



Australian Capital Territory

Judicial Commissions Amendment Act 2015

A2015-1

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Australian Capital Territory

Judicial Commissions Amendment Act 2015

A2015-1

An Act to amend the *Judicial Commissions Act 1994*, and for other purposes

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

1 Name of Act

This Act is the *Judicial Commissions Amendment Act 2015*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Judicial Commissions Act 1994*.

Note This Act also amends other legislation (see sch 1).

4 New part 2A

insert

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 the council's functions under this Act to a member of the council's staff, subject to subsection (2).

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

- (2) The council must not delegate its function of dismissing a complaint, referring a complaint or making a recommendation in relation to a complaint.

**5 Making of complaint
Section 14 (1)**

substitute

- (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).
- (1A) 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.

6 New section 14 (2) (e)

insert

- (e) contain anything else prescribed by regulation.

Note If a form is approved under s 62 for this provision, the form must be used.

7 Section 14 (3) (b)

substitute

- (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.
- (4) If a member of the Legislative Assembly gives notice under subsection (3) (b), the member must also tell the council about the notice.

8 Sections 15 to 17

substitute

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 general president—the general 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](#).

- (5) In this section:

general president—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

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.

9 Part 5 heading

substitute

Part 5 Proceedings—council and commissions

10 New section 24A

in division 5.1, insert

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.

11 Section 25 heading

substitute

25 Determination of question—commission

12 Section 26

substitute

26 Counsel assisting

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

**13 Protection of members etc
Section 27 (1)**

omit

A member has,

substitute

A member of the council or a commission has,

14 Section 27 (2) and (3)

omit

a commission

substitute

the council or a commission

15 Section 28 heading

substitute

28 Offence—disclosure of information by members etc

16 Section 28 (1) (a)

substitute

- (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

17 Section 29

substitute

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.

18 Section 30 heading

substitute

30 Outstanding matters—commission**19 Procedure
Section 31**

omit

a commission—

substitute

the council or a commission—

20 Section 31 (b)

omit

the commission

substitute

it

**21 Privileges against selfincrimination and exposure to civil penalty
Section 32 (1)**

omit

section 43 (1) or (3)

substitute

this part

**22 Search warrants
Section 33 (1)**

omit

presiding member may issue

substitute

presiding member of a commission may issue

23 Section 33 (7)

omit

to the presiding member includes

substitute

to the presiding member of a commission includes

24 **Inspection and retention of documents**
New section 34 (1A)

before section 34 (1), insert

- (1A) 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.

25 **Section 34 (2)**

omit

(1) (b)

substitute

(1A) (b) or (1) (b)

26 **Section 34 (3)**

substitute

- (3) 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.

27 Section 35

substitute

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 undergo a specified medical examination.
- (2) If the judicial officer fails 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).

28 New division 5.3A

insert

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.

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

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.

29 **Division 5.4 heading**

substitute

Division 5.4 **Hearings—commission**

30 **Application of Criminal Code, ch 7**
Section 55

omit

a commission

substitute

the council or a commission

31 **Section 55, note**

omit

to commission

substitute

to council or commission

32 Section 56

substitute

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.

**33 Protection of Attorney-General and other officers
Section 58 (c)**

after

member

insert

of the council or a commission

**34 Reimbursement of costs and expenses
Section 59 (1)**

omit

before a commission

substitute

before the council or a commission

35 New section 59 (3)

insert

- (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).

**36 No proceeding to be brought
Section 60 (a)**

omit

section 16 (3)

substitute

section 17 (3)

37 Section 60 (c)

substitute

- (c) a decision of the Attorney-General under section 15 or section 23 (3); or

38 Section 60 (e)

substitute

- (e) a decision or any proceedings of the council or a commission.

**39 Reports of proceedings—protection
Section 61 (1)**

omit

a commission

substitute

the council or a commission

40 New section 61A

insert

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.

41 Dictionary, new definition of *approved protocol*

insert

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

42 Dictionary, definition of *authorised person*

substitute

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.

43 Dictionary, definition of *commission*, paragraph (a)

omit

section 16 (3)

substitute

section 17 (3)

44 Dictionary, definition of *complaint*, paragraph (b)

omit

Attorney-General

substitute

council

45 Dictionary, new definitions

insert

council means the judicial council established under section 5A.

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

46 Dictionary, definition of *member*

substitute

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.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Administrative Decisions (Judicial Review) Act 1989

[1.1] Schedule 1, item 12, column 3

substitute

- a decision of the Executive under section 5 (1), section 17 (3) or section 18
- a decision of a member of the Legislative Assembly to propose a motion in accordance with section 14 (3) (a) or to give notice of the motion to the Attorney-General in accordance with section 14 (3) (b)
- a decision of the Attorney-General under section 15 (1) or section 23 (3)
- a decision of the judicial council
- a decision of a judicial commission

Part 1.2 Court Procedures Act 2004

[1.2] Section 40, definition of *court*, new paragraph (ha)

insert

- (ha) the judicial council established under the *Judicial Commissions Act 1994*, section 5A; or

Part 1.3 Freedom of Information Act 1989

[1.3] Dictionary, definition of *prescribed authority*, new paragraph (a) (vi)

insert

- (vi) the judicial council established under the *Judicial Commissions Act 1994*, section 5A; or

Part 1.4 Information Privacy Act 2014

[1.4] New section 24 (ba)

insert

- (ba) the judicial council established under the *Judicial Commissions Act 1994*, section 5A;

Part 1.5 Juries Act 1967

[1.5] Schedule 2, part 2.1, item 23, column 2, new paragraph (d)

insert

- (d) a member of the judicial council established under the *Judicial Commissions Act 1994*, section 5A

Part 1.6 Ombudsman Act 1989

[1.6] New section 5 (2) (ja)

insert

- (ja) action taken by the judicial council under the *Judicial Commissions Act 1994*, section 5A; or

Part 1.7 Territory Records Act 2002

[1.7] Section 7, definition of *agency*, new paragraph (ka)

insert

- (ka) the judicial council established under the *Judicial Commissions Act 1994*, section 5A; or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 November 2014.

2 Notification

Notified under the [Legislation Act](#) on 25 February 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Judicial Commissions Amendment Bill 2015, which originated in the Legislative Assembly as the Judicial Commissions Amendment Bill 2014 and was passed by the Assembly on 10 February 2015.

Clerk of the Legislative Assembly

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