



Australian Capital Territory

Judicial Commissions Act 1994

A1994-9

Republication No 5

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Authorised by the ACT Parliamentary Counsel

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 23 November 2005. It also includes any amendment, repeal or expiry affecting the republished law to 23 November 2005.

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 does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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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 respect of judicial officers, to provide for their removal from office in certain circumstances, and for related purposes

Part 1 Preliminary

1 Short title

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

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

chief police officer means the police officer who is responsible for the day-to-day administration and control of police services in the ACT.

commission—

- (a) means a judicial commission appointed under section 16 (3) or 18; and
- (b) in relation to a complaint—means the commission appointed to examine the complaint.

complaint means—

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

head of jurisdiction—

- (a) in relation to a judge or the master of the Supreme Court—means the Chief Justice of that Court; or

- (b) in relation to a magistrate—means the Chief Magistrate; or
- (c) in relation to a member of the administrative appeals tribunal—means the president of the tribunal.

judge means—

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

and includes a person who is an additional judge appointed under 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 master of the Supreme Court; or
- (c) a magistrate; or
- (d) a member of the administrative appeals tribunal, other than a person who is also a member of the Commonwealth administrative appeals tribunal.

magistrate does not include a registrar.

member, in relation to a commission, means a member of the commission and includes the presiding member.

premises includes—

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

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

3A 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.

3B 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 shall 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 shall, by instrument, remove the judicial officer from the office.
- (2) For subsection (1), a resolution of the Legislative Assembly shall be taken to have been passed in the appropriate manner if it is passed—
 - (a) pursuant to a motion of which notice was given after completion of the formal process; and
 - (b) within 15 sitting days after the Attorney-General has laid before the Legislative Assembly the report of the commission appointed to examine the complaint in respect of the judicial officer; and
 - (c) by a majority of the votes of the members of the Legislative Assembly present and voting.
- (3) For subsection (2), the formal process shall be taken to have been completed where—
 - (a) the commission has submitted to the Attorney-General in accordance with section 22 a report of its examination of the complaint in which it concludes that the behaviour or physical or mental capacity of the judicial officer concerned could amount to proved misbehaviour or incapacity such as to

warrant removal from office and the Attorney-General has laid a copy of that report before the Legislative Assembly in accordance with section 23; 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 laid that statement before 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 legal practitioner on the judicial officer's behalf) in relation to any matter relating to the commission's findings or conclusion; and
 - (d) the Legislative Assembly has determined that the findings by the commission amount to misbehaviour or physical or mental incapacity identified by the commission.
- (4) An address to the Assembly in accordance with subsection (3) (c) shall not contain any references to persons or things that are inconsistent with the commission's reasons for submitting a separate report (if any) in accordance with section 22 (3).

Part 3 Judicial commissions

6 Constitution

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

7 Members

- (1) A person shall 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 shall constitute the commission; and
 - (b) this Act has effect as if section 6 referred to 1 other member.
- (3) If the presiding member dies, resigns or is removed from office under section 12, the Executive shall, in writing, appoint 1 of the remaining members to be the presiding member.
- (4) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

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.

11 Resignation

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

12 Termination of appointment

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

13 Staff

- (1) The staff of a commission shall be public servants made available to the commission by the chief executive.
- (2) While a public servant is performing services for a commission, he or she shall perform those services in accordance with the directions of a member, and not otherwise.

Part 4 Complaints against judicial officers

14 Making of complaint

- (1) A person may complain to the Attorney-General about a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer.
- (2) A complaint shall—
 - (a) be in writing; 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.
- (3) A member of the Legislative Assembly shall not raise in the Assembly a matter that relates or may relate to the behaviour or physical or mental capacity of a judicial officer—
 - (a) except by way of a motion to have a specific allegation made in precise terms in respect of the judicial officer examined by a judicial commission; and
 - (b) unless the member has given to the Attorney-General not less than 5 sitting days notice of the motion and the member has not been notified by the Attorney-General within that period in accordance with section 16 (2) that the Executive has been requested to appoint a commission to examine the allegation.

15 Attorney-General to inform judicial officer

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

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

of the nature of the complaint.

16 Request by Attorney-General

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

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

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

- (3) If the Executive receives a request from the Attorney-General in accordance with subsection (1), the Executive shall appoint a judicial commission to examine the complaint and to submit to the Attorney-General a report of its examination within the period

specified by the Executive or within such further period as the Executive, by notice in writing, allows.

17 Attorney-General may decline to act on complaint

- (1) The Attorney-General may decline to take any action under this Act in respect of a complaint if the Attorney-General considers—
 - (a) that the complaint has been made vexatiously, frivolously or without reasonable grounds; or
 - (b) that the complainant has not included in the complaint, or the member of the Legislative Assembly has not included in the notice, sufficient relevant detail in respect of the matter the subject of the complaint; or
 - (c) that, even if the matter complained of were proved, it could not amount to misbehaviour or incapacity such as to warrant removal of the judicial officer.
- (2) Where the Attorney-General declines to take any action in respect of a complaint for a reason specified in subsection (1), the Attorney-General shall advise the complainant or the member of the Legislative Assembly (as the case may be) accordingly.

18 Resolution by Legislative Assembly

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

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 performing any function connected with the relevant judicial office.
- (2) A judicial officer who has been excused shall not resume the performance of any such function unless—
 - (a) the commission has submitted to the Attorney-General in accordance with section 22 a report of its examination of the complaint in which it does not conclude that the behaviour or physical or mental capacity of the judicial officer could amount to proved misbehaviour or incapacity such as to warrant removal from office; 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 laid the commission's report before the Legislative Assembly in accordance with section 23; or
 - (c) such a motion, having been called on before the Legislative Assembly within the period referred to in paragraph (b), is resolved in the negative.
- (3) A judicial officer who has been excused from office is entitled to be paid remuneration and allowances as a judicial officer for that office while excused.

20 Functions of officers who have been excused

- (1) Subject to this section, a judicial officer who has been excused shall not, while excused, perform any function connected with the relevant judicial office.
- (2) The Executive may, by instrument, authorise a judicial officer who has been excused to perform such functions as are necessary for the purpose of completing a specified matter or class of matters.

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

21 Examination of complaint by commission

- (1) A commission shall, as soon as practicable after being appointed to examine a complaint, conduct an examination of the complaint.
- (2) In conducting the examination, the commission—
- (a) shall consider only specific allegations made in precise terms; and
 - (b) shall not consider a matter arising before the appointment of the judicial officer concerned to the relevant office unless the commission considers it necessary and desirable to do so for the full and proper examination of the complaint; and
 - (c) may initiate such inquiries into the subject matter of the complaint as the commission thinks appropriate.
- (3) Except as otherwise provided by this Act, an examination or inquiry shall be conducted in such manner as the commission determines.

22 Reports of commission

- (1) After completing an examination of a complaint, a commission shall—
- (a) prepare a report of its examination; and
 - (b) submit the report to the Attorney-General.
- (2) A report shall—
- (a) set out the commission's findings on material questions of fact; 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 respect of a person (other than the judicial officer the subject of the complaint) were to be laid before the Legislative Assembly—
- (a) a person who has been or may be charged with an offence may not receive a fair trial for the offence; 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 laid before the Legislative Assembly.
- (4) When submitting a report to the Attorney-General, a commission shall commit any documents or things (except documents or things required for the purpose of finalising matters under section 30) then in its possession to the custody of the Attorney-General for safekeeping.

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

23 Tabling reports

- (1) The Attorney-General shall, as soon as practicable after receiving a report submitted by a commission (other than a report in relation to which he or she has accepted a recommendation referred to in section 22 (3) (f)), lay a copy of the report before the Legislative Assembly.
- (2) The Attorney-General shall, on laying a copy of the report before the Legislative Assembly, give a copy of that report to—
- (a) the judicial officer the subject of the complaint; and
 - (b) where the judicial officer is not a head of jurisdiction—the relevant head of jurisdiction.
- (3) The Attorney-General may also give to the judicial officer the subject of a complaint a copy of a report in accordance with 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 laid before 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 respect of a judicial officer, the judicial officer may deliver to the Attorney-General a written statement containing particulars of any matter relating to the commission's findings.
- (2) A statement relating to a report shall not contain any references to persons or things that are inconsistent with the commission's reasons for submitting a separate report (if any) in accordance with section 22 (3).
- (3) A statement relating to a report shall be delivered to the Attorney-General—
- (a) where the Legislative Assembly has, by resolution, fixed a period longer than 14 days after the Attorney-General has laid the report before the Assembly—within the period so fixed; or
 - (b) where paragraph (a) does not apply—within 14 days after the Attorney-General has laid the report before the Assembly.
- (4) The Attorney-General shall, as soon as practicable after receiving a statement under subsection (1), lay a copy of the statement before the Legislative Assembly.

Part 5 **Proceedings of commissions**

Division 5.1 **General**

25 **Determination of questions**

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

26 **Counsel assisting commission**

A commission may appoint a legal practitioner to assist the commission, either generally or in relation to a particular matter.

27 **Protection of members etc**

- (1) A member has, in the performance or exercise of any function or power as a member in relation to an examination, the same protection and immunity as a judge of the Supreme Court in proceedings in that Court.
- (2) A legal practitioner assisting a commission or appearing on a person's behalf at a hearing before a commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

- (3) Subject to this Act, a person subpoenaed to attend or appearing before a commission as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

28 Nondisclosure of information by members

- (1) This section applies to—
- (a) a person who is or has been—
 - (i) a member; or
 - (ii) a member of the staff of a commission; or
 - (iii) a legal practitioner assisting a commission; and
 - (b) any other person who has or has had access to information by virtue of that person's office or employment under or for this Act.
- (2) A person to whom this section applies shall not, either directly or indirectly, except in the performance or exercise of a function or power under or for 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 furnished for this Act.

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

29 Disclosure of information by commission

Where, in the course of an examination, a commission obtains information that relates or may relate to the commission of an offence, or evidence of the commission of an offence against a law of the Territory, the Commonwealth, a State or another Territory, the commission may, if in its opinion it is appropriate to do so, communicate the information or furnish the evidence to—

- (a) the Attorney-General or the appropriate Minister of State for the Commonwealth, a State or that other Territory; or
- (b) the chief police officer.

30 Outstanding matters

- (1) Where—
 - (a) a commission has submitted its report in accordance with section 22; and
 - (b) there are any outstanding matters connected with the performance by the commission of its functions under this Act;the commission shall—
 - (c) notify the Attorney-General that there are outstanding matters; and
 - (d) for such time as is necessary, continue to exercise its powers under this Act for the purpose of finalising those matters.
- (2) When any outstanding matters have been finalised, the commission shall—
 - (a) notify the Attorney-General accordingly; and
 - (b) commit any documents or things still in its possession to the custody of the Attorney-General for safekeeping.

Division 5.2 Evidence

31 Procedure

In conducting its proceedings, a commission—

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

32 Privileges against selfincrimination and exposure to civil penalty

- (1) This section applies if a person is required under section 43 (1) or (3) to—
 - (a) produce a document or other thing; or
 - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination 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

33 Search warrants

- (1) The presiding member may issue a search warrant where—
 - (a) the presiding member has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, in or on any premises, a thing of a particular kind connected with a matter into which the commission is inquiring (*thing of the relevant kind*); and
 - (b) the presiding member believes on reasonable grounds that, if a search warrant were not issued for the production of the thing, that thing might be concealed, lost, mutilated, destroyed or disposed of.
- (2) A search warrant shall authorise a police officer or an authorised person named in the warrant with such assistance, and by such force, as is necessary and reasonable—
 - (a) to enter the premises; 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 shall—
 - (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 expiration 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 shall deliver the thing so seized to the commission.
- (6) A person executing a search warrant shall, on request by an occupant of the premises to which the warrant relates, show the warrant to that occupant.
- (7) A reference in subsection (1) to the presiding member includes a reference to a member authorised by the presiding member to act under that subsection.

34 Inspection and retention of documents

- (1) A commission, a member, a member of the staff of a commission or an authorised person may—
 - (a) inspect a document or other thing produced before, or delivered to, the commission; 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.
- (2) Where a document is retained under subsection (1) (b)—
- (a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a member to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original; and
 - (b) until the certified copy is supplied, the commission shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- (3) Where the retention of a document or other thing by a commission ceases to be necessary for the purposes of an inquiry, the commission shall, if a person who appears to the commission to be entitled to the document or thing so requests, cause the document or thing to be delivered to the person.

35 Medical examination of judicial officer

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

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

36 Additional powers

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

Division 5.4 Hearings

37 Power to hold

- (1) For the purposes of conducting an inquiry, a commission may hold hearings.
- (2) Subject to subsection (3), a hearing shall be in public.
- (3) Where a commission is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter, or for any other reason, the commission may—
- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; 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 persons present at a hearing of evidence given before, or the contents of a document lodged with or received in evidence by, the commission.

- (4) In considering whether to give a direction under subsection (3), a commission shall take as the basis of its consideration the principle that it is desirable that hearings be in public and that evidence given before, or the contents of documents lodged with or received in evidence by, the commission should be made available to the public and to all persons present at the hearing, but shall pay due regard to any reasons given to the commission why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

38 Person presiding

The presiding member shall preside at a hearing.

39 Conduct

Except as otherwise provided by this Act, the procedure at a hearing shall be determined 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 legal practitioner; and
 - (b) a person summoned to attend or appearing before the commission as a witness may be represented by a legal practitioner; and
 - (c) any other person may, with the consent of the commission, appear and may be represented by a legal practitioner.
- (2) In subsection (1) (b):
person includes an unincorporated association.

41 Presence of persons at private hearing

Where a hearing is being held in private, a person shall 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 legal practitioner assisting the commission; or
- (d) the judicial officer the subject of the complaint; or
- (e) the legal practitioner 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 legal practitioner assisting the commission; or
- (b) the judicial officer the subject of the complaint or the legal practitioner representing him or her; or
- (c) any other person present who is permitted by the presiding member to do so;

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

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 where, 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 18 (1) or 30 (1).
- (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 shall be 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 by reason of noncompliance by the witness with the subpoena.
- (6) Unless the warrant specifies otherwise, a police officer may cause the witness to be brought before the commission by an escort acting on behalf of the officer under the *Custodial Escorts Act 1998*.

Part 6 Miscellaneous

55 Application of Criminal Code, ch 7

A proceeding before 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 commission proceedings.

56 Contempt of commission

A person commits an offence if the person does something in the face, or within the hearing, of a commission that would be contempt of court if 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) Where 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;

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

59 Reimbursement of costs and expenses

- (1) A witness appearing before a commission is entitled to be paid by the Territory in respect of the expenses of the attendance of the witness an amount authorised in accordance with the Supreme Court scale of costs.
- (2) Where a commission—
 - (a) does not conclude that the behaviour or physical or mental capacity of a judicial officer could amount to proved misbehaviour or incapacity such as to warrant removal from office; or
 - (b) discontinues the examination of a complaint under 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.

60 No proceedings to be brought

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

- (a) a decision of the Executive under section 5 (1), 16 (3) or 18; or
- (b) 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); or

- (c) a decision of the Attorney-General under section 16 (1), 17 (1) or 23 (3); or
- (d) a resolution for the examination of a complaint in respect of a judicial officer by a judicial commission passed by the Legislative Assembly; or
- (e) the proceedings of a commission.

61 Publication of proceedings protected

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

61A References to *subpoena*

- (1) In this Act:
subpoena includes summons.
- (2) This section expires 1 year after the day it commences.

62 Approved forms

- (1) The Attorney-General may, in writing, 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.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

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 2001*.

Endnotes

1 About the endnotes

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 and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

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

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 Act 2002 No 49 amdt 3.222)

notified 19 September 1997 (Gaz 1997 No S264)
commenced 24 September 1997 (s 2 as am by Act 2002 No 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)

Endnotes

4 Amendment history

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 No 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)

4 Amendment history

Commencement

s 2 om A2001-44 amdt 1.2275

Definitions for Act

s 3 def *legal practitioner* am A1997-96 sch 1
def *magistrate* sub A2005-20 amdt 3.180

Notes

s 3A ins A2005-53 amdt 1.78

Offences against Act—application of Criminal Code etc

s 3B ins A2005-53 amdt 1.78

Remuneration and allowances

s 9 om A1997-41 sch 1

Staff

s 13 am A1994-38 sch 1 pt 49

Tabling reports

s 23 am A1998-54 sch

Proceedings of commissions

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

Counsel assisting commission

s 26 am A1997-96 sch 1

Protection of members etc

s 27 am A2005-53 amdt 1.79

Nondisclosure of information by members

s 28 am A1997-96 sch 1; A1998-54 sch

Evidence

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

Privileges against selfincrimination and exposure to civil penalty

s 32 sub A2005-53 amdt 1.80

Powers

div 5.3 hdg (prev pt 5 div 3 hdg) renum R2 LA

Hearings

div 5.4 (prev pt 5 div 4 hdg) renum R2 LA

Presence of persons at private hearing

s 41 am A1997-96 sch 1

Examination of witnesses

s 42 am A1997-96 sch 1

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

Endnotes

4 Amendment history

Apprehension of witnesses failing to appear

s 44 am A1998-67 s 24; A2005-53 amdt 1.82

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

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

Contempt of commission

s 56 am A1998-54 sch
om A2005-53 amdt 1.83
ins A2005-53 amdt 1.84

References to subpoena

s 61A ins A2005-53 amdt 1.85
exp 23 November 2006 (s 61A (2))

Approved forms

s 62 sub A2001-44 amdt 1.2277

Regulation-making power

s 63 ins A2001-44 amdt 1.2277

Miscellaneous

pt 7 hdg renum as pt 6 hdg

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

† reissued for retrospective amendment made by A2002-49

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