

**JUDICIAL COMMISSION BILL 2020  
(Serial 125)**

**Ms FYLES (Attorney-General and Justice):** Mr Speaker, I thank the Opposition Leader for her contribution to this debate. She was a practising lawyer—unlike me. It was pointed out earlier today that I was a swimming teacher once. I am very proud to be a former swimming teacher. Maybe one day I will be back at the pool teaching swimming.

I have a wealth of experience from the Department of the Attorney-General and Justice, and we have acknowledged the contributions in the House today. I adjourned the statement on Coronavirus and will make my comments on that at another time, but I acknowledge the department for its work on this bill as well as its work on the Coronavirus. It provided advice and directions to the Chief Minister when things were moving quickly. The Department keeps me, a former swim teacher, on track with all these bills.

This government is very committed to being open and transparent. This legislation is very important within the Northern Territory judicial system. It provides transparent in the system.

I acknowledge the legal profession for their ongoing advocacy for a Judicial Commission. I will say up front that the Opposition Leader had some questions on why we did not specifically follow the initial advice from Chief Justice Grant on the New South Wales model. This bill was developed in close consultation with the heads of jurisdiction, Law Society NT and other legal stakeholders. The Department of Attorney-General and Justice also consulted with the New South Wales Judicial Commission and the ACT Ombudsman's office, which provides operational support to the ACT Judicial Commission.

During this consultation, it was agreed by stakeholders that the initial proposal to refer the most serious matters to a conduct division of the New South Wales Judicial Commission was not feasible. In short, there would be difficulties from a body in one jurisdiction exercising and potentially making decisions around judicial officers from another jurisdiction.

I can reassure the Leader of the Opposition that the Chief Justice was consulted and a part of this process.

In terms of the operational support costs, the government intends to provide staffing support for the Judicial Commission in the most fiscally responsible way possible. I am sure she will be very pleased to hear that. It is not anticipated that the Judicial Commission will have an independent office like in New South Wales. Rather, it is anticipated that the Northern Territory model will be similar to the ACT. In the ACT, the Ombudsman performs the role of principal officer with additional staffing requirements met by his office. That would be similar for the Northern Territory. As we heard earlier today, we will go through the budget process later in the year and we will work to implement the legislation.

There were questions about it being a very small jurisdiction and if any consideration was given to ensuring that a member or members from the Judicial Commission came from outside the Territory. This was answered in the first part of my speech. During the development of the bill, we gave that consideration to New South Wales. We saw submissions to the Legislation Scrutiny Committee and I acknowledge the very hard-working Member for Brennan and the members for the scrutiny committee's work.

It was suggested that an independent complaints model be adopted involving an externally sourced commissioner located outside of the Territory. The government considers that the independent complaints model is not justified at this point. That is not saying that things might not change in the future. This is a big step forward with this bill today.

In terms of this bill, it not only establishes a Judicial Commission for the Northern Territory but it makes consequential amendments to the *Independent Commissioner Against Corruption Act 2017*, *Legal Profession Act 2006*, *Local Court Act 2015*, *Northern Territory Civil and Administrative Tribunal Act 2014* and the *Supreme Court Act 1979*.

As we know in this House today, particularly of all days, we established the ICAC as a specialist investigating body with a focus on government corruption. In terms of setting up this body, this is another integrity body that will increase transparency and accountability of the judiciary.

In particular the bill provides a formal and transparent statutory mechanism for dealing with complaints and misconduct or incapacity of judicial officers and ordinary members of the NTCAT. The bill preserves the

ICAC's jurisdiction to investigate complaints outside the judiciary which fall outside these categories and relate to corrupt conduct within the public sector.

The bill will promote public trust and confidence with the administration of justice but it will also support those working in the justice system and it will reinforce the requirement that judicial officers maintain the highest levels of integrity without undermining judicial independence.

The bill also reduces the risk of legitimate complaints about judicial conduct or capacity not being appropriately addressed. The current ad hoc process of making complaints directly to the relevant head of jurisdiction I believe is unsatisfactory, is not transparent and carries a risk that complainants will be treated inconsistently. It also does not provide the confidence of a system for them to come forward with their complaint.

A system where the head of jurisdiction alone has to deal with a complaint also places a tremendous burden on one individual. In a small jurisdiction like the Northern Territory, our judicial officers I believe are to the highest standard, but they know each other well and it can often cause a situation that puts burden on one individual.

We have heard about the history of the absence of having a formal mechanism for dealing with complaints about judicial conduct and at the moment, complaints are currently heard by the head of relevant jurisdiction so the Chief Justice of the Supreme Court or the Chief Judge of the Local Court. Matters for the NTCAT are dealt with by the president of the NTCAT.

The Supreme Court has a protocol for the making and handling of complaints. The Local Court and NTCAT do not, so these less rigorous processes. We believe this is a big step forward in terms of our processes. Removal from office is following consideration by parliament. It ensures the independence of the judiciary but it is reserved for the most extreme misconduct or incapacity.

We have seen in Australia, since federation, very few judicial officers have ever been removed. While there is a statutory provision for removal from office there is no clear process by which a matter would come to the Legislative Assembly.

In 2018 at addresses in functions in Alice Springs and Darwin, Chief Justice Grant foreshadowed that the judiciary and other legal stakeholders would be submitting a proposal to the government on the establishment of a judicial commission. We have seen this and it was based on that *Judicial Officers Act 1986* from New South Wales. So since receiving that correspondence the bill has been developed in close consultation with the heads of jurisdiction along with the Law Society Northern Territory. We have also consulted the president of the bar association, the Ombudsman, the ICAC commissioner, Northern Territory Women Lawyer's Association, the judicial commissioner of New South Wales and the ombudsman's office in the ACT.

The primary purpose of this bill is to establish a formal statutory framework to deal with complaints about misconduct or mental or physical incapacity of judicial officers. The membership of the judicial commission will be heads of jurisdiction, president of the law society and at least one, but no more than two community members. The community members are appointed by the Administrator on the recommendation of the minister and must be of high standing.

So this judicial commission will dismiss a complaint, refer it to head of jurisdiction with recommendations for action or establish an investigation panel to deal with the most serious complaints. If an investigation panel is instigated they will investigate complaints that could justify removal from office or termination of appointment. The bill provides an investigation panel will be comprised of three persons appointed by the judicial commission. Two members will be judges or former judges of Australian superior court but cannot be from the same court as the judicial officer who is subject to the complaint. The third member will be a community member of high standard chosen from a pool by the minister.

The process will be that they will dismiss the complaint, refer it to the head of jurisdiction with recommendations for action. If it forms the opinion that the complaint could justify consideration for removal from office or termination they report to the Administrator and the minister. The report will be tabled in the Legislative Assembly and then it is a matter for the Legislative Assembly or the Administrator as to what may happen.

We have seen steps forward over the recent time in other jurisdictions. There is no judicial commission at the federal level. Although, however the federal courts legislation empowers a relevant head of jurisdiction

to dismiss or deal with a complaint and establish an ad hoc conduct committee to investigate and report on the complaint to the federal attorney general.

This bill was referred to the legislation scrutiny committee. I thank them for their work and I was pleased to see that the committee recommended that the bill be passed. They had six amendments. The government supports all the amendments proposed by the Legislation Scrutiny Committee as set out in recommendations two to seven of the report, subject to minor variations. To recommendations two and four—which we distributed within the assembly with an amendment schedule. We will go into the committee stage to make those amendments.

This bill is a big step forward. I acknowledge the efforts of many people that have advocated for this. The work within the Department of Attorney General and Justice, which will inform key stakeholders of the expected commencement of the legislation and its key features. There will be a focus on clearly communicating what types of complaints the judicial commission can investigate and the complaints handling process including potential outcomes. The information will be updated on the NTG website, which will have frequently asked questions, flow charts and a pro forma complaints form.

This certainly brings transparency here in the Northern Territory. Once upon a time the legal sector was dominated—and no offence in this description—by older men. We have really seen that change. I am very proud of those who work in our justice system in the Northern Territory. They are multicultural, they represent the breadth and depth of the Northern Territory. We want them to have a safe working environment. I have heard firsthand that when there is a complaint, people working in the legal sector do not feel supported. This judicial commission bill is a big step forward and will provide that clear process if someone wishes to make a complaint.

I thank those involved. The sector will get a presentation within the legal profession, as will the judges of the local court at their annual conference. There will be information shared quite broadly about these changes.

In concluding, before committee stage, I acknowledge the Department of Attorney-General and Justice, and the Parliamentary Counsel. I commend the bill to the House.

Motion agreed to; bill read a second time.

### **Consideration in detail**

Clauses 1 to 10, by leave, taken together and agreed to.

Clause 11:

**Ms FYLES:** I move amendment 1 to clause 11 of the Judicial Commission Bill 2020 that the sub-clause 2 of clause 11 be omitted and new sub-clauses (2) to (5) be inserted.

Madam Deputy Speaker, the proposed assembly amendment addresses recommendation 2 from the Legislation Scrutiny Committee in its inquiry into this bill. The committee recommended that following the consultation with the heads of jurisdiction, clause 10 be amended to clarify the procedure to be adopted regarding appointment of acting member of the Judicial Commission when an ex-officio member is subject to the complaint.

There were further drafting changes at the committee's recommendations being addressed by amending clause 11 rather than clause 10. The assembly amendment makes it clear that where a judicial member of the Judicial Commission is the subject of the complaint, they cannot control who or if anyone is appointed as an acting member to take their place. Clearly, it provides a process for judicial members to avoid any potential conflict of interest.

Amendment agreed to.

Clause 11, as amended, agreed to.

Clauses 12 to 45, by leave, taken together and agreed to.

Clause 46:

**Ms FYLES:** I move amendment 2 to clause 46 to the bill by inserting a new sub-clause 4 to provide that the Judicial Commission may refuse to disclose information under clause 46(2) to a complainant if it is considered disclosure would be contrary to public interest.

This proposed amendment addresses recommendation 3 of the committee's report in its enquiry into the bill. The committee recommended that clause 46(2) be amended to provide that the Judicial Commission may refuse to disclose information to a complainant if that would be contrary to public interest.

Amendment agreed to.

Clause 46, as amended, agreed to.

Clause 47 agreed to.

Clause 48:

**Ms FYLES:** I move amendment 3 to clause 48 to insert new subclauses (3), (4) and (5). The new subclause (3) is inserted to provide that if a complaint is dismissed under section 44, the Judicial Commission must give written notice of the dismissal to the complainant and the subject of the complaint.

New subclause (4) is inserted to provide that the notice must include a summary of the complaint and the reasons for the dismissal.

New subclause (5) is inserted to provide that the Judicial Commission may refuse to disclose information under subsection (4) to the complainant if the commission considers the disclosure would be contrary to the public interest.

The purpose of clause 48 is to set out the options for taking action where the Judicial Commission has given the subject of the complaint an opportunity to respond to a complaint before referring it to the head of the jurisdiction or an investigation panel. This addresses recommendation 5 of the committee's report on its inquiry into the bill.

Amendment agreed to.

Clause 48, as amended, agreed to.

Clauses 49 to 51, by leave, taken together and agreed to.

Clause 52:

**Ms FYLES:** I move amendment 4 to clause 52(4) of the bill to ensure that the punctuation of paragraph (c) of clause 52(4) is amended and consequential to amendment 5.

Amendment agreed to.

**Ms FYLES:** I move amendment 5 to clause 52(4) of the bill that the new paragraph (d) be inserted. The new paragraph (d) to clause 52(4) provides that a judicial officer of ordinary member of the NTCAT who is the subject of a complaint is a person who may examine or cross-examine witnesses during a hearing conducted by an investigation panel.

The proposed Assembly amendment addresses recommendation 6 of the committee's report on its inquiry into the bill. The committee recommended that clause 52(4) be amended to include the judicial officer of ordinary member of the NTCAT who is the subject of a complaint is a person who may examine or cross-examine witnesses during a hearing conducted by an investigation panel.

Amendment agreed to.

Clause 52, as amended, agreed to.

Clauses 53 to 55, by leave, taken together and agreed to.

Clause 56:

**Ms FYLES:** I move amendment 6 to clause 56 of the bill that subclauses (4), (5) and (6) be omitted and replaced with a new subclause (4). The new subclause (4) states that the investigation panel must give a copy of the report to the judicial officer or ordinary member of NTCAT who is the subject of the complaint, the complainant and the Judicial Commission.

This proposed amendment addresses recommendation 4 of the committee's report on its inquiry into the bill. The committee recommended that clause 56(6)(b) be amended to clarify that the Judicial Commission may give a copy of the summary report to the complainant. Unless the investigation panel has notified the Judicial Commission in writing, this should not occur. The purpose of the amendment is to remove the need for the Judicial Commission to act as the conduit for an investigation panel and enable direct provision of information from the investigation panel to a complainant and a person subject to the complaint.

Amendment agreed to.

Clause 56, as amended, agreed to.

Clauses 57 to 67, by leave, taken together and agreed to.

Clause 68:

**Ms FYLES:** I move amendment 7 that clause 68(2)(b) of the bill be omitted and replaced to refer only to an offence against section 76 to 81, 93, 95 to 97, 99 to 104, 209 or 119 of the Criminal Code. Clause 68 provides that the privilege against self-incrimination, subclause (2), sets out the limited circumstances in which a self-incriminating answer, document or thing or self-incriminating information is admissible in evidence. The intention is that the circumstances be limited to proceedings where falsity or misleading nature of the answer, information, document or thing is relevant to the proceedings which strike at the administration of justice, some of which are listed in Part 4 of the Criminal Code.

The proposed Assembly amendment addresses recommendation 7 of the committee's report on its inquiry into the bill. The committee recommended that 68(2)(b) be amended to clarify that the exceptions to the non-admissibility of the responses in a civil or criminal proceeding are limited to those offences in Part 4 of the Criminal Code which are directly related to the purposes of the bill, namely upholding of judicial accountability and protection of the administration of justice.

Amendment agreed to.

Clause 68, as amended, agreed to.

Remainder of the bill, by leave, taken as a whole and agreed to.

Motion agreed to; bill read a second time.

**Ms FYLES (Attorney-General and Justice):** Madam Deputy Speaker, I move that the bill be now read a third time.

Motion agreed to' bill read a third time.