

Serial 125
Judicial Commission Bill 2020
Ms Fyles

A Bill for an Act to establish a commission for handling complaints against judges of the Supreme Court and Local Court and members of the Northern Territory Civil and Administrative Tribunal, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

JUDICIAL COMMISSION ACT 2020

Act No. [] of 2020

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2020

An Act to establish a commission for handling complaints against judges of the Supreme Court and Local Court and members of the Northern Territory Civil and Administrative Tribunal, and for related purposes

[Assented to [] 2020]
[Introduced [] 2020]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Judicial Commission Act 2020*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

approved form, means a form approved under section 77.

community member means the following:

- (a) in relation to the Judicial Commission – a member of the Judicial Commission appointed under section 8;
- (b) in relation to an investigation panel – a member of the investigation panel appointed under section 24(3).

complaint means a complaint made under section 40.

head of jurisdiction means the following:

- (a) in relation to a Supreme Court Judge – the Chief Justice;
- (b) in relation to an Associate Judge – the Chief Justice;
- (c) in relation to a Local Court Judge – the Chief Judge;
- (d) in relation to a member of NTCAT – the President of NTCAT.

investigation panel means an investigation panel established under section 21.

Judicial Commission means the Judicial Commission established under section 5.

judicial officer means the following:

- (a) a Supreme Court Judge;
- (b) an Associate Judge;
- (c) a Local Court Judge, including a Local Court Judge acting as a coroner;
- (d) the President of NTCAT;
- (e) a Deputy President of NTCAT.

ordinary member of NTCAT means a member of NTCAT appointed under section 16 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.

principal officer means the principal officer of the Judicial Commission appointed under section 39(2).

4 **Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 4

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Judicial Commission and investigation panels

Division 1 Judicial Commission

5 Establishment of Judicial Commission

The Judicial Commission is established.

6 Functions of Judicial Commission

The Judicial Commission has the following functions:

- (a) to receive complaints regarding the behaviour or the physical or mental capacity of judicial officers and ordinary members of NTCAT;
- (b) to investigate and make determinations of fact in relation to complaints as appropriate;
- (c) to refer complaints to the heads of jurisdiction or establish investigation panels as appropriate;
- (d) to make recommendations in relation to complaints it refers to the heads of jurisdiction;
- (e) to assist and support any investigation panel it establishes;
- (f) to perform any other functions conferred on it by this or any other Act.

Note for section 6

The Judicial Commission is only an investigatory body and has no power to discipline a judicial officer or an ordinary member of NTCAT.

7 Composition of Judicial Commission

- (1) The Judicial Commission consists of the following members:
 - (a) the Chief Justice;
 - (b) the Chief Judge;
 - (c) the President of NTCAT;
 - (d) the President of the Council of the Law Society Northern Territory;
 - (e) at least one but not more than 2 community members appointed under section 8.

- (2) The Chief Justice is the chairperson of the Judicial Commission.

8 Appointment of community member to Judicial Commission

- (1) The Administrator may appoint a person to be a community member of the Judicial Commission.
- (2) To be eligible to be appointed as a community member of the Judicial Commission, a person must be:
- (a) of high standing in the community; and
 - (b) nominated by the Minister; and
 - (c) not ineligible under subsection (3).
- (3) The following persons are ineligible to be appointed as a community member:
- (a) a lawyer;
 - (b) a judicial officer or a person who was formerly a judicial officer;
 - (c) an ordinary member of NTCAT or a person who was formerly an ordinary member of NTCAT;
 - (d) a person who holds office, or formerly held office, as a member of another administrative or civil tribunal in the Territory;
 - (e) a person who holds office, or formerly held office, as a judge or a member of an administrative or civil tribunal in a State or another Territory;
 - (f) a member of the Legislative Assembly or a person who was formerly a member of the Legislative Assembly.
- (4) The Minister must consult with the Chief Justice and the Chief Judge before nominating a person for appointment as a community member of the Judicial Commission.
- (5) A community member of the Judicial Commission holds office for the period, not exceeding 5 years, specified in the member's appointment.
- (6) A community member of the Judicial Commission may be reappointed, if still eligible, for one further period not exceeding 5 years.

- (7) A community member of the Judicial Commission holds office on the conditions determined by the Administrator.

9 Termination of appointment of community member

- (1) The appointment of a person as a community member is taken to be terminated if the person:
- (a) ceases to be eligible for appointment; or
 - (b) resigns by giving written notice to the Administrator.
- (2) The Administrator must terminate the appointment of a person as a community member if the person:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of remuneration for their benefit; or
 - (b) becomes mentally incapacitated or is being treated under the *Mental Health and Related Services Act 1998*; or
 - (c) is found guilty of an offence that is punishable by imprisonment for 12 months or more.
- (3) The Administrator may terminate the appointment of a person as a community member for incompetence or misbehaviour.
- (4) To avoid doubt, subsections (1), (2) and (3) apply to an acting community member.

10 Acting members of Judicial Commission

- (1) The Chief Justice may appoint a Supreme Court Judge to act as a member and acting chairperson of the Judicial Commission during a period, or all periods, when the Chief Justice is unable or unavailable to perform the functions or exercise the powers of a member of the Judicial Commission.
- (2) The Chief Judge may appoint a Deputy Chief Judge or another Local Court Judge to act as a member of the Judicial Commission during a period, or all periods, when the Chief Judge is unable or unavailable to perform functions or exercise powers of a member of the Judicial Commission.
- (3) The President of NTCAT may appoint a Deputy President of the NTCAT to act as a member of the Judicial Commission during a period, or all periods, when the President is unable or unavailable to perform functions or exercise powers of a member of the Judicial

Commission.

- (4) The President of the Council of the Law Society Northern Territory may appoint another member of the Council of the Law Society Northern Territory to act as a member of the Judicial Commission during a period, or all periods, when the President of the Law Society Northern Territory is unable or unavailable to perform functions or exercise powers of a member of the Judicial Commission.
- (5) The Administrator may appoint a person eligible for appointment as a community member to act as a community member of the Judicial Commission during a period, or all periods, when a community member of the Judicial Commission is unable or unavailable to perform functions or exercise powers of a member of the Judicial Commission.
- (6) An acting member of the Judicial Commission appointed by the Administrator under subsection (5) holds office on the conditions determined by the Administrator.

11 Member involved in complaint

- (1) A member of the Judicial Commission must not perform any function or exercise any power under this Act in relation to a complaint if the member is the complainant or is the subject of the complaint.
- (2) To avoid doubt, if a member of the Judicial Commission is the complainant or is the subject of a complaint, the person appointed as the acting member under section 10 must perform the functions and exercise the powers of the member until the complaint is finally resolved.

12 Head of jurisdiction involved in complaint

- (1) This section has effect if a head of jurisdiction is the complainant or is the subject of the complaint and continues in effect until the complaint is finally resolved.
- (2) The Administrator may exercise the powers of the head of jurisdiction under section 59 in relation to the complaint.
- (3) If the head of jurisdiction is the Chief Justice, a person nominated under subsection (4) may perform the functions and exercise the powers of the Chief Justice under sections 49, 56 and 60 in relation to the complaint.

- (4) The Judicial Commission must nominate one of the following persons, with the person's consent, to perform the functions and exercise the powers of the Chief Justice under sections 49, 56 and 60 in relation to the complaint:
 - (a) a former Chief Justice;
 - (b) a former Justice of the High Court of Australia;
 - (c) a person who is, or has been, the Chief Justice of a Supreme Court of a State or another Territory.
- (5) If the head of jurisdiction is the Chief Judge, a person nominated under subsection (6) may perform the functions and exercise the powers of the Chief Judge under sections 49, 56 and 60 in relation to the complaint.
- (6) The Judicial Commission must nominate one of the following persons, with the person's consent, to perform the functions and exercise the powers of the Chief Judge under sections 49, 56 and 60:
 - (a) the Chief Justice;
 - (b) a person specified in subsection (4)(a) to (c);
 - (c) a former Chief Judge;
 - (d) a person who is, or has been, the head of jurisdiction of a court of a State or another Territory that is equivalent to the Local Court.
- (7) If the head of jurisdiction is the President of NTCAT, the Chief Justice may perform the functions and exercise the powers of the President of NTCAT under sections 49, 56 and 60.

13 Meetings of Judicial Commission

- (1) The chairperson of the Judicial Commission may determine the procedure for calling meetings of the Commission and the conduct of business at those meetings.
- (2) The Judicial Commission must hold a meeting at least once every 3 months.
- (3) The quorum for a meeting of the Judicial Commission is 4 members of the Commission, of whom at least one must be a community member.

- (4) Decisions of the Judicial Commission are to be made by a majority of the votes cast at a meeting of the Commission at which a quorum is present.
- (5) The Judicial Commission must keep full and accurate minutes of its meetings and other proceedings.

Division 2 Powers of Judicial Commission

14 General powers

The Judicial Commission has the powers necessary to perform its functions.

15 Guidelines

- (1) The Judicial Commission may establish guidelines to assist both it and any investigation panel in the performance of their functions.
- (2) The guidelines may include provisions with respect to any of the following matters:
 - (a) the general manner in which an investigation panel should conduct its examination of complaints;
 - (b) the general manner in which an investigation panel should conduct its hearings regarding complaints;
 - (c) the criteria that an investigation panel should consider when determining whether a hearing should be held in public or in private;
 - (d) the criteria that an investigation panel should consider when exercising its power to consent to legal representation for persons appearing at its hearings.

16 Legal assistance

The Judicial Commission may engage a legal practitioner to assist the Commission.

17 Examination on oath

The chairperson of the Judicial Commission may require a person appearing before the Judicial Commission to give evidence on oath.

18 Issuing summons

- (1) The chairperson of the Judicial Commission may issue a summons to order a person to do the following:
 - (a) to attend to give evidence as directed by the summons;
 - (b) to produce any document or thing as directed by the summons.
- (2) Each summons may be issued to only one person.
- (3) A summons must:
 - (a) be in the approved form; and
 - (b) identify the person to whom it is issued by name or by description of office or position; and
 - (c) specify what the person is being summoned to do; and
 - (d) identify any documents or things to be produced; and
 - (e) specify the date, time and place for any attendance or production.
- (4) A summons must be served personally on the person to whom it is issued.

19 Inspection and retention of documents

- (1) The Judicial Commission may:
 - (a) inspect a document or other thing produced to the Commission; and
 - (b) retain possession of the document or thing for as long as necessary for the Commission to perform its functions; and
 - (c) make copies of, or take extracts from, the document.
- (2) If a document is retained under subsection (1)(b), the person otherwise entitled to possession of the document is entitled to:
 - (a) inspect the document; and
 - (b) receive a certified true copy of the document.
- (3) The Judicial Commission may refer a document or thing, or a copy of a document, to an investigation panel and a head of jurisdiction.

- (4) The Judicial Commission must return any document or thing retained under subsection (1)(b) when it is no longer required.

20 Medical or psychological examination

- (1) The Judicial Commission may request a judicial officer or ordinary member of NTCAT who is the subject of a complaint to undergo a specified medical or psychological examination within a reasonable specified time if the Judicial Commission believes on reasonable grounds that the judicial officer or ordinary member might be physically or mentally unfit to perform the functions or exercise the powers of office.
- (2) The examination must relate only to the fitness, whether physical, mental or both, of the judicial officer or ordinary member of NTCAT to perform the functions or exercise the powers of office.
- (3) As soon as practicable after the examination, the judicial officer or ordinary member of NTCAT must give the Judicial Commission a copy of the report of the examination.
- (4) If a judicial officer or ordinary member of NTCAT fails, without reasonable excuse, to comply with a request under subsection (1) or to give a copy of the report under subsection (3), a statement to that effect must be included in any report given by the Judicial Commission in relation to the judicial officer or ordinary member.

Division 3 Investigation panel

21 Establishing investigation panel

- (1) The Judicial Commission may establish one or more investigation panels when required under section 50.
- (2) The Judicial Commission may:
 - (a) establish more than one investigation panel to deal with different complaints; or
 - (b) establish one investigation panel to deal with different complaints.

22 Pool of persons eligible to be community members

- (1) The Minister must nominate a pool of at least 3 persons who are eligible for appointment as community members of an investigation panel.

- (2) To be eligible to be appointed as a community member, a person must be of high standing in the community and not be ineligible under section 8(3).
- (3) A person's nomination to the pool is for a period of 5 years.
- (4) A person may be renominated to the pool, if still eligible, for one further period of 5 years.
- (5) The nomination of a person to the pool is taken to be terminated if the person:
 - (a) ceases to be eligible for appointment; or
 - (b) resigns the person's nomination by giving written notice to the Minister; or
 - (c) meets any of the conditions specified in section 9(2).
- (6) The Minister may terminate nomination of a person to the pool for incompetence or misbehaviour.

23 Functions of investigation panel

An investigation panel has the following functions:

- (a) to examine and investigate complaints under Part 3, Division 3;
- (b) to make determinations of fact in relation to those complaints;
- (c) to report on its investigations and determinations under Part 3, Divisions 3 and 4.

24 Members of investigation panel

- (1) An investigation panel consists of 3 persons appointed by the Judicial Commission.
- (2) Two members of an investigation panel must be appointed from among any of the following groups of persons:
 - (a) Supreme Court Judges and former Supreme Court Judges;
 - (b) judges and former judges of a superior court of a State or another Territory;
 - (c) judges and former judges of the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and any other federal court established by the Commonwealth.

- (3) One member of an investigation panel must be appointed from the pool of eligible persons nominated under section 22.
- (4) A person must not be appointed to an investigation panel if the person:
 - (a) is a member or acting member of the Judicial Commission; or
 - (b) is a judge or former judge of the same court as the person who is the subject of the complaint.
- (5) The Judicial Commission must designate one of the members of an investigation panel as its chairperson.
- (6) The appointment of a person under subsection (3) from the pool of eligible persons is taken to be terminated if the person:
 - (a) ceases to be eligible for appointment; or
 - (b) resigns the person's appointment by giving written notice to the Minister; or
 - (c) meets any of the conditions specified in section 9(2).

25 Meetings of investigation panel

- (1) Subject to any guidelines established by the Judicial Commission, the chairperson of an investigation panel may determine the procedure for the calling of meetings of the panel and for the conduct of business at those meetings.
- (2) The quorum for a meeting of an investigation panel is all 3 members of the panel.
- (3) An investigation panel must keep full and accurate minutes of its meetings and other proceedings.
- (4) If a member of the investigation panel is unable or unavailable to perform the functions or exercise the powers of a member, or the member's appointment is terminated under section 24(6), the remaining members of the panel may:
 - (a) continue as a panel of 2 members; or
 - (b) request the Judicial Commission to appoint a replacement member.
- (5) If an investigation panel continues as a panel of 2 members under subsection (4)(a), the decisions of the panel must be unanimous.

Division 4 Powers of investigation panel

26 General powers

An investigation panel has the powers necessary to perform its functions.

27 Legal assistance

An investigation panel may engage a legal practitioner to assist the panel.

28 Examination on oath

The chairperson of an investigation panel may require a person appearing before the investigation panel to give evidence on oath.

29 Issuing summons

- (1) The chairperson of an investigation panel may issue a summons to order a person to do the following:
 - (a) to attend to give evidence as directed by the summons;
 - (b) to produce any document or thing as directed by the summons.
- (2) Each summons may be issued to only one person.
- (3) A summons must:
 - (a) be in the approved form; and
 - (b) identify the person to whom it is issued by name or by description of office or position; and
 - (c) specify what the person is being summoned to do; and
 - (d) identify any documents or things to be produced; and
 - (e) specify the date, time and place for any attendance or production.
- (4) A summons must be served personally on the person to whom it is issued.

30 Arrest warrant

- (1) If a person fails to attend as required by a summons under section 29, the chairperson of an investigation panel may issue a warrant for the arrest of the person.

- (2) Before issuing the arrest warrant, the chairperson of the investigation panel must be satisfied that:
 - (a) the summons was served on the person; or
 - (b) a reasonable attempt was made to serve the summons on the person.
- (3) An arrest warrant must:
 - (a) be signed by the chairperson of the investigation panel; and
 - (b) be issued to a police officer or a person named in the warrant; and
 - (c) state the purpose for which it is issued; and
 - (d) the name or identity of the person to be arrested.
- (4) An arrest warrant authorises a police officer or the person named in the warrant:
 - (a) to arrest the person identified in the warrant at any time and bring the person before the investigation panel; and
 - (b) to detain the person in custody until released by order of the investigation panel or the Supreme Court.
- (5) The arrest of a person under this section does not prevent the person from being prosecuted for an offence against section 67.

31 Search warrants

- (1) The chairperson of an investigation panel may issue a search warrant if the panel believes on reasonable grounds that issuing a search warrant is justified to ensure the production of a document or thing that might otherwise be concealed, lost, mutilated, destroyed or disposed of.
- (2) A search warrant must:
 - (a) be signed by the chairperson of the investigation panel; and
 - (b) be issued to a police officer or a person named in the warrant; and
 - (c) state the purpose for which it is issued; and
 - (d) specify the premises for which entry is authorised; and

- (e) 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
 - (f) include a description of the kind of documents or things in relation to which the powers under the warrant may be exercised; and
 - (g) specify the day on which the warrant ceases to have effect, which must be a day not later than 30 days after the day of its issue.
- (3) A search warrant authorises a police officer or the person named in the warrant:
- (a) to enter the premises specified in the warrant; and
 - (b) to search the premises for documents or things relevant to a complaint; and
 - (c) to seize any document or thing relevant to a complaint found in or on the premises; and
 - (d) to deliver anything seized to the investigation panel.
- (4) A search warrant may be executed, in accordance with its terms, at any time during the period commencing on the day of issue of the warrant and ending at the end of the day specified for subsection (2)(g).
- (5) A person executing a search warrant may seize a document or thing not of a kind specified in the warrant if in the course of searching under the search warrant for a document or thing of a relevant kind:
- (a) the person believes on reasonable grounds the document or thing is connected with the matter being investigated; and
 - (b) the person believes on reasonable grounds that it is necessary to seize that document or thing in order to prevent it from being concealed, lost, mutilated, destroyed or disposed of.
- (6) Any document or thing seized under subsection (5) must be presented without delay to the investigation panel.
- (7) A person executing a search warrant must, on request by an occupant of the premises to which the warrant relates, show the warrant to that occupant.

32 Inspection and retention of documents

- (1) An investigation panel may:
 - (a) inspect a document or other thing produced to the Judicial Commission or the investigation panel or seized under a search warrant; and
 - (b) retain possession of the document or thing for as long as necessary for either the Judicial Commission or the investigation panel to perform their functions; and
 - (c) make copies of, or take extracts from, the document.
- (2) If a document is retained under subsection (1)(b), the person otherwise entitled to possession of the document is entitled to:
 - (a) inspect the document; and
 - (b) receive a certified true copy of the document.
- (3) An investigation panel may refer a document or thing, or a copy of a document, to the Judicial Commission and a head of jurisdiction.
- (4) An investigation panel must return any document or thing retained under subsection (1)(b) when it is no longer required.

33 Medical or psychological examination

- (1) An investigation panel may request a judicial officer or ordinary member of NTCAT who is the subject of a complaint to undergo a specified medical or psychological examination within a reasonable specified time if the investigation panel believes on reasonable grounds that the judicial officer or ordinary member might be physically or mentally unfit to perform the functions or exercise the powers of office.
- (2) The examination must relate only to the fitness, whether physical, mental or both, of the judicial officer or ordinary member of NTCAT to perform the functions or exercise the powers of office.
- (3) As soon as practicable after the examination, the judicial officer or ordinary member of NTCAT must give the investigation panel a copy of the report of the examination.
- (4) If a judicial officer or ordinary member of NTCAT fails, without reasonable excuse, to comply with a request under subsection (1) or to give a copy of the report under subsection (3), a statement to that effect must be included in any report given by the investigation panel in relation to the judicial officer or ordinary member.

34 Preventing or restricting release of information

- (1) An investigation panel may refuse to disclose information to a complainant if the disclosure would be contrary to the public interest.
- (2) An investigation panel may give directions preventing or restricting the publication of evidence given to the panel or evidence regarding matters contained in documents received by the panel.
- (3) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct results in a contravention of a direction given under subsection (2) and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for
6 months.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

Division 5 Related matters

35 Independence of all members

- (1) In the performance of functions or the exercise of powers under this Act, a member of the Judicial Commission or an investigation panel is not subject to the direction or control of any person.
- (2) The conditions of office of a member of the Judicial Commission or an investigation panel:
 - (a) cannot be contingent on the member's performance in office; and
 - (b) cannot be varied during the member's term in office.

36 Expenses and remuneration

- (1) The following are entitled to be reimbursed for reasonable expenses incurred in performing functions or exercising powers under this Act:
 - (a) the members of the Judicial Commission;
 - (b) the members of an investigation panel.

- (2) The following are entitled to be paid remuneration for performing functions or exercising powers under this Act:
 - (a) a community member of the Judicial Commission or an investigation panel;
 - (b) a former judge who is a member of an investigation panel.
- (3) The conditions about expenses and remuneration under this section are determined by the Administrator.

37 Protocol for complaints against ordinary members of NTCAT

- (1) If recommended by the Judicial Commission, the Minister must, by *Gazette* notice, issue a protocol to provide a process for a suitably qualified person to deal with a complaint in relation to an ordinary member of NTCAT.
- (2) The contents of the protocol must be approved by the Judicial Commission.
- (3) Despite any provision to the contrary, a complaint in relation to an ordinary member of NTCAT must be dealt with in accordance with the protocol.

38 Delegation by Judicial Commission

- (1) Subject to subsection (2), the Judicial Commission may delegate its powers and functions to:
 - (a) a member of the Judicial Commission; or
 - (b) a suitably qualified person acting under any protocol issued under section 37; or
 - (c) the principal officer or another member of the staff of the Judicial Commission.
- (2) Subsection (1) does not authorise the delegation of the following powers and functions to a single member of the Judicial Commission, the principal officer or another member of the staff of the Judicial Commission:
 - (a) establishing an investigation panel under section 21;
 - (b) referring a complaint or making a recommendation under section 49.
- (3) A person delegated a power or function cannot subdelegate that power or function.

39 Staff of Judicial Commission

- (1) The Judicial Commission is to be supported in the exercise of its functions by:
 - (a) the principal officer; and
 - (b) other staff considered suitable by the Commission.
- (2) The principal officer of the Judicial Commission must be appointed by the Minister, on the recommendation of the Commission.
- (3) The conditions of the principal officer's employment must be determined in accordance with Part 3, Division 3 of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.
- (4) The other staff of the Judicial Commission are public sector employees:
 - (a) employed for the purposes of the Commission; or
 - (b) employed in an Agency and made available by the Chief Executive Officer of the Agency under an arrangement with the Judicial Commission.

Part 3 Complaint process

Division 1 Making complaint

40 Grounds for complaint

- (1) Any person may make a complaint under this Act about a matter relating to the behaviour or the physical or mental capacity of a judicial officer or an ordinary member of NTCAT.
- (2) Despite subsection (1), a complaint may not be made or dealt with under this Act in relation to a matter that is within the jurisdiction of the ICAC, unless the ICAC consents or refers the matter to the Judicial Commission.
- (3) To avoid doubt, a series of actions may be taken as a course of conduct that constitutes a single matter for a complaint.
- (4) A complaint must be in writing and include the following information:
 - (a) the name and contact information of the complainant;

- (b) the name or identity of the judicial officer or ordinary member of NTCAT who is the subject of the complaint;
- (c) the grounds for the complaint;
- (d) a summary of the facts relevant to the complaint;
- (e) any other information prescribed by regulation.

41 Referral to Judicial Commission

- (1) The Minister may refer to the Judicial Commission any matter relating to the behaviour or the physical or mental capacity of a judicial officer or an ordinary member of NTCAT.
- (2) Any matter referred to the Judicial Commission by the Minister under subsection (1), or by the ICAC under section 25A of the *Independent Commissioner Against Corruption Act 2017*, is taken to be a complaint lodged with the Judicial Commission.

Division 2 Acting on complaint

42 Preliminary examination of complaint

- (1) The Judicial Commission must conduct a preliminary examination of a complaint as efficiently and expeditiously as possible.
- (2) The Judicial Commission may initiate the inquiries into the subject matter of the complaint that the Commission considers appropriate.
- (3) The preliminary examination and any inquiries made by the Judicial Commission must, as far as practicable, be in private.

43 Matters related to complaint

- (1) In dealing with a complaint, the Judicial Commission and any investigation panel is not limited to the matters raised initially in the complaint, and may consider other matters arising in the course of dealing with it either as part of the original complaint or constituting a new complaint.
- (2) If the matter arising constitutes grounds for a complaint about another judicial officer or ordinary member of NTCAT, the Judicial Commission and any investigation panel may consider the new matter as a complaint against that other judicial officer or ordinary member.

44 Grounds to dismiss complaint

- (1) The Judicial Commission may dismiss all or part of a complaint if it is satisfied on reasonable grounds of any of the following:
- (a) the complaint is frivolous or vexatious or not made in good faith;
 - (b) the complaint is trivial;
 - (c) the matter is one for which a complaint may not be made under section 40(2);
 - (d) there is or was available another satisfactory means of dealing with the matter;
 - (e) the matter is the subject of legal proceedings and should more properly be the subject of an appeal;
 - (f) the matter happened so far in the past that it does not justify further consideration;
 - (g) the matter arose before the person who is the subject of the complaint was appointed as a judicial officer or an ordinary member of NTCAT, unless it appears to the Judicial Commission that the matter could justify the removal from office or termination of appointment of the judicial officer or ordinary member;
 - (h) the person who is the subject of the complaint is no longer a judicial officer or an ordinary member of NTCAT;
 - (i) the matter relates to the private life of a judicial officer or an ordinary member of NTCAT that cannot reasonably be considered to affect, or have affected, either:
 - (i) the judicial officer's or ordinary member's suitability to hold office; or
 - (ii) the judicial officer's or ordinary member's performance of the functions or exercise of the powers of the officer's or member's office;
 - (j) 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 Judicial Commission may have regard to any matter it considers relevant.

- (3) To avoid doubt, a matter that arose before the commencement of this Act may be the subject of a complaint and is not to be dismissed for that reason alone.

45 Vexatious complainants

- (1) The Judicial Commission may declare a person to be a vexatious complainant if the person persistently, without reasonable grounds, makes complaints against one or more judicial officers or ordinary members of NTCAT.
- (2) The Judicial Commission may disregard any complaint made by a person it has declared to be a vexatious complainant.

46 Giving notice

- (1) If the complaint is dismissed after its preliminary examination under section 42, the Judicial Commission must give written notice of the dismissal to:
- (a) the complainant; and
 - (b) the judicial officer or ordinary member of NTCAT who is the subject of the complaint.
- (2) The notice under subsection (1) must include:
- (a) a summary of the complaint; and
 - (b) the reasons for the dismissal.
- (3) If the complaint is not dismissed after its preliminary examination under section 42, the Judicial Commission must give the judicial officer or ordinary member of NTCAT who is the subject of the complaint written notice of:
- (a) a summary of the complaint; and
 - (b) the right of the judicial officer or ordinary member of NTCAT to respond to the complaint under section 47.

47 Opportunity to respond to complaint

- (1) The Judicial Commission must give the judicial officer or ordinary member of NTCAT who is the subject of a complaint a reasonable opportunity to respond to the complaint before:
- (a) referring the matter to the head of jurisdiction under section 49; or
 - (b) establishing an investigation panel under section 50.

- (2) The judicial officer or ordinary member of NTCAT who is the subject of a complaint may respond in writing to a complaint.

48 Options for taking action

- (1) After considering any response given under section 47(2), the Judicial Commission may take one of the following actions:
- (a) dismiss the complaint under section 44;
 - (b) refer the complaint to the head of jurisdiction under section 49;
 - (c) establish an investigation panel to investigate the complaint under section 50.
- (2) The Judicial Commission must give written notice of the action taken under subsection (1) to:
- (a) the complainant; and
 - (b) the judicial officer or ordinary member of NTCAT who is the subject of the complaint.

49 Referral to head of jurisdiction

- (1) The Judicial Commission may refer a complaint to the head of jurisdiction if the Commission is satisfied on reasonable grounds that:
- (a) the complaint is partly or wholly substantiated; and
 - (b) the complaint is not sufficiently serious to justify establishment of an investigation panel under section 50.
- (2) The Judicial Commission may include recommendations in its referral as to what action should be taken in relation to the complaint.

Division 3 Examination and investigation by investigation panel

50 Establishment of investigation panel

The Judicial Commission must establish an investigation panel under section 21 to examine and investigate a complaint if satisfied on reasonable grounds that the complaint is sufficiently serious that, if substantiated, it could justify the removal from office or termination of appointment of the judicial officer or ordinary member.

51 Examination and investigation by investigation panel

- (1) An investigation panel must:
 - (a) conduct an examination of the complaint or complaints for which it was established; and
 - (b) initiate the investigations into the subject matter of the complaint that the panel thinks appropriate.
- (2) The examination and investigations of an investigation panel must, as far as practicable, take place in private.

52 Hearing by investigation panel

- (1) An investigation panel may hold a hearing in connection with the complaint.
- (2) The investigation panel may determine whether a hearing is held in public or in private.
- (3) If a hearing or part of a hearing is to take place in private, the investigation panel may give directions as to the persons who may be present.
- (4) The following persons may examine or cross-examine any witness at a hearing on any matter that the investigation panel considers relevant:
 - (a) a legal practitioner assisting the investigation panel;
 - (b) any person authorised by the investigation panel to appear before it at the hearing;
 - (c) any legal practitioner representing a person at the hearing under section 65.
- (5) The investigation panel may set limits on the examination and cross-examination as the panel considers appropriate.

53 Dismissal of complaint by investigation panel

- (1) An investigation panel must dismiss a complaint to the extent that it is of the opinion that:
 - (a) the complaint should be dismissed on any of the grounds specified in section 44; or
 - (b) the complaint is not substantiated.

- (2) If an investigation panel dismisses a complaint, it must give a written report setting out its determinations to:
 - (a) the Judicial Commission; and
 - (b) the judicial officer or ordinary member of NTCAT who is the subject of the complaint.
- (3) An investigation panel must give the complainant written notice of the dismissal of a complaint setting out the reasons for the dismissal.
- (4) An investigation panel may give a copy of the report required under subsection (2), or a summary of the report, to the complainant.

54 Termination of investigation panel

An investigation panel is terminated and the appointment of its members is terminated, in relation to the complaint for which it was established, when the panel completes its work by either:

- (a) dismissing the complaint; or
- (b) giving its report on the complaint to the head of jurisdiction and the Judicial Commission under section 56; or
- (c) giving its report on the complaint to the Administrator and the Minister under section 57.

Division 4 Substantiation of complaint by investigation panel

55 Duty to report

An investigation panel must give a report under this Division if the panel has not dismissed the complaint under section 53(1).

56 Report to head of jurisdiction

- (1) The investigation panel must give a written report under this section if it forms the opinion that the complaint does not justify consideration of the removal from office or termination of appointment of the judicial officer or ordinary member of NTCAT who is the subject of the complaint.
- (2) The report must be given to the head of jurisdiction and set out the investigation panel's findings of fact and its opinions.
- (3) The report may include recommendations as to what action should be taken in relation to the complaint.

- (4) The investigation panel must give a copy of the report to the Judicial Commission.
- (5) The Judicial Commission must, without delay, give a copy of the report to the judicial officer or ordinary member of NTCAT.
- (6) The Judicial Commission may give a copy of the report, or a summary of the report, to the complainant.

57 Report to Administrator and Minister

- (1) The investigation panel must give a written report under this section if it forms the opinion that the complaint could justify consideration of the removal from office or termination of appointment of the judicial officer or ordinary member of NTCAT who is the subject of the complaint.
- (2) The report must be given to the Administrator and set out the investigation panel's findings of fact and its opinions.
- (3) The investigation panel must give a copy of the report to the Minister.
- (4) The Minister must, without delay, give a copy of the report to the following:
 - (a) the head of jurisdiction;
 - (b) the Judicial Commission;
 - (c) the judicial officer or ordinary member of NTCAT.
- (5) The judicial officer or ordinary member of NTCAT may give the Minister a written response to the report setting out the matters the judicial officer or ordinary member considers relevant.

58 Tabling report before Legislative Assembly

The Minister must table a copy of any report or response, given to the Minister under section 57, in the Legislative Assembly within 6 sitting days after the report or response is received by the Minister.

Division 5 Action in response to complaint

59 Interim suspension

- (1) If a complaint about a judicial officer or ordinary member of NTCAT is being investigated by an investigation panel, the head of jurisdiction may suspend the judicial officer or ordinary member from performing functions or exercising powers of the officer's or member's office.
- (2) The suspension continues until the earlier of the following:
 - (a) the complaint is dismissed under section 53;
 - (b) a report is given to the head of jurisdiction under section 56;
 - (c) the head of jurisdiction otherwise terminates the suspension.
- (3) While a judicial officer or an ordinary member of NTCAT is suspended under subsection (1), the judicial officer or ordinary member remains entitled to be paid the remuneration and allowances to which the judicial officer or ordinary member is otherwise entitled.

60 Action by head of jurisdiction

- (1) After receiving a referral under section 49 or a report under section 56, the head of jurisdiction may take one or more of the following actions in respect of the judicial officer or ordinary member of NTCAT who is the subject of the complaint:
 - (a) give or provide counselling;
 - (b) make recommendations regarding future conduct;
 - (c) exercise any other powers available to the head of jurisdiction.

Example for subsection (1)(c)

Direct the judicial officer or ordinary member of NTCAT to participate in professional development or training.

- (2) In taking action under subsection (1), the head of jurisdiction must have regard to the matters and any recommendations in the referral or report.
- (3) The head of jurisdiction must give a written report to the Judicial Commission stating the action taken under subsection (1) and the reasons for that action.

- (4) Subject to subsection (5), the Judicial Commission must give a copy of the head of jurisdiction's report to the complainant.
- (5) The Judicial Commission must not disclose any information under subsection (4) that is contrary to the public interest.

61 Removal of Supreme Court Judge from office

A Supreme Court Judge may be removed from office under section 40(1) or (2) of the *Supreme Court Act 1979* only if:

- (a) a report from an investigation panel is received by the Administrator under section 57(2); and
- (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office on the ground of proved misbehaviour or incapacity.

62 Removal of Associate Judge from office

An Associate Judge may be removed from office under section 41F of the *Supreme Court Act 1979* only if:

- (a) a report from an investigation panel is received by the Administrator under section 57(2); and
- (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office because the Associate Judge:
 - (i) has become incapable of performing the duties of the office, other than by reason of temporary illness; or
 - (ii) is guilty of misbehaviour.

63 Termination of appointment of Local Court Judge

- (1) The appointment of a Local Court Judge, other than an acting Local Court Judge, may be terminated under section 57 of the *Local Court Act 2015* only if:
 - (a) a report from an investigation panel is received by the Administrator under section 57(2); and
 - (b) the investigation panel states in the report its opinion that the matter could justify the Judge's termination of appointment on the grounds of incapacity or misbehaviour.

- (2) The appointment of an acting Local Court Judge may be terminated under section 63(d) of the *Local Court Act 2015* with or without a report from an investigation panel being received under section 57.

64 Termination of appointment of member of NTCAT

The appointment of a member of NTCAT may be terminated under section 19 of the *Northern Territory Civil and Administrative Tribunal Act 2014* only if:

- (a) a report from an investigation panel is received by the Administrator under section 57(2); and
- (b) the investigation panel states in the report its opinion that the matter could justify the member's termination of appointment on the grounds of incapacity or misbehaviour.

Part 4 Miscellaneous matters

65 Legal representation

- (1) A judicial officer or ordinary member of NTCAT who is the subject of a complaint is entitled to appear and to be represented by a legal practitioner during proceedings under this Act.
- (2) A person summoned to attend or who appears as a witness in proceedings under this Act may be represented by a legal practitioner.
- (3) In circumstances other than those referred to in subsection (1) or (2), a person may participate in proceedings under this Act, and be represented by a legal practitioner, only with the consent of the Judicial Commission or an investigation panel.

66 Procedure

In conducting its proceedings, the Judicial Commission and an investigation panel:

- (a) are not bound by the rules of evidence; and
- (b) may inform themselves in any manner they consider appropriate; and
- (c) may do whatever they consider necessary or expedient for the fair and expeditious examination or investigation into a complaint.

67 Contempt

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct in the face, or within the hearing, of the Judicial Commission or an investigation panel; and
 - (b) the conduct would constitute contempt of court, if the Judicial Commission or an investigation panel were a court of record, and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

68 Self-incrimination

- (1) A person required to answer a question, give information or produce a document or thing under this Act is not excused from doing so on the ground that the answer, information, document or thing might tend to incriminate the person or make the person liable to a penalty.
- (2) However, the answer, information, document or thing is not admissible in evidence against the person in a civil or criminal proceeding except a proceeding for:
- (a) an offence in which the falsity or misleading nature of the answer, information, document or thing is relevant; or
 - (b) an offence against the Part IV of the Criminal Code.

Note for subsection (2)(b)

Part IV of the Criminal Code relates to offences against the administration of law and justice and against public authority.

69 Reimbursement of witness's expenses

A witness appearing before the Judicial Commission or an investigation panel is entitled to be paid by the Territory for the witness's expenses for attendance in accordance with the Supreme Court's scale of costs.

70 Payment of costs and expenses of judicial officer or ordinary member of NTCAT

The reasonable costs and reasonable expenses incurred by a judicial officer or ordinary member of NTCAT, who is the subject of a complaint, for appearance and legal representation in respect of proceedings under this Act are to be paid by the Territory.

71 Protection of members

A member of the Judicial Commission or an investigation panel has, in the performance of functions or exercise of powers of office, the same protection and immunity as a Justice of the High Court of Australia.

72 Protection of staff

(1) The principal officer or another member of the staff of the Judicial Commission is not civilly liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise of a power includes the purported exercise of the power.

performance of a function includes the purported performance of the function.

73 Offence to disclose certain information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and

(b) the information is confidential and the person is reckless in relation to that circumstance; and

(c) the person intentionally engages in conduct; and

- (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
- (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for subsection (3)

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

74 Misleading information

- (1) A person commits an offence if:
 - (a) the person intentionally gives information to another person; and
 - (b) the other person is an authorised officer; and
 - (c) the information is misleading and the person has knowledge of that circumstance; and
 - (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:
 - (a) the person intentionally gives a document to another person; and

- (b) the other person is an authorised officer; and
- (c) the document contains misleading information and the person has knowledge of that circumstance; and
- (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the person, when giving the information or document:
 - (a) draws the misleading aspect of the information or document to the authorised officer's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the authorised officer the information necessary to remedy the misleading aspect of the information or document.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (5) In this section:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

authorised officer means any of the following:

- (a) a member of the Judicial Commission;
- (b) the principal officer or another member of the staff of the Judicial Commission;
- (c) a legal practitioner acting for the Judicial Commission or an investigation panel;
- (d) a member of an investigation panel.

75 Giving information to Minister

- (1) The Judicial Commission must give written notice to the Minister when:
 - (a) it establishes an investigation panel to investigate a complaint; and
 - (b) the investigation panel completes its work in relation to a complaint.
- (2) The Judicial Commission must, at the request of the Minister, give the Minister the following information in relation to a specific judicial officer or ordinary member of NTCAT:
 - (a) whether a complaint was made;
 - (b) when a complaint was made;
 - (c) the subject matter of any complaint and when the subject matter is alleged to have occurred;
 - (d) the status of any complaint;
 - (e) the results of any investigation;
 - (f) any action taken as a result of a complaint.
- (3) Despite subsection (2), the Judicial Commission may refuse to provide information under that subsection if:
 - (a) an investigation panel is not established to investigate the complaint; and
 - (b) the Commission considers providing the information is contrary to the public interest.
- (4) When providing the Minister with information about a complaint under this section, the Judicial Commission may also provide other information that the Commission considers relevant.

76 Annual report

- (1) Each financial year, the Judicial Commission must give the Minister a written report about the work and activities of the Commission and any investigation panel established by the Commission.

- (2) The report must include the following information in relation to the financial year:
 - (a) the number of complaints received by, or referred to, the Judicial Commission;
 - (b) the number of complaints dismissed and the grounds for dismissal;
 - (c) the number of complaints not dismissed and the results of the investigation;
 - (d) a description, including statistics if appropriate, of any patterns in the nature and scope of the complaints.
- (3) The report may include recommendations for changes to:
 - (a) this Act and any regulations; and
 - (b) the Judicial Commission's functions and powers; and
 - (c) any related administrative matters.
- (4) The report must not identify any person who is the subject of a complaint, unless the person is the subject of a public hearing or is found guilty of an offence connected with the complaint.
- (5) The report must be given to the Minister by 30 September following the end of the financial year to which it relates.
- (6) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

77 Approved forms

- (1) The chairperson of the Judicial Commission may approve forms for this Act.
- (2) The chairperson of the Judicial Commission must publish an approved form on the Judicial Commission's website.

78 Regulations

The Administrator may make regulations under this Act.

Note for section 78

See section 65 of the Interpretation Act 1978.

Part 5 Consequential amendments

Division 1 Independent Commissioner Against Corruption Act 2017

79 Act amended

This Division amends the *Independent Commissioner Against Corruption Act 2017*.

80 Section 4 amended (Definitions)

- (1) Section 4, definition ***independent entity***, after paragraph (c)

insert

(ca) the Judicial Commission;

- (2) Section 4, definition ***referral entity***, after "section 25"

insert

or 25A

81 Section 25 amended (Referral to referral entity)

Section 25(2)(b)

omit, insert

- (b) who is a Deputy Coroner (even if the conduct is alleged to have occurred before the person became a Deputy Coroner), or who was a Deputy Coroner at the time the conduct is alleged to have occurred, the referral entity is the Territory Coroner; or

82 Section 25A inserted

After section 25

insert

25A Referral to Judicial Commission

- (1) The ICAC may refer to the Judicial Commission, established under the *Judicial Commission Act 2020*, any matter relating to the behaviour or the physical or mental capacity of a judicial officer or a member of NTCAT that could constitute a complaint under the *Judicial Commission Act 2020*.

- (2) Despite section 26, the ICAC must consult with the Judicial Commission before referring a matter under this section, unless consultation is not required under a memorandum of understanding or protocol referred to in subsection (3).
- (3) The ICAC and the Judicial Commission may enter into a memorandum of understanding or protocol about practices and procedures for referrals.

83 Section 28 amended (Directions to referral entity)

Section 28(3)

omit

or Deputy Speaker

insert

, Deputy Speaker, Judicial Commission

Division 2 Legal Profession Act 2006

84 Act amended

This Division amends the *Legal Profession Act 2006*.

85 Section 467 amended (Practitioners to whom this Chapter applies)

After section 467(2)(c)

insert

(ca) a member of NTCAT in relation to any matter that may be the subject of a complaint under the *Judicial Commission Act 2020*;

Division 3 Local Court Act 2015

86 Act amended

This Division amends the *Local Court Act 2015*.

87 Section 57 replaced

Section 57

repeal, insert

57 Termination of appointment of Judge

- (1) The Administrator may, in writing, terminate the appointment of a Judge on the address of the Legislative Assembly seeking the removal of the Judge on the grounds of incapacity or misbehaviour.
- (2) However, the appointment of a Judge must not be terminated under subsection (1) unless:
 - (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and
 - (b) the investigation panel states in the report its opinion that the matter could justify termination of the Judge's appointment on the grounds of incapacity or misbehaviour.

Division 4 Northern Territory Civil and Administrative Tribunal Act 2014

88 Act amended

This Division amends the *Northern Territory Civil and Administrative Tribunal Act 2014*.

89 Section 19 replaced

Section 19

repeal, insert

19 Termination of appointment of member

- (1) The Administrator may, in writing, terminate the appointment of a member on the address of the Legislative Assembly seeking the removal of the member on the grounds of incapacity or misbehaviour.
- (2) However, the appointment of a member must not be terminated under subsection (1) unless:
 - (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and

- (b) the investigation panel states in the report its opinion that the matter could justify termination of the member's appointment on the grounds of incapacity or misbehaviour.

Division 5 Supreme Court Act 1979

90 Act amended

This Division amends the *Supreme Court Act 1979*.

91 Section 40 amended (Removal from office)

After section 40(2)

insert

- (3) A Judge must not be removed from office under subsection (1) or (2) unless:
 - (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and
 - (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office on the ground of proved misbehaviour or incapacity.

92 Section 41F replaced

Section 41F

repeal, insert

41F Removal of Associate Judge from office

- (1) The Administrator must remove an Associate Judge from office if the Associate Judge:
 - (a) becomes incapable of performing the duties of the office, other than by reason of temporary illness; or
 - (b) is guilty of misbehaviour.
- (2) However, an Associate Judge must not be removed from office under subsection (1) unless:
 - (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and

- (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office on the ground of proved misbehaviour or incapacity.