed as a member—
- (a) unless the person is or has been a Judge;
  - (b) unless the person has been a Judge of the Supreme Court or Justice of the High Court; or



(c) if the person is an acting Judge appointed under subsection 4A (1) of the *Supreme Court Act 1933*.

(2) If a member dies, resigns or is removed from office under section 12—

(a) the remaining members shall constitute the Commission; and

(b) this Act has effect as if section 6 referred to 1 other member.

(3) If the presiding member dies, resigns or is removed from office under section 12, the Executive shall, in writing, appoint 1 of the remaining members to be the presiding member.

(4) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

### **Terms and conditions of appointment**

8. A member holds office on such terms and conditions in relation to matters not provided for by this Act as are determined in writing by the Executive.

### **Remuneration and allowances**

9. (1) A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

(a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the member; or

(b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

(3) If a person who is a Judge is appointed as a member, the person may be paid allowances, but is not entitled to remuneration, under this Act while receiving a salary as a Judge.

(4) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal.

### **Cessation**

10. A member ceases to hold office as a member—

(a) when the Commission's report of its examination of the complaint has been submitted to the Attorney-General in accordance with section 22; or

- (b) if section 30 applies—when the Commission notifies the Attorney-General in accordance with that section that any outstanding matters have been finalised.

### **Resignation**

**11.** A person may resign as a member or as the presiding member by writing signed by the person and delivered to the Attorney-General.

### **Termination of appointment**

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

### **Staff**

**13. (1)** The staff of a Commission shall be public servants made available to the Commission by the Head of Administration.

**(2)** While a public servant is performing services for a Commission, he or she shall perform those services in accordance with the directions of a member, and not otherwise.

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

### **Making of complaint**

**14. (1)** A person may complain to the Attorney-General about a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer.

**(2)** A complaint shall—

- (a) be in writing;
- (b) state the name and address of the complainant;
- (c) identify the judicial officer concerned; and
- (d) contain full particulars of the matter the subject of the complaint.

**(3)** A member of the Legislative Assembly shall not raise in the Assembly a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer—

- (a) except by way of a motion to have a specific allegation made in precise terms in respect of the judicial officer examined by a Judicial Commission; and
- (b) unless the member has given to the Attorney-General not less than 5 sitting days' notice of the motion and the member has not been notified by the Attorney-General within that period in accordance

with subsection 16 (2) that the Executive has been requested to appoint a Commission to examine the allegation.

**Attorney-General to inform judicial officer**

**15.** The Attorney-General shall, as soon as practicable after receiving a complaint (other than a complaint to which subsection 17 (1) applies), inform—

- (a) the judicial officer the subject of the complaint; and
- (b) where the judicial officer is not a head of jurisdiction—the relevant head of jurisdiction;

of the nature of the complaint.

**Request by Attorney-General**

**16. (1)** If, after receiving a complaint, the Attorney-General is satisfied on reasonable grounds that the complaint could, if substantiated, justify consideration by the Legislative Assembly of a resolution requiring the removal from office of the judicial officer the subject of the complaint, the Attorney-General shall, in writing, request the Executive to appoint a Judicial Commission to examine the complaint.

**(2)** The Attorney-General shall notify—

- (a) the complainant or the member of the Legislative Assembly (as the case requires);
- (b) the judicial officer; and
- (c) where the judicial officer is not a head of jurisdiction—the relevant head of jurisdiction;

in writing of whether or not the Executive has been requested to appoint a Commission to examine the complaint.

**(3)** If the Executive receives a request from the Attorney-General in accordance with subsection (1), the Executive shall appoint a Judicial Commission to examine the complaint and to submit to the Attorney-General a report of its examination within the period specified by the Executive or within such further period as the Executive, by notice in writing, allows.

**Attorney-General may decline to act on complaint**

**17. (1)** The Attorney-General may decline to take any action under this Act in respect of a complaint if the Attorney-General considers—

- (a) that the complaint has been made vexatiously, frivolously or without reasonable grounds;

- (b) that the complainant has not included in the complaint, or the member of the Legislative Assembly has not included in the notice, sufficient relevant detail in respect of the matter the subject of the complaint; or
- (c) that, even if the matter complained of were proved, it could not amount to misbehaviour or incapacity such as to warrant removal of the judicial officer.

(2) Where the Attorney-General declines to take any action in respect of a complaint for a reason specified in subsection (1), the Attorney-General shall advise the complainant or the member of the Legislative Assembly (as the case may be) accordingly.

### **Resolution by Legislative Assembly**

**18.** If the Legislative Assembly passes a resolution for the examination of a complaint in respect of a judicial officer by a Judicial Commission, the Executive shall appoint a Judicial Commission to examine the complaint and to submit to the Attorney-General a report of its examination within the period specified by the Executive or within such further period as the Executive, by notice in writing, allows.

### **Judicial officer excused**

**19. (1)** When a Commission is appointed to examine a complaint, the judicial officer concerned is, by force of this section, excused from performing any function connected with the relevant judicial office.

(2) A judicial officer who has been excused shall not resume the performance of any such function unless—

- (a) the Commission has submitted to the Attorney-General in accordance with section 22 a report of its examination of the complaint in which it does not conclude that the behaviour or physical or mental capacity of the judicial officer could amount to proved misbehaviour or incapacity such as to warrant removal from office;
- (b) a motion in the Legislative Assembly to require the removal from office of the judicial officer is withdrawn or is not called on within 5 sitting days after the Attorney-General has laid the Commission's report before the Legislative Assembly in accordance with section 23; or

- (c) such a motion, having been called on before the Legislative Assembly within the period referred to in paragraph (b), is resolved in the negative.

(3) A judicial officer who has been excused from office is entitled to be paid remuneration and allowances as a judicial officer for that office while excused.

### **Functions of officers who have been excused**

20. (1) Subject to this section, a judicial officer who has been excused shall not, while excused, perform any function connected with the relevant judicial office.

(2) The Executive may, by instrument, authorise a judicial officer who has been excused to perform such functions as are necessary for the purpose of completing a specified matter or class of matters.

(3) If a judicial officer who has been excused performs a function connected with the relevant judicial office, the function shall be taken to have been performed as validly and effectively as if the judicial officer had not been excused.

### **Examination of complaint by Commission**

21. (1) A Commission shall, as soon as practicable after being appointed to examine a complaint, conduct an examination of the complaint.

(2) In conducting the examination, the Commission—

- (a) shall consider only specific allegations made in precise terms;
- (b) shall not consider a matter arising before the appointment of the judicial officer concerned to the relevant office unless the Commission considers it necessary and desirable to do so for the full and proper examination of the complaint; and
- (c) may initiate such inquiries into the subject matter of the complaint as the Commission thinks appropriate.

(3) Except as otherwise provided by this Act, an examination or inquiry shall be conducted in such manner as the Commission determines.

### **Reports of Commission**

22. (1) After completing an examination of a complaint, a Commission shall—

- (a) prepare a report of its examination; and
- (b) submit the report to the Attorney-General.

**(2)** A report shall—

- (a) set out the Commission's findings on material questions of fact;
- (b) refer to the evidence or other material on which those findings were based; and
- (c) set out the Commission's conclusion as to whether or not the behaviour or physical or mental capacity of the judicial officer concerned could amount to proved misbehaviour or incapacity such as to warrant his or her removal from office.

**(3)** If a Commission is of the opinion that, if any of its findings, or any of the 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) a person who has been or may be charged with an offence may not receive a fair trial for the offence;
- (b) the conduct of 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 enabled to ascertain the existence or identity of that source; or
- (d) there may be prejudice to the safety or reputation of a person;

the Commission may include those findings or that evidence in a separate report and submit the report to the Attorney-General, together with—

- (e) a statement of its opinion; and
- (f) a recommendation that the report not be laid before the Legislative Assembly.

**(4)** When submitting a report to the Attorney-General, a Commission shall commit any documents or things (except documents or things required for the purpose of finalising matters under section 30) then in its possession to the custody of the Attorney-General for safekeeping.

**(5)** The Attorney-General shall accept a recommendation referred to in paragraph 3 (f) unless he or she is satisfied that there are compelling reasons of public policy why the relevant report should be laid before the Legislative Assembly.

### **Tabling reports**

**23. (1)** The Attorney-General shall, as soon as practicable after receiving a report submitted by a Commission (other than a report in relation to which he or she has accepted a recommendation referred to in paragraph 22 (3) (f)), lay a copy of the report before the Legislative Assembly.

**(2)** The Attorney-General shall, on laying a copy of the report before the Legislative Assembly, give a copy of that report to—

- (a) the judicial officer the subject of the complaint; and
- (b) where the judicial officer is not a head of jurisdiction—the relevant head of jurisdiction.

**(3)** The Attorney-General may also give to the judicial officer the subject of a complaint a copy of a report in accordance with subsection 22 (3) in relation to which the Attorney-General has accepted a recommendation referred to in paragraph 22 (3) (f) if the Attorney-General considers it appropriate to do so.

**(4)** The Attorney-General need not inquire whether a condition precedent has been satisfied in relation to a report purporting to have been prepared and submitted in accordance with this Act.

**(5)** A person who publishes a report or part of a report that has not been laid before the Legislative Assembly by the Attorney-General is guilty of an offence punishable, on conviction, by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 2 years, or both.

### **Statement by judicial officer**

**24. (1)** Where a Commission submits to the Attorney-General a report of its examination of a complaint in respect of a judicial officer, the judicial officer may deliver to the Attorney-General a written statement containing particulars of any matter relating to the Commission's findings.

**(2)** A statement relating to a report shall not contain any references to persons or things that are inconsistent with the Commission's reasons for submitting a separate report (if any) in accordance with subsection 22 (3).

**(3)** A statement relating to a report shall be delivered to the Attorney-General—

- (a) where the Legislative Assembly has, by resolution, fixed a period longer than 14 days after the Attorney-General has laid the report before the Assembly—within the period so fixed; or
- (b) where paragraph (a) does not apply—within 14 days after the Attorney-General has laid the report before the Assembly.

(4) The Attorney-General shall, as soon as practicable after receiving a statement under subsection (1), lay a copy of the statement before the Legislative Assembly.

## **PART V—PROCEEDINGS OF COMMISSIONS**

### *Division 1—General*

#### **Determination of questions**

25. (1) A question arising before a Commission shall be decided—
- (a) where the Commission is constituted by 3 members—in accordance with the opinion of a majority of the members; or
  - (b) where the Commission is constituted by 2 members and those members are divided in opinion—in accordance with the opinion of the presiding member.

(2) Where, in relation to a question arising before a Commission, the members are not unanimous in opinion, there shall, if a member so requires, be recorded in the report of the Commission particulars of the opinions of the members on that question.

#### **Counsel assisting Commission**

26. A Commission may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter.

#### **Protection of members etc.**

27. (1) A member has, in the performance or exercise of any function or power as 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) A legal practitioner assisting a Commission or appearing on a person's behalf at a hearing before 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 summoned to attend or appearing 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.

#### **Non-disclosure of information by members**

28. (1) This section applies to—
- (a) a person who is or has been—
    - (i) a member;



- (ii) a member of the staff of a Commission; or
  - (iii) counsel assisting a Commission; and
- (b) any other person who has or has had access to information by virtue of that person's office or employment under or for the purposes of this Act.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance or exercise of a function or power under or for the purposes of this Act—

- (a) make a record of, or divulge or communicate to any person, any information acquired by the first-mentioned person by virtue of that person's office or employment under or for the purposes of this Act;
- (b) make use of any such information; or
- (c) produce to any person, or permit any person to have access to, a document furnished for the purposes of this Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

#### **Disclosure of information by Commission**

29. Where, in the course of an examination, 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, if in its opinion it is appropriate to do so, communicate the information or furnish the evidence to—

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

#### **Outstanding matters**

30. (1) Where—

- (a) a Commission has submitted its report in accordance with section 22; and
- (b) there are any outstanding matters connected with the performance by the Commission of its functions under this Act;

the Commission shall—

- (c) notify the Attorney-General that there are outstanding matters; and

- (d) for such time as is necessary, continue to exercise its powers under this Act for the purpose of finalising those matters.
- (2) When any outstanding matters have been finalised, the Commission shall—
  - (a) notify the Attorney-General accordingly; and
  - (b) commit any documents or things still in its possession to the custody of the Attorney-General for safekeeping.

### ***Division 2—Evidence***

#### **Procedure**

- 31.** In conducting its proceedings, a Commission—
- (a) is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate; and
  - (b) may do whatever the Commission considers necessary or expedient for the fair and expeditious conduct of the examination of the complaint.

#### **Admissibility of evidence in proceedings**

**32.** A statement or disclosure made, or a document or other thing produced, by a witness in the course of giving evidence before a Commission, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the first-mentioned document or thing, is not (except in proceedings for an offence against this Act) admissible in evidence against that witness in any civil or criminal proceedings.

### ***Division 3—Powers***

#### **Search warrants**

- 33. (1)** The presiding member may issue a search warrant where—
- (a) the presiding member has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, in or on any premises, a thing of a particular kind connected with a matter into which the Commission is inquiring (in this section referred to as a “thing of the relevant kind”); and
  - (b) the presiding member believes on reasonable grounds that, if a search warrant were not issued for the production of the thing, that thing might be concealed, lost, mutilated, destroyed or disposed of.

(2) A search warrant shall authorise 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;
- (b) to search the premises for things of the relevant kind;
- (c) to seize any things of the relevant kind found in or on the premises; and
- (d) to deliver any thing so seized to the Commission.

(3) A search warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (c) include a description of the kind of things in relation to which the powers under the warrant may be exercised; and
- (d) specify the date, being a date not later than 1 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 expiration of the date specified for the purpose of paragraph (3) (d).

(5) If, in the course of searching under a search warrant for a thing of a relevant kind—

- (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 of a kind specified in the warrant; and
- (b) the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its being concealed, lost, mutilated, destroyed or disposed of;

the person may seize that thing and shall deliver the thing so seized to the Commission.

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

(7) A reference in subsection (1) to the presiding member shall be read as including a reference to a member authorised by the presiding member to act under that subsection.

### **Inspection and retention of documents**

**34. (1)** A Commission, a member, a member of the staff of a Commission or an authorised person may—

- (a) inspect a document or other thing produced before, or delivered to, the Commission;
- (b) retain possession of the document or thing for such period as is necessary for the purposes of the inquiry to which the document or thing relates; and
- (c) 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.

**(2)** Where a document is retained under paragraph (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 member to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original; and
- (b) until the certified copy is supplied, the Commission shall, 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)** 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, if a person who appears to the Commission to be entitled to the document or thing so requests, cause the document or thing to be delivered to the person.

### **Medical examination of judicial officer**

**35. (1)** If, in the course of examining a complaint, a Commission forms the opinion, on reasonable grounds, that the judicial officer concerned may be physically or mentally unfit to exercise efficiently the functions of his or her office, the Commission may request the judicial officer to undergo such medical examination as the Commission specifies.

**(2)** If the judicial officer refuses or fails to comply with the Commission's request, the Commission shall include in its report under section 22 a statement to that effect.

### **Additional powers**

**36.** A Commission has power to do all things necessary or incidental to the performance of its functions.

### ***Division 4—Hearings***

#### **Power to hold**

**37. (1)** For the purposes of conducting an inquiry, a Commission may hold hearings.

**(2)** Subject to subsection (3), a hearing shall be in public.

**(3)** Where a Commission is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter, or for any other reason, the Commission may—

- (a)** direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;
- (b)** give directions prohibiting or restricting the publication of evidence given at a hearing (whether in public or private) or of matters contained in documents lodged with, or received in evidence by, the Commission; and
- (c)** give directions prohibiting or restricting the disclosure to some or all of the persons present at a hearing of evidence given before, or the contents of a document lodged with or received in evidence by, the Commission.

**(4)** In considering whether to give a direction under subsection (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 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 persons present at the hearing, 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 the evidence or the matter contained in the document should be prohibited or restricted.

#### **Person presiding**

**38.** The presiding member shall preside at a hearing.

#### **Conduct**

**39.** Except as otherwise provided by this Act, the procedure at a hearing shall be determined by the Commission.

**Appearance and representation****40. (1)** At a hearing—

- (a) the judicial officer the subject of the complaint is entitled to appear and to be represented by a legal practitioner;
- (b) a person summoned to attend or appearing before the Commission as a witness may be represented by a legal practitioner; and
- (c) any other person may, with the consent of the Commission, appear and may be represented by a legal practitioner.

**(2)** In paragraph (1) (b)—

“person” includes an unincorporated association.

**Presence of persons at private hearing**

**41.** Where a hearing is being held in private, a person shall not be present at the hearing unless the person is—

- (a) a member;
- (b) a member of the staff of the Commission directed to be present;
- (c) counsel assisting the Commission;
- (d) the judicial officer the subject of the complaint;
- (e) the legal practitioner representing that judicial officer; or
- (f) entitled by virtue of a direction under paragraph 37 (3) (a) to be present.

**Examination of witnesses****42.** At a hearing—

- (a) counsel assisting the Commission;
- (b) the judicial officer the subject of the complaint or the legal practitioner representing him or her; or
- (c) any other person present who is permitted by the presiding member to do so;

may, so far as the Commission thinks appropriate, examine or cross-examine a witness on any matter that the Commission considers relevant to its inquiry.

**Power to summon witnesses and take evidence**

**43. (1)** For the purposes of a hearing before a Commission, the presiding member, or a member authorised by the presiding member, may summon a person to appear before the Commission—

- (a) on a date specified in the summons to produce the documents and other things referred to in the summons; or
- (b) at the hearing—
  - (i) to give evidence; or
  - (ii) to give evidence and to produce the documents and other things referred to in the summons.

(2) A person shall be taken to have complied with a summons of the kind referred to in paragraph (1) (a) if the person delivers the documents and things to the Commission before the date specified in the summons.

(3) A summons shall be—

- (a) in the prescribed form; and
- (b) served on a person in the prescribed manner.

(4) At a hearing, the Commission may take evidence on oath or affirmation and, for that purpose—

- (a) a member may require a witness at the hearing either to take an oath or to make an affirmation; and
- (b) a member or authorised person may administer an oath or affirmation to a witness at the hearing.

(5) At a hearing, the presiding member may—

- (a) require a witness to answer a question put to the witness; and
- (b) require a person appearing at the hearing pursuant to a summons to produce a document or other thing specified in the summons.

#### **Arrest of witnesses failing to appear**

44. (1) If a person served with a summons to appear before a Commission as a witness fails to appear or attend pursuant to the summons, the presiding member may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

(2) A warrant authorises—

- (a) the apprehension of the witness;
- (b) the bringing of the witness before the Commission; and
- (c) the detention of the witness in custody for that purpose until the witness is released by order of the presiding member.

(3) A warrant may be executed by—

- (a) a police officer;

- (b) a member of the police force of a State or another Territory; or
- (c) the person to whom it is addressed.

(4) 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.

(5) The apprehension of a witness under this section does not relieve the witness from any liability incurred by reason of non-compliance by the witness with the summons.

## **PART VI—OFFENCES**

### **Obstruction of authorised persons**

45. A person shall not, without reasonable excuse, obstruct or hinder a police officer or an authorised person in the exercise of his or her powers under section 33.

Penalty: \$5,000 or imprisonment for 6 months, or both.

### **Failure of witnesses to attend or produce documents**

46. (1) A person served with a summons to appear as a witness at a hearing before a Commission shall not, without reasonable excuse—

- (a) fail to appear before the Commission as required by the summons; or
- (b) fail to attend from day-to-day unless excused, or released from further attendance, by a member.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) A person shall not, without reasonable excuse, refuse or fail to produce a document or other thing that the person was required to produce—

- (a) by a summons under this Act served on the person; or
- (b) if the person appears as a witness at a hearing before a Commission—by the presiding member.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) It is a defence to a prosecution for an offence against subsection (2) that the document or other thing was not relevant to the matter into which the Commission was inquiring.

(4) It is not a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to produce a document or other thing on the ground that the production of the document or thing might tend to incriminate the person.



**Refusal to be sworn or give evidence**

**47. (1)** A person appearing as a witness at a hearing before a Commission shall not, without reasonable excuse, refuse or fail—

- (a) to comply with a requirement under paragraph 43 (4) (a) to take an oath or make an affirmation; or
- (b) to answer a question that the person is required by the presiding member to answer.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** Where a person has on any day done or omitted to do something, being an act or omission that constitutes an offence against subsection (1), and the person does or omits to do the same thing at a hearing of the Commission held on some other day, each such act or omission constitutes a separate offence.

**(3)** It is not a reasonable excuse for the purposes of paragraph (1) (b) for a person to refuse or fail to answer a question on the ground that the answer to the question might tend to incriminate the person.

**False evidence**

**48.** A person shall not, at a hearing before a Commission, knowingly give evidence that is false or misleading in a material particular.

Penalty: \$50,000 or imprisonment for 5 years, or both.

**Improper dealings with documents**

**49.** 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—

- (a) conceal, mutilate, destroy or alter the document or other thing;
- (b) render the document or other thing incapable of identification; or
- (c) in the case of a document—render it illegible or indecipherable.

Penalty: \$20,000 or imprisonment for 2 years, or both.

**Intimidation or dismissal of witnesses**

**50. (1)** A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person—

- (a) because the person appeared or is to appear before a Commission as a witness or pursuant to a summons or warrant;
- (b) because of any evidence given, or any document or other thing produced, by the person before a Commission; or

- (c) because of any thing that was seized or delivered to a Commission pursuant to a search warrant.

Penalty: \$50,000 or imprisonment for 5 years, or both.

(2) An employer shall not dismiss an employee from employment or prejudice an employee in employment—

- (a) because the employee appeared or is to appear before a Commission as a witness or pursuant to a summons or warrant;
- (b) because of any evidence given, or any document or other thing produced, by the employee before a Commission; or
- (c) because of any thing that was seized or delivered to a Commission pursuant to a search warrant.

Penalty: \$50,000 or imprisonment for 5 years, or both.

(3) If all the elements of an offence against subsection (2) other than the reason for the employer's action are proved, the onus of proving that the dismissal or prejudice was not because the employee appeared or was to appear as a witness or gave evidence is on the employer.

### **Preventing witnesses from attending**

**51.** A person shall not wilfully prevent a person who has been summoned to attend as a witness before a Commission—

- (a) from so attending;
- (b) from answering a question that the person is required by the presiding member to answer; or
- (c) from producing a document or other thing referred to in the summons.

Penalty: \$10,000 or imprisonment for 1 year, or both.

### **Bribery of witnesses**

**52.** A person shall not—

- (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, on or 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;
- (b) induce a person called or to be called as a witness before a Commission to give false testimony or to withhold true testimony; or

- (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another 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.

Penalty: \$50,000 or imprisonment for 5 years, or both.

#### **Fraud on witnesses**

**53.** A person shall not practise any fraud or deceit, or knowingly make or exhibit any false statement, representation, token or writing, to any person called or to be called as a witness before a Commission with intent to affect the testimony of that person as a witness.

Penalty: \$20,000 or imprisonment for 2 years, or both.

#### **Contempt of Commission**

**54.** A person shall not—

- (a) wilfully insult or disturb a Commission;
- (b) wilfully interrupt the proceedings of a Commission;
- (c) use insulting language towards a Commission;
- (d) make a statement that is false and defamatory of a Commission; or
- (e) commit a wilful contempt of a Commission.

Penalty: \$10,000 or imprisonment for 1 year, or both.

#### **False representation**

**55. (1)** A person shall not falsely represent himself or herself to be an officer of a Commission.

Penalty: \$10,000 or imprisonment for 1 year, or both.

**(2)** In subsection (1)—

“officer of a Commission” means—

- (a) a member;
- (b) a member of the staff of a Commission;
- (c) counsel assisting a Commission; or
- (d) an authorised person.

**Dealing with certain offences summarily**

**56. (1)** Notwithstanding that an offence against section 48 or 49 is an indictable offence, proceedings in respect of such an offence may be heard and determined by a court of summary jurisdiction where—

- (a) the court is satisfied that it is proper to do so; and
- (b) the defendant and prosecution both consent to the offence being so dealt with.

**(2)** Where a person is convicted of an offence that has been dealt with pursuant to subsection (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****Vexatious complaints**

**57. (1)** A Commission may discontinue the examination of a complaint if the Commission considers that the complaint has been made vexatiously, frivolously or without reasonable grounds.

**(2)** Where a Commission discontinues an examination under subsection (1), section 22 applies as if the Commission had completed the examination.

**Protection of Attorney-General and other officers**

**58.** A person who is or has been—

- (a) the Attorney-General;
- (b) a public servant; or
- (c) a person acting under the direction of a member;

is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or exercise or purported performance or exercise of any function, power or authority conferred on the person in that capacity for the purposes of this Act.

**Reimbursement of costs and expenses**

**59. (1)** A witness appearing before a Commission is entitled to be paid by the Territory in respect of the expenses of the attendance of the witness an amount authorised in accordance with the Supreme Court scale of costs.

**(2)** Where a Commission—

- (a) 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
- (b) discontinues the examination of a complaint under subsection 57 (1);

the judicial officer concerned is entitled to be paid by the Territory the reasonable costs and expenses incurred by the judicial officer in connection with his or her appearance and representation before the Commission.

### **No proceedings to be brought**

**60.** No proceedings for an injunction, declaration or writ of mandamus, prohibition or certiorari shall be brought in relation to—

- (a) a decision of the Executive under subsection 5 (1) or 16 (3) or section 18;
- (b) a decision of a member of the Legislative Assembly to propose a motion in accordance with paragraph 14 (3) (a) or to give notice of the motion to the Attorney-General in accordance with paragraph 14 (3) (b);
- (c) a decision of the Attorney-General under subsection 16 (1), 17 (1) or 23 (3);
- (d) a resolution for the examination of a complaint in respect of a judicial officer by a Judicial Commission passed by the Legislative Assembly; or
- (e) the proceedings of a Commission.

### **Publication of proceedings protected**

**61.** No action or proceeding, civil or criminal, lies against a person in respect of the publication of a fair and accurate report of the proceedings of a hearing before a Commission (except a publication in contravention of a direction under subsection 37 (3)).

### **Regulations**

**62.** The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Presentation speech made in Assembly on 16 December 1993]*

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