



Australian Capital Territory

Judicial Commissions Act 1994

A1994-9

Republication No 21

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About this republication

The republished law

This is a republication of the *Judicial Commissions Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 26 April 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 26 April 2018.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



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Judicial Commissions Act 1994

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Australian Capital Territory

Judicial Commissions Act 1994

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

Part 1 Preliminary

1 Name of Act

This Act is the *Judicial Commissions Act 1994*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to an offence against this Act, pt 6 (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Tenure of judicial office

4 Tenure

A judicial officer must not be removed from office except in accordance with this Act.

5 Removal of judicial officer

- (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 must, by instrument, remove the judicial officer from the office.
- (2) For subsection (1), a resolution of the Legislative Assembly is taken to have been passed in the appropriate manner if it is passed—
 - (a) under a motion of which notice was given after completion of the formal process; and
 - (b) within 15 sitting days after the Attorney-General has presented to 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 subsection (2), the formal process is taken to have been completed if—
- (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 presented a copy of the report to the Legislative Assembly in accordance with section 23; and
 - (b) following the submission of the report—
 - (i) the judicial officer has delivered to the Attorney-General in accordance with section 24 (1) and (3) a statement relating to the report and the Attorney-General has presented the statement to the Legislative Assembly in accordance with section 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; and
 - (c) the judicial officer has been given a reasonable opportunity by the Legislative Assembly to address the Assembly (whether in person or by a lawyer 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 subsection (3) (c) must not contain any references to people or things that are inconsistent with the commission's reasons for submitting a separate report (if any) in accordance with section 22 (3).

Part 2A Judicial council

5A Establishment of council

The judicial council (the *council*) is established.

5B Council—members

- (1) The council consists of—
 - (a) the Chief Justice; and
 - (b) the Chief Magistrate; and
 - (c) 2 members appointed by the Executive.
- (2) The Chief Justice is the head of council.

5C Appointment of members

- (1) The Executive must appoint—
 - (a) 1 member who is a legal practitioner jointly nominated by the council of the law society and the council of the bar association; and
 - (b) 1 member who the Executive is satisfied has the qualifications and experience to assist the council in the exercise of its functions.
- (2) Before appointing a person as a member of the council, the Executive must consult with the Chief Justice and the Chief Magistrate.

Note For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

5D Standing acting arrangement—members

- (1) The Executive may appoint a person to act for a member of the council appointed under section 5C during all periods when the member cannot for any reason exercise the functions of a member of the council.

Note 1 The [Legislation Act](#), div 19.3.2A deals with standing acting arrangements.

Note 2 A person acting under a standing arrangement has all the functions of the occupant of the position.

- (2) Before appointing a person under this section, the Executive must consult with the Chief Justice and the Chief Magistrate.

5E Delegation by Chief Justice and Chief Magistrate

- (1) The Chief Justice may delegate a function under this part to a resident judge.
- (2) The Chief Magistrate may delegate a function under this part to a magistrate.
- (3) The delegate may exercise a function as a member of the council only when the delegator cannot for any reason exercise the function.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

5F Council—functions

The council has the following functions:

- (a) receiving complaints in relation to a judicial officer;
- (b) examining complaints in relation to a judicial officer;
- (c) referring certain complaints to the Executive or a head of jurisdiction;
- (d) giving information about the process for complaints in relation to judicial officers;

- (e) any other function given to the council under this Act or another territory law.

Note A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196).

5G Member not to exercise function in certain circumstances

If a member of the council is, in relation to a complaint, the complainant or the judicial officer who is the subject of the complaint, the member may not exercise a function as a member of the council in relation to the complaint.

5H Council—staff

The council is to be supported in the exercise of its functions by a principal officer and other staff considered suitable by the council.

5I Council—delegation

- (1) The council may delegate its functions under this Act to a member of the council's staff.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the council must not delegate its function of—
- (a) dismissing a complaint, other than its function under section 35B (1) (a), (f) or (g); or
 - (b) referring a complaint; or
 - (c) making a recommendation in relation to a complaint.

Part 3 Judicial commissions

6 Constitution of judicial commission

A judicial commission must consist of a presiding member and 2 other members appointed by the Executive.

Note For the making of appointments, see the [Legislation Act](#), pt 19.3.

7 Members

- (1) A person must not be appointed as a member—
 - (a) unless the person is or has been a judge; or
 - (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 the [Supreme Court Act 1933](#), section 4B.
- (2) If a member dies, resigns or is removed from office under section 12—
 - (a) the remaining members 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 must, in writing, appoint 1 of the remaining members to be the presiding member.

8 Terms and conditions of appointment

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.

10 Cessation

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.

Note A commissioner's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

12 Termination of appointment

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

13 Arrangements for staff

- (1) A commission may arrange with the head of service to use the services of a public servant.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

- (2) A public servant subject to an arrangement under subsection (1) must act in accordance with the direction of a member, and not otherwise.

Part 4 Complaints against judicial officers

14 Making of complaint

- (1) A person may complain to the council or the Attorney-General about a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer (other than a presidential member of the ACAT).
- (2) 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 presidential member of the ACAT.
- (3) A complaint must—
 - (a) be in writing; and
 - (b) state the name and address of the complainant; and
 - (c) identify the judicial officer concerned; and
 - (d) contain full particulars of the matter the subject of the complaint; and
 - (e) contain anything else prescribed by regulation.

Note If a form is approved under s 62 for this provision, the form must be used.
- (4) A member of the Legislative Assembly must 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 relation to the judicial officer examined by a judicial commission; and

- (b) unless the member has given to the Attorney-General not less than 6 sitting days notice of the motion and the member has not been notified by the Attorney-General or the council within that period that a recommendation has been made that the Executive appoint a judicial commission in relation to the allegation.
- (5) If a member of the Legislative Assembly gives notice under subsection (4) (b), the member must also tell the council about the notice.

15 Referral of complaint to council

- (1) The Attorney-General must, as soon as practicable after receiving a complaint—
 - (a) refer the complaint to the council; and
 - (b) tell the complainant that the complaint has been referred to the council.
- (2) However, if the complaint is about a presidential member of the ACAT, the Attorney-General must ensure that it is dealt with in accordance with an approved protocol.

16 Council to examine complaint etc

The council must, as soon as practicable after receiving a complaint—

- (a) examine the complaint in accordance with part 5 (Proceedings—council and commissions); and
- (b) tell the following about the complaint:
 - (i) the subject of the complaint;
 - (ii) if the subject of the complaint is not a head of jurisdiction—the relevant head of jurisdiction.

16A Protocol—complaints in relation to ACAT

- (1) The Attorney-General must approve a protocol about dealing with complaints made in relation to a presidential member of the ACAT.
- (2) An approved protocol may provide for the appointment of a suitably qualified person to consider a complaint in relation to a presidential member.
- (3) An approved protocol must provide—
 - (a) for the following to be told about the complaint as soon as practicable:
 - (i) the subject of the complaint;
 - (ii) if the subject of the complaint is not the president—the president; and
 - (b) for a recommendation to be made to the Executive to appoint a judicial commission to examine the complaint if the complaint could justify parliamentary consideration of the removal of the presidential member.
- (4) An approved protocol is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

17 Council recommendation—appointment of commission

- (1) If the council is satisfied on reasonable grounds that a complaint is wholly or partly substantiated under section 35J (1) (a) (Substantiation of complaint by council) the council must—
 - (a) recommend, in writing, that the Executive appoint a judicial commission to examine the complaint; and
 - (b) give the Executive the report mentioned in section 35J.

- (2) The council must also give written notice of a recommendation under subsection (1) (a) to—
- (a) the complainant or the member of the Legislative Assembly (as the case requires); and
 - (b) the subject of the complaint; and
 - (c) if the subject of the complaint is not a head of jurisdiction—the relevant head of jurisdiction.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) If the Executive receives a recommendation from the council under this section the Executive must appoint a judicial commission to examine and report on the complaint.

18 Resolution by Legislative Assembly

If the Legislative Assembly passes a resolution for the examination of a complaint in relation to a judicial officer by a judicial commission, the Executive must 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.

19 Judicial officer excused

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

- (2) A judicial officer who has been excused must not resume the exercise 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; or
 - (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 presented the commission's report to 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.

20 Functions of officers who have been excused

- (1) Subject to this section, a judicial officer who has been excused must not, while excused, exercise any function connected with the relevant judicial office.
- (2) The Executive may, by instrument, authorise a judicial officer who has been excused to exercise 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 exercises a function connected with the relevant judicial office, the function is taken to have been exercised as validly and effectively as if the judicial officer had not been excused.

21 Examination of complaint by commission

- (1) A commission must, 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) must consider only specific allegations made in precise terms; and
 - (b) must 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 considers appropriate.
- (3) Except as otherwise provided by this Act, an examination or inquiry must be conducted in such manner as the commission determines.

22 Reports of commission

- (1) After completing an examination of a complaint, a commission must—
 - (a) prepare a report of its examination; and
 - (b) submit the report to the Attorney-General.
- (2) A report must—
 - (a) set out the commission's findings on material questions of fact; and
 - (b) refer to the evidence or other material on which those findings were based; and
 - (c) set out the commission's 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 relation to a person (other than the judicial officer the subject of the complaint) were to be presented to 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; or
 - (b) the conduct of an investigation of a breach or possible breach of the law may be prejudiced; or
 - (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 presented to the Legislative Assembly.
- (4) When submitting a report to the Attorney-General, a commission must 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 must accept a recommendation referred to in subsection (3) (f) unless he or she is satisfied that there are compelling reasons of public policy why the relevant report should be presented to the Legislative Assembly.

23 Tabling reports

- (1) The Attorney-General must, 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 section 22 (3) (f)), present a copy of the report to the Legislative Assembly.
- (2) The Attorney-General must, on presenting a copy of the report to the Legislative Assembly, give a copy of that report to—
 - (a) the judicial officer the subject of the complaint; and
 - (b) if 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 section 22 (3) in relation to which the Attorney-General has accepted a recommendation referred to in section 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 presented to the Legislative Assembly by the Attorney-General commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

24 Statement by judicial officer

- (1) Where a commission submits to the Attorney-General a report of its examination of a complaint in relation to a judicial officer, the judicial officer may deliver to the Attorney-General a written statement containing particulars of any matter relating to the commission's findings.
- (2) A statement relating to a report must not contain any references to people or things that are inconsistent with the commission's reasons for submitting a separate report (if any) in accordance with section 22 (3).
- (3) A statement relating to a report must be delivered to the Attorney-General—
 - (a) if the Legislative Assembly has, by resolution, fixed a period longer than 14 days after the Attorney-General has presented the report to the Assembly—within the period so fixed; or
 - (b) if paragraph (a) does not apply—within 14 days after the Attorney-General has presented the report to the Assembly.
- (4) The Attorney-General must, as soon as practicable after receiving a statement under subsection (1), present a copy of the statement to the Legislative Assembly.

Part 5 **Proceedings—council and commissions**

Division 5.1 **General**

24A **Determination of question—council**

- (1) A question before the council must be decided—
 - (a) in accordance with the opinion of a majority of the members; or
 - (b) if the council is equally divided—in accordance with the opinion of the head of council.
- (2) If, in relation to a question before the council, members are not unanimous in opinion, a member may require the record of the council to reflect the different opinions of the members on that question.

25 **Determination of question—commission**

- (1) A question arising before a commission must be decided—
 - (a) if the commission is constituted by 3 members—in accordance with the opinion of a majority of the members; or
 - (b) if the commission is constituted by 2 members and those members are divided in opinion—in accordance with the opinion of the presiding member.
- (2) If, in relation to a question arising before a commission, the members are not unanimous in opinion, there must, if a member so requires, be recorded in the report of the commission particulars of the opinions of the members on that question.

26 **Counsel assisting**

The council or a commission may appoint a lawyer to assist it, either generally or in relation to a particular matter.

27 Protection of members etc

- (1) A member of the council or a commission has, in the exercise of any function 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 lawyer assisting the council or a commission or appearing on a person's behalf at a hearing before the council or a commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person subpoenaed to attend or appearing before the council or a commission as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

28 Offence—disclosure of information by members etc

- (1) This section applies to—
 - (a) a person who is or has been—
 - (i) a member of the council or a commission; or
 - (ii) a member of the staff of the council; or
 - (iii) a member of the staff of a commission; or
 - (iv) a lawyer assisting the council or 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 this Act.
- (2) A person to whom this section applies must not, either directly or indirectly, except in the exercise of a function under or for this Act—
 - (a) make a record of, or divulge or communicate to any person, any information acquired by the firstmentioned person by virtue of that person's office or employment under or for this Act; or

- (b) make use of any such information; or
- (c) produce to any person, or permit any person to have access to, a document provided for this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

29 Disclosure of information to Attorney-General etc

If, in the course of exercising a function under this Act, the council or 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 council or commission may, if in its opinion it is appropriate to do so, communicate the information or give 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.

30 Outstanding matters—commission

- (1) If—
 - (a) a commission has submitted its report in accordance with section 22; and
 - (b) there are any outstanding matters connected with the exercise by the commission of its functions under this Act;the commission must—
 - (c) notify the Attorney-General that there are outstanding matters; and
 - (d) for such time as is necessary, continue to exercise its powers under this Act for the purpose of finalising those matters.

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

Division 5.2 Evidence

31 Procedure

In conducting its proceedings, the council or a commission—

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

32 Privileges against self-incrimination and exposure to civil penalty

- (1) This section applies if a person is required under this part to—
- (a) produce a document or other thing; or
 - (b) answer a question.
- (2) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

Note The [Legislation Act](#), s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
 - (b) an offence against the [Criminal Code](#), chapter 7 (Administration of justice offences).

Division 5.3 Powers

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

33 Search warrants

- (1) The presiding member of a commission may issue a search warrant if—
 - (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 (*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 must 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; and
 - (b) to search the premises for things of the relevant kind; and
 - (c) to seize any things of the relevant kind found in or on the premises; and
 - (d) to deliver anything so seized to the commission.
- (3) A search warrant must—
 - (a) state the purpose for which it is issued; and
 - (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; and

- (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 end of the date specified for subsection (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 must deliver the thing so seized to the commission.
- (6) A person executing a search warrant must, 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 of a commission includes a reference to a member authorised by the presiding member to act under that subsection.

34 Inspection and retention of documents

- (1) A council member, a member of the staff of the council or an authorised person may—
 - (a) inspect a document or other thing produced before, or delivered to, the council; and
 - (b) retain possession of the document or thing for the period necessary for the purposes of the inquiry to which the document or thing relates; and
 - (c) in the case of a document produced before, or delivered to, the council—make copies of, or take extracts from, the parts of the document that are relevant to a matter the subject of the inquiry.
- (2) 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; and
 - (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.
- (3) Where a document is retained under subsection (1) (b) or (2) (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 must be received in all courts as evidence as if it were the original; and

- (b) until the certified copy is supplied, the commission must, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- (4) If the retention of a document or other thing by the council or a commission ceases to be necessary for the purposes of an inquiry and a person who reasonably appears to the council or commission to be entitled to the document or thing requests it, the council or commission must return the document or thing to the person.

35 Medical examination of judicial officer

- (1) If, in the course of examining a complaint, the council or 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 council may request the judicial officer to—
 - (a) undergo a specified medical examination within a reasonable stated time; and
 - (b) give the council a copy of any report of the medical examination.
- (2) A specified medical examination must relate only to the physical or mental fitness of the judicial officer to exercise efficiently the functions of his or her office.
- (3) If the judicial officer fails, without reasonable excuse, to comply with the request, a statement to that effect must be included in any report given in relation to the judicial officer under—
 - (a) section 22 (Reports of commission); or
 - (b) section 35I (Dismissal of complaint by council); or
 - (c) section 35J (Substantiation of complaint by council).

Division 5.3A Examinations and hearings—council

35A Preliminary examination

- (1) The council must conduct a preliminary examination of a complaint.
- (2) The council may initiate the inquiries into the subject matter of the complaint that the council considers appropriate.
- (3) A preliminary examination and any inquiries must, as far as practicable, be in private.

35B Early dismissal of complaint

- (1) After a preliminary examination under section 35A, the council may dismiss a complaint if satisfied on reasonable grounds of any of the following:
 - (a) the complaint is one that the council is not required to deal with;
 - (b) the complaint is frivolous, vexatious or not in good faith;
 - (c) the subject matter of the complaint is trivial;
 - (d) the matter complained about happened at too remote a time to justify further consideration;
 - (e) in relation to the matter complained about, there is or was available a satisfactory means of redress or of dealing with the complaint or the subject matter of the complaint;
 - (f) without limiting paragraph (e), the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights;
 - (g) the person complained about is no longer a judicial officer;
 - (h) having regard to all the circumstances, further consideration of the complaint is unnecessary or unjustifiable.
- (2) In deciding whether or not to dismiss a complaint, the council may have regard to any matter the council considers relevant.

- (3) If the council dismisses a complaint after a preliminary examination under section 35A, the council must tell the complainant that the complaint has been dismissed.

35C Refer complaint to head of jurisdiction

- (1) The council may refer a complaint to the relevant head of jurisdiction if the council is satisfied on reasonable grounds that although the complaint appears to be wholly or partly substantiated, it does not justify the attention of the council.
- (2) A reference under subsection (1) may include recommendations as to what steps might be taken to deal with the complaint.

35D Examination of complaint by council

- (1) The council must conduct an examination of a complaint received by the council or referred to it under section 15 (Referral of complaint to council) unless—
 - (a) the complaint is dismissed under section 35B (Early dismissal of complaint); or
 - (b) the complaint is referred under section 35C.
- (2) The council may initiate the inquiries into the subject matter of the complaint that the council considers appropriate.
- (3) An examination and any inquiries must, as far as practicable, be in private.
- (4) The council must tell the Attorney-General when it starts conducting an examination of a complaint about a judicial officer and when, and the way in which, the complaint is disposed of.
- (5) Subsection (4) applies whether or not the Attorney-General has requested the information about the complaint.

35E Hearing of complaint by council

- (1) The council may hold hearings in connection with a complaint.
- (2) A hearing must be held in private, unless the council decides on reasonable grounds that it is in the public interest for the hearing to be held in public.
- (3) If a hearing or part of a hearing is to be held in private, the council may give directions as to the persons who may be present.

35F Appearance and representation

- (1) At a hearing—
 - (a) the judicial officer the subject of a complaint is entitled to appear and to be represented by a lawyer; and
 - (b) a person summoned to attend or appearing before the council as a witness may be represented by a lawyer; and
 - (c) any other person may, with the consent of the council, appear and may be represented by a lawyer.
- (2) In subsection (1) (b):
person includes an unincorporated association.

35G Examination of witnesses

The following may examine or cross-examine a witness at a hearing on any matter that the council is satisfied on reasonable grounds is relevant and appropriate to its inquiry:

- (a) a lawyer assisting the council;
- (b) the judicial officer the subject of the complaint or the lawyer representing the judicial officer;
- (c) any other person present who is permitted by the head of council to do so.

35H Powers in relation to witnesses etc

- (1) The head of council, or an authorised person, may, by written notice given to a person (a *subpoena*), require the person to appear before the council at a hearing, at a stated time and place, to do either or both of the following:

- (a) give evidence;
- (b) produce a stated document or other thing relevant to the hearing.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (2) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the council before the date stated in the subpoena for its production.

- (3) The head of council may require a witness appearing at a hearing before the council to give evidence to do 1 or more of the following:

- (a) take an oath;
- (b) answer a question relevant to the hearing;
- (c) produce a stated document or other thing relevant to the hearing.

Note *Oath* includes affirmation and *take* an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

35I Dismissal of complaint by council

- (1) The council must dismiss a complaint if satisfied on reasonable grounds that—
- (a) any of the matters mentioned in section 35B (Early dismissal of complaint) apply to the complaint; or
 - (b) the complaint has not been substantiated.
- (2) If the council dismisses a complaint, the council must prepare a report of its examination.

- (3) A report must—
 - (a) set out the council’s findings on material questions of fact; and
 - (b) refer to the evidence or other material on which those findings were based; and
 - (c) set out the council’s reasons for dismissing the complaint.
- (4) The council must give a copy of the report to the judicial officer concerned and, in the case of notice by a member of the Legislative Assembly, to the member.
- (5) The council may give a copy of the report, or a summary of the report, to the complainant.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

35J Substantiation of complaint by council

- (1) If the council is satisfied on reasonable grounds that a complaint is wholly or partly substantiated, the council must—
 - (a) if the complaint could justify parliamentary consideration of the removal of the judicial officer—make a recommendation under section 17 (Council recommendation—appointment of commission); or
 - (b) if the complaint could not justify parliamentary consideration of the removal of the judicial officer—refer the complaint under section 35C (Refer complaint to head of jurisdiction).
- (2) If the council substantiates a complaint, the council must—
 - (a) prepare a report of its examination; and
 - (b) give the report to—
 - (i) if subsection (1) (a) applies—the Executive; or
 - (ii) if subsection (1) (b) applies—the head of jurisdiction.

- (3) A report must—
- (a) set out the council’s findings on material questions of fact; and
 - (b) refer to the evidence or other material on which those findings were based; and
 - (c) set out the council’s reasons for substantiating the complaint.
- (4) The council must give a copy of the report to the judicial officer concerned and, in the case of notice by a member of the Legislative Assembly, to the member.
- (5) The council may give a copy of the report, or a summary of the report, to the complainant.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

35JA Notifying Attorney-General about complaint

- (1) This section applies to a complaint referred to the council under section 15.
- (2) The council must, as soon as practicable after dealing with the complaint, notify the Attorney-General about whether the matter was—
- (a) dismissed under section 35B; or
 - (b) referred to the relevant head of jurisdiction under section 35C.

Note The council must also notify the Attorney-General under s 35D (4) when it starts examining a complaint about a judicial officer and when, and the way in which, the complaint is disposed of.

35K Extension or partial dismissal of complaint

- (1) In dealing with a complaint about a judicial officer, the council is not limited to the matters raised initially in the complaint, and the council may treat the original complaint as extending to other matters arising in the course of its being dealt with.
- (2) If, in dealing with a complaint about a judicial officer, a matter which might constitute grounds for a complaint about another judicial officer come to the attention of the council, it may treat the original complaint as extending to the new matter.
- (3) A power to dismiss a complaint includes a power to dismiss a part of a complaint.

Division 5.4 Hearings—commission

37 Power to hold

- (1) For the purposes of conducting an inquiry, a commission may hold hearings.
- (2) Subject to subsection (3), a hearing must be in public.
- (3) If 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 must take place in private and give directions as to the people who may be present; and
 - (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 people 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 must 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 people present at the hearing, but must 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.

38 Person presiding

The presiding member must preside at a hearing.

39 Conduct of hearing

Except as otherwise provided by this Act, the procedure at a hearing may be decided by the commission.

40 Appearance and representation

- (1) At a hearing—
 - (a) the judicial officer the subject of the complaint is entitled to appear and to be represented by a lawyer; and
 - (b) a person summoned to attend or appearing before the commission as a witness may be represented by a lawyer; and
 - (c) any other person may, with the consent of the commission, appear and may be represented by a lawyer.
- (2) In subsection (1) (b):

person includes an unincorporated association.

41 Presence of people at private hearing

If a hearing is being held in private, a person must not be present at the hearing unless the person is—

- (a) a member; or
- (b) a member of the staff of the commission directed to be present; or
- (c) a lawyer assisting the commission; or
- (d) the judicial officer the subject of the complaint; or
- (e) the lawyer representing that judicial officer; or
- (f) entitled under a direction under section 37 (3) (a) to be present.

42 Examination of witnesses

At a hearing—

- (a) a lawyer assisting the commission; or
- (b) the judicial officer the subject of the complaint or the lawyer 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 considers appropriate, examine or cross-examine a witness on any matter that the commission considers relevant to its inquiry.

43 Powers in relation to witnesses etc

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

Note *Oath* includes affirmation and *take* an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

43A Appearance by audiovisual or audio links

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the commission has given a direction under the [Evidence \(Miscellaneous Provisions\) Act 1991](#), section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from another place).

- (2) Where this section applies a person who, in a relevant hearing—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;
- may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant hearing in accordance with this section is taken to be before the commission.

44 Apprehension of witnesses failing to appear

- (1) If a person served with a subpoena to appear before a commission as a witness fails to appear or attend under the subpoena, the presiding member may, on proof of the service of the subpoena, issue a warrant for the apprehension of the person.
- (2) A warrant authorises—
- (a) the apprehension of the witness; and
 - (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; or
 - (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 because of noncompliance by the witness with the subpoena.

Part 6 Miscellaneous

55 Application of Criminal Code, ch 7

A proceeding before the council or a commission is a legal proceeding for the [Criminal Code](#), chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to council or commission proceedings.

56 Contempt

A person commits an offence if the person does something in the face, or within the hearing, of the council or a commission that would be contempt of court if the council or the commission were a court of record.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

57 Vexatious complaints

- (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) If a commission discontinues an examination under subsection (1), section 22 applies as if the commission had completed the examination.

58 Protection of Attorney-General and other officers

A person who is or has been—

- (a) the Attorney-General; or
- (b) a public servant; or

- (c) a person acting under the direction of a member of the council or a commission;

is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done honestly in the exercise or purported exercise of any function—given to the person in that capacity for this Act.

59 Reimbursement of costs and expenses

- (1) A witness appearing before the council or a commission is entitled to be paid by the Territory in relation to the expenses of the attendance of the witness an amount authorised in accordance with the Supreme Court scale of costs.
- (2) If 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 section 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.

- (3) A judicial officer is entitled to be paid by the Territory the reasonable costs and expenses incurred by the judicial officer in connection with an appearance and representation before the council if the council—
 - (a) dismisses the complaint under section 35B (Early dismissal of complaint); or
 - (b) refers the complaint under section 35C (Refer complaint to head of jurisdiction); or

- (c) dismisses the complaint under section 35I (Dismissal of complaint by council).

60 No proceeding to be brought

A proceeding for an injunction, declaration or prerogative order must not be brought in relation to—

- (a) a decision of the Executive under section 5 (1), section 17 (3) or section 18; or
- (b) a decision of a member of the Legislative Assembly to propose a motion in accordance with section 14 (4) (a) or to give notice of the motion to the Attorney-General in accordance with section 14 (4) (b); or
- (c) a decision of the Attorney-General under section 15 or section 23 (3); or
- (d) a resolution for the examination of a complaint in relation to a judicial officer by a judicial commission passed by the Legislative Assembly; or
- (e) a decision or any proceedings of the council or a commission.

61 Reports of proceedings—protection

- (1) The proceedings of a hearing before the council or a commission are taken to be proceedings of public concern for the *Civil Law (Wrongs) Act 2002*, section 139 (Defences of fair report of proceedings of public concern).
- (2) Subsection (1) does not apply in relation to the publication of a report of proceedings, or a part of proceedings, if a direction given under section 37 (3) restricts publication of the proceedings or part of them and the publication of the report contravenes the direction.

61A Report of council activities

- (1) The council must prepare a report each year about the work and activities of the council in the previous year and give the report to the Attorney-General.
- (2) The report must include the following for the year:
 - (a) the number of complaints received by, or referred to the council;
 - (b) the number of complaints dismissed under section 35B (Early dismissal of complaint);
 - (c) the number of complaints referred under section 35C (Refer complaint to head of jurisdiction);
 - (d) the number of complaints dismissed under section 35I (Dismissal of complaint by council);
 - (e) the number of complaints substantiated under section 35J (Substantiation of complaint by council);
 - (f) a description, which may include statistics, of any patterns in the nature and scope of complaints made or dealt with by the council.
- (3) The report may include recommendations for changes to legislation, the council's functions or related administrative matters arising from the exercise of the council's functions.
- (4) The report must not identify any person against whom a complaint has been made under this Act, unless the person has been the subject of a public hearing or has been convicted of an offence connected with the complaint.
- (5) The Attorney-General must as soon as practicable after receiving the report, table the report in the Legislative Assembly.

61B Information about complaint to be provided to Attorney-General

- (1) The council must, at the request of the Attorney-General, provide the Attorney-General with the following information in relation to a particular judicial officer:
 - (a) whether a complaint has been made, when a complaint was made or when the matter about which a complaint was made is alleged to have happened;
 - (b) the subject matter of the complaint;
 - (c) the stage of the procedure for dealing with a complaint that the complaint has reached;
 - (d) for a complaint that has been disposed of, the way in which the complaint was disposed of;
 - (e) other information the council considers relevant.
- (2) However, unless a complaint has been referred to a judicial commission, the council is not required to provide information about the complaint against a particular judicial officer if the council considers it is not in the public interest to provide the information.

62 Approved forms

- (1) The Attorney-General may approve forms for this Act.
- (2) If the Attorney-General approves a form for a particular purpose, the form must be used for that purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

63 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Dictionary

(see s 2)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- chief police officer
- director-general (see s 163)
- Executive
- exercise
- fail
- function
- head of service
- public servant
- sitting day
- under.

approved protocol means a protocol approved under section 16A (Protocol—complaints in relation to ACAT).

authorised person means—

- (a) for an inquiry or proceeding of the council—a person declared in writing by the head of council to be an authorised person for this Act; and
- (b) for an inquiry or proceeding of a commission—a person declared in writing by the presiding member of the commission to be an authorised person for this Act.

commission means—

- (a) a judicial commission appointed under section 17 (3) or section 18; and
- (b) for a complaint—the commission appointed to examine the complaint.

complaint means—

- (a) a complaint made under section 14; or
- (b) an allegation in relation to which notice has been given to the council under section 14.

council means the judicial council established under section 5A.

head of council—the **head of council** is the Chief Justice (see section 5B (2)).

head of jurisdiction means—

- (a) for a judge or the associate judge of the Supreme Court—the Chief Justice; or
- (b) for a magistrate—the Chief Magistrate; or
- (c) for a member of the ACAT—the president of the ACAT.

judge—

- (a) means—
 - (i) a judge of the Federal Court or Family Court; or
 - (ii) a judge of the Supreme Court of a State or the Northern Territory; and
- (b) includes a person who is an additional judge appointed under the *Supreme Court Act 1933*, section 4A.

judicial officer means—

- (a) a judge of the Supreme Court, other than a person who is an additional judge appointed under the *Supreme Court Act 1933*, section 4A; or
- (b) the associate judge of the Supreme Court; or
- (c) a magistrate; or
- (d) a presidential member of the ACAT.

magistrate does not include a registrar.

member means—

- (a) of a council—a member of the council and includes the head of council; and
- (b) of a commission—a member of the commission, and includes the presiding member.

premises includes—

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

president, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

presidential member, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

presiding member means the presiding member of a commission appointed under section 6 or section 7 (3).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Judicial Commissions Act 1994 A1994-9

notified 14 March 1994 ([Gaz 1994 No S44](#))

commenced 14 March 1994 (s 2)

as amended by

Public Sector Management (Consequential and Transitional Provisions) Act 1994 A1994-38 sch 1 pt 49

notified 30 June 1994 ([Gaz 1994 No S121](#))

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 pt 49 commenced 1 July 1994 (s 2 (2) and [Gaz 1994 No S142](#))

Remuneration Tribunal (Consequential Amendments) Act 1997

A1997-41 sch 1 (as am by A2002-49 amdt 3.222)

notified 19 September 1997 ([Gaz 1997 No S264](#))

commenced 24 September 1997 (s 2 as am by [A2002-49](#) amdt 3.222)

Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 sch 1

notified 1 December 1997 ([Gaz 1997 No S380](#))

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch 1 commenced 1 June 1998 (s 2 (2))

Statute Law Revision (Penalties) Act 1998 A1998-54 sch

notified 27 November 1998 ([Gaz 1998 No S207](#))

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and [Gaz 1998 No 49](#))

Custodial Escorts (Consequential Provisions) Act 1998 A1998-67 pt 7

notified 23 December 1998 ([Gaz 1998 No S212](#))

s 1, s 2 commenced 23 December 1998 (s 2 (1))

pt 7 commenced 23 December 1998 (s 2 (2) and [Gaz 1998 No 51](#))

Courts and Tribunals (Audio Visual and Audio Linking) Act 1999

A1999-22 pt 8

notified 14 April 1999 ([Gaz 1999 No S16](#))

s 1, s 2 commenced 14 April 1999 (s 2 (1))

pt 8 commenced 1 September 1999 (s 2 (2) and [Gaz 1999 No 35](#))

**Justice and Community Safety Legislation Amendment Act 2000
(No 3) A2000-17 sch 1**

notified 1 June 2000 ([Gaz 2000 No 22](#))
commenced 1 June 2000 (s 2)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 199

notified 26 July 2001 ([Gaz 2001 No 30](#))
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 199 commenced 12 September 2001 (s 2 and see [Gaz 2001 No S65](#))

Statute Law Amendment Act 2002 (No 2) A2002-49 amdt 3.222

notified LR 20 December 2002
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))
amdt 3.222 commenced 24 September 1997 (s 2 (3))

Note This Act only amends the [Remuneration Tribunal \(Consequential Amendments\) Act 1997 A1997-41](#) .

**Criminal Code (Theft, Fraud, Bribery and Related Offences)
Amendment Act 2004 A2004-15 sch 2 pt 2.46**

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.46 commenced 9 April 2004 (s 2 (1))

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.30

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.30 commenced 2 June 2005 (s 2 (1))

**Criminal Code (Administration of Justice Offences) Amendment Act
2005 A2005-53 sch 1 pt 1.15**

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.15 commenced 23 November 2005 (s 2)

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.23

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
sch 1 pt 1.23 commenced 2 June 2006 (s 2 (1) and see [Crimes \(Sentence Administration\) Act 2005 A2005-59 s 2](#), [Crimes \(Sentencing\) Act 2005 A2005-58, s 2](#) and LA s 79)

Justice and Community Safety Legislation Amendment Act 2006

A2006-40 sch 2 pt 2.19

notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 2 pt 2.19 commenced 29 September 2006 (s 2 (1))

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.14

notified LR 26 October 2006
s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))
sch 3 pt 3.14 commenced 16 November 2006 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2007

A2007-22 sch 1 pt 1.11

notified LR 5 September 2007
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))
sch 1 pt 1.11 commenced 6 September 2007 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment

Act 2008 A2008-36 sch 1 pt 1.32

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.32 commenced 2 February 2009 (s 2 (1) and see [ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 \(1\)](#) and [CN2009-2](#))

Justice and Community Safety Legislation Amendment Act 2010

(No 3) A2010-40 sch 2 pt 2.9

notified LR 5 October 2010
s 1, s 2 commenced 5 October 2010 (LA s 75 (1))
s 3 commenced 6 October 2010 (s 2 (1))
sch 2 pt 2.9 commenced 2 November 2010 (s 2 (2))

Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.26

notified LR 22 February 2011
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))
sch 3 pt 3.26 commenced 1 March 2011 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments)

Act 2011 A2011-22 sch 1 pt 1.86

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.86 commenced 1 July 2011 (s 2 (1))

Judicial Commissions Amendment Act 2015 A2015-1**(as am by A2015-52 pt 10)**

notified LR 25 February 2015

s 1, s 2 commenced 25 February 2015 (LA s 75 (1))

remainder commenced 1 February 2017 (s 2 (as am by [A2015-52](#) s 28))

Courts Legislation Amendment Act 2015 A2015-10 pt 9

notified LR 7 April 2015

s 1, s 2 commenced 7 April 2015 (LA s 75 (1))

pt 9 commenced 21 April 2015 (s 2 (2))

Courts Legislation Amendment Act 2015 (No 2) A2015-52 pt 10

notified LR 26 November 2015

s 1, s 2 commenced 26 November 2015 (LA s 75 (1))

pt 10 (s 28) commenced 10 December 2015 (s 2 (2))

Note Pt 10 (s 28) only amends the [Judicial Commissions Amendment Act 2015 A2015-1](#)

ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)**A2016-28 sch 1 pt 1.4**

notified LR 15 June 2016

s 1, s 2 commenced 15 June 2016 (LA s 75 (1))

amdt 1.7, amdt 1.8 commenced 1 February 2017 (s 2 (3) and see [A2015-1](#) s 2 (2) (as am by [A2015-52](#) s 28))

sch 1 pt 1.4 remainder commenced 16 June 2016 (s 2 (1))

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.40

notified LR 25 August 2016

s 1, s 2 commenced 25 August 2016 (LA s 75 (1))

sch 1 pt 1.40 commenced 1 September 2016 (s 2)

Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 pt 10

notified LR 17 May 2017

s 1, s 2 commenced 17 May 2017 (LA s 75 (1))

pt 10 commenced 24 May 2017 (s 2 (1))

Endnotes

3 Legislation history

Courts and Other Justice Legislation Amendment Act 2018 A2018-9

pt 10

notified LR 29 March 2018

s 1, s 2 commenced 29 March 2018 (LA s 75 (1))

pt 10 commenced 26 April 2018 (s 2)

4 Amendment history

Name of Act

s 1 sub [A2006-42](#) amdt 3.84

Dictionary

s 2 om [A2001-44](#) amdt 1.2275
ins [A2006-42](#) amdt 3.85

Notes

s 3 **orig s 3**
om [A2006-42](#) amdt 3.85
def **legal practitioner** am [A1997-96](#) sch 1
om [A2006-42](#) amdt 3.85
def **magistrate** sub [A2005-20](#) amdt 3.180
om [A2006-42](#) amdt 3.85
pres s 3
(prev s 3A) ins [A2005-53](#) amdt 1.78
renum as s 3 [A2006-42](#) amdt 3.86

Offences against Act—application of Criminal Code etc

s 3A **orig s 3A**
renum as s 3
pres s 3A
(prev s 3B) ins [A2005-53](#) amdt 1.78
renum as s 3A [A2006-42](#) amdt 3.86

Offences against Act—application of Criminal Code etc

s 3B renum as s 3A

Removal of judicial officer

s 5 am [A2006-42](#) amdt 3.87, amdt 3.88, amdts 3.116-3.118;
[A2011-3](#) amdt 3.263, amdt 3.264

Judicial council

pt 2A hdg ins [A2015-1](#) s 4

Establishment of council

s 5A ins [A2015-1](#) s 4

Council—members

s 5B ins [A2015-1](#) s 4

Appointment of members

s 5C ins [A2015-1](#) s 4

Standing acting arrangement—members

s 5D ins [A2015-1](#) s 4

Delegation by Chief Justice and Chief Magistrate

s 5E ins [A2015-1](#) s 4

Endnotes

4 Amendment history

Council—functions

s 5F ins [A2015-1](#) s 4

Member not to exercise function in certain circumstances

s 5G ins [A2015-1](#) s 4

Council—staff

s 5H ins [A2015-1](#) s 4

Council—delegation

s 5I ins [A2015-1](#) s 4
sub [A2018-9](#) s 51

Constitution of judicial commission

s 6 sub [A2006-42](#) amdt 3.89

Members

s 7 am [A2006-42](#) amdt 3.90

Remuneration and allowances

s 9 om [A1997-41](#) sch 1

Cessation

s 10 am [A2006-42](#) amdt 3.91

Resignation

s 11 om [A2006-42](#) amdt 3.92

Arrangements for staff

s 13 am [A1994-38](#) sch 1 pt 49; [A2011-22](#) amdt 1.263
sub [A2016-52](#) amdt 1.108

Making of complaint

s 14 am [A2015-1](#) ss 5-7; ss renum R19 LA

Referral of complaint to council

s 15 sub [A2015-1](#) s 8

Council to examine complaint etc

s 16 sub [A2015-1](#) s 8

Protocol—complaints in relation to ACAT

s 16A ins [A2015-1](#) s 8
am [A2016-28](#) amdt 1.7, amdt 1.8

Council recommendation—appointment of commission

s 17 sub [A2015-1](#) s 8

Judicial officer excused

s 19 am [A2006-42](#) amdts 3.93-3.95; [A2011-3](#) amdt 3.265

Functions of officers who have been excused

s 20 am [A2006-42](#) amdts 3.96-3.98

Reports of commission

s 22 am [A2006-42](#) amdt 3.116

Tabling reports

s 23 am [A1998-54](#) sch; [A2006-42](#) amdt 3.99, amdt 3.100, amdt 3.116

Statement by judicial officer

s 24 am [A2006-42](#) amdt 3.101, amdt 3.102, amdt 3.118

Proceedings—council and commissions

pt 5 hdg sub [A2015-1](#) s 9

Proceedings of commissions

div 5.1 hdg (prev pt 5 div 1 hdg) renum R2 LA

Determination of question—council

s 24A ins [A2015-1](#) s 10

Determination of question—commission

s 25 hdg sub [A2015-1](#) s 11

Counsel assisting

s 26 am [A1997-96](#) sch 1; [A2006-42](#) amdt 3.117
sub [A2015-1](#) s 12

Protection of members etc

s 27 am [A2005-53](#) amdt 1.79; [A2006-42](#) amdt 3.103, amdt 3.117;
[A2015-1](#) s 13, s 14

Offence—disclosure of information by members etc

s 28 hdg sub [A2015-1](#) s 15
s 28 am [A1997-96](#) sch 1; [A1998-54](#) sch; [A2006-42](#) amdt 3.104,
amdt 3.105, amdt 3.117; [A2015-1](#) s 16

Disclosure of information to Attorney-General etc

s 29 am [A2006-42](#) amdt 3.106
sub [A2015-1](#) s 17

Outstanding matters—commission

s 30 hdg sub [A2015-1](#) s 18
s 30 am [A2006-42](#) amdt 3.107

Evidence

div 5.2 hdg (prev pt 5 div 2 hdg) renum R2 LA

Procedure

s 31 am [A2015-1](#) s 19, s 20

Privileges against self-incrimination and exposure to civil penalty

s 32 sub [A2005-53](#) amdt 1.80
am [A2015-1](#) s 21

Endnotes

4 Amendment history

Powers

div 5.3 hdg (prev pt 5 div 3 hdg) renum R2 LA
div 5.3 hdg note ins [A2006-42](#) amdt 3.108

Search warrants

s 33 am [A2015-1](#) s 22, s 23

Inspection and retention of documents

s 34 am [A2015-1](#) ss 24-26; ss renum R19 LA

Medical examination of judicial officer

s 35 am [A2006-42](#) amdt 3.109
sub [A2015-1](#) s 27
am [A2018-9](#) s 52, s 53; ss renum R21 LA

Examinations and hearings—council

div 5.3A hdg ins [A2015-1](#) s 28

Preliminary examination

s 35A ins [A2015-1](#) s 28

Early dismissal of complaint

s 35B ins [A2015-1](#) s 28

Refer complaint to head of jurisdiction

s 35C ins [A2015-1](#) s 28

Examination of complaint by council

s 35D ins [A2015-1](#) s 28
am [A2018-9](#) s 54

Hearing of complaint by council

s 35E ins [A2015-1](#) s 28

Appearance and representation

s 35F ins [A2015-1](#) s 28

Examination of witnesses

s 35G ins [A2015-1](#) s 28

Powers in relation to witnesses etc

s 35H ins [A2015-1](#) s 28

Dismissal of complaint by council

s 35I ins [A2015-1](#) s 28
am [A2018-9](#) s 55

Substantiation of complaint by council

s 35J ins [A2015-1](#) s 28
am [A2018-9](#) s 56

Notifying Attorney-General about complaint

s 35JA ins [A2018-9](#) s 57

Extension or partial dismissal of complaint

s 35K ins [A2015-1](#) s 28

Additional powers

s 36 om [A2006-42](#) amdt 3.110

Hearings—commission

div 5.4 hdg (prev pt 5 div 4 hdg) renum R2 LA
sub [A2015-1](#) s 29

Power to hold

s 37 am [A2006-42](#) amdt 3.118

Conduct of hearing

s 39 sub [A2006-42](#) amdt 3.111

Appearance and representation

s 40 am [A2006-42](#) amdt 3.117

Presence of people at private hearing

s 41 hdg am [A2006-42](#) amdt 3.118
s 41 am [A1997-96](#) sch 1; [A2006-42](#) amdt 3.117

Examination of witnesses

s 42 am [A1997-96](#) sch 1; [A2006-42](#) amdt 3.117

Powers in relation to witnesses etc

s 43 am [A2001-44](#) amdt 1.2276
sub [A2005-53](#) amdt 1.81

Appearance by audiovisual or audio links

s 43A ins [A1999-22](#) s 16
am [A2000-17](#) s 3 sch 1; [A2010-40](#) amdt 2.15; [A2018-9](#) s 58

Apprehension of witnesses failing to appear

s 44 am [A1998-67](#) s 24; [A2005-53](#) amdt 1.82; [A2006-23](#)
amdt 1.206

Obstruction of authorised persons

s 45 am [A1998-54](#) sch
om [A2004-15](#) amdt 2.101

Failure of witnesses to attend or produce documents

s 46 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Refusal to be sworn or give evidence

s 47 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

False evidence

s 48 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Endnotes

4 Amendment history

Improper dealings with documents

s 49 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Intimidation or dismissal of witnesses

s 50 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Preventing witnesses from attending

s 51 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Bribery of witnesses

s 52 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Fraud on witnesses

s 53 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Contempt of commission

s 54 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83

Miscellaneous

pt 6 hdg orig pt 6 hdg om [A2005-53](#) amdt 1.83
(prev pt 7 hdg) renum [A2005-53](#) amdt 1.86

Application of Criminal Code, ch 7

s 55 am [A1997-96](#) sch 1; [A1998-54](#) sch
om [A2005-53](#) amdt 1.83
ins [A2005-53](#) amdt 1.84
am [A2015-1](#) s 30, s 31

Contempt

s 56 am [A1998-54](#) sch
om [A2005-53](#) amdt 1.83
ins [A2005-53](#) amdt 1.84
sub [A2015-1](#) s 32

Protection of Attorney-General and other officers

s 58 am [A2006-42](#) amdt 3.112; [A2015-1](#) s 33

Reimbursement of costs and expenses

s 59 am [A2015-1](#) s 34, s 35

No proceeding to be brought

s 60 am [A2006-40](#) amdt 2.114; [A2015-1](#) ss 36-38

Reports of proceedings—protection

s 61 sub [A2007-22](#) amdt 1.34
am [A2015-1](#) s 39

Report of council activities

s 61A ins [A2005-53](#) amdt 1.85
exp 23 November 2006 (s 61A (2))
ins [A2015-1](#) s 40

Information about complaint to be provided to Attorney-General

s 61B ins [A2018-9](#) s 59

Approved forms

s 62 sub [A2001-44](#) amdt 1.2277
am [A2006-42](#) amdt 3.113, amdt 3.114

Regulation-making power

s 63 ins [A2001-44](#) amdt 1.2277

Miscellaneous

pt 7 hdg renum as pt 6 hdg

Dictionary

dict ins [A2006-42](#) amdt 3.115
am [A2008-36](#) amdt 1.365; [A2011-22](#) amdt 1.264; [A2016-52](#)
amdt 1.109
def **approved protocol** ins [A2015-1](#) s 41
def **authorised person** ins [A2006-42](#) amdt 3.115
sub [A2015-1](#) s 42
def **commission** ins [A2006-42](#) amdt 3.115
am [A2015-1](#) s 43
def **complaint** ins [A2006-42](#) amdt 3.115
am [A2015-1](#) s 44
sub [A2017-14](#) s 26
def **council** ins [A2015-1](#) s 45
def **general president** ins [A2008-36](#) amdt 1.366
om [A2016-28](#) amdt 1.9
def **head of council** ins [A2015-1](#) s 45
def **head of jurisdiction** ins [A2006-42](#) amdt 3.115
am [A2008-36](#) amdt 1.367; [A2015-10](#) s 30; [A2016-28](#)
amdt 1.10
def **judge** ins [A2006-42](#) amdt 3.115
def **judicial officer** ins [A2006-42](#) amdt 3.115
am [A2008-36](#) amdt 1.368; [A2015-10](#) s 30
def **magistrate** ins [A2006-42](#) amdt 3.115
def **member** ins [A2006-42](#) amdt 3.115
sub [A2015-1](#) s 46
def **premises** ins [A2006-42](#) amdt 3.115
def **president** ins [A2016-28](#) amdt 1.11
def **presidential member** ins [A2008-36](#) amdt 1.369
def **presiding member** ins [A2006-42](#) amdt 3.115

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	A1998-67	28 February 1999
2	A2001-44	13 February 2002
2 (RI)	A2001-44 †	11 February 2003
3	A2004-15	9 April 2004
4	A2005-20	2 June 2005
5	A2005-53	23 November 2005
6	A2006-23	2 June 2006
7	A2006-40	29 September 2006
8	A2006-42	16 November 2006
9	A2006-42	24 November 2006
10*	A2007-22	6 September 2007
11	A2008-36	2 February 2009
12	A2010-40	2 November 2010
13	A2011-3	1 March 2011
14	A2011-22	1 July 2011
15	A2015-10	21 April 2015
16	A2015-10	10 December 2015
17	A2016-28	16 June 2016
18	A2016-52	1 September 2016
19	A2016-52	1 February 2017
20	A2017-14	24 May 2017

† reissued for retrospective amendment made by [A2002-49](#)

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