

Judicial Matters Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Judicial Matters Bill and recommends that it be passed with the amendments shown.

Introduction

The Judicial Matters Bill is an omnibus bill that amends the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 and section 26C(2) of the Judicature Act 1908. The bill proposes to

- establish the Office of the Deputy Judicial Conduct Commissioner
- allow the Judicial Conduct Commissioner to decide to take no further action in respect of a complaint
- increase the statutory maximum number of Associate Judges of the High Court from six to nine.

The amendments to the Judicial Conduct Commissioner and Judicial Conduct Panel Act proposed by the bill are in part the result of recommendations by the Judicial Conduct Commissioner. The

Judicial Conduct Commissioner considered that these amendments would better achieve the Judicial Conduct Commissioner and Judicial Conduct Panel Act's stated purpose.

We received one submission, from Chief Justice Dame Sian Elias, which supported the bill. This submission was made following consultation with the President of the Court of Appeal and the Chief High Court Judge.

Disposal of complaint

New section 15A (clause 11) amends the Judicial Conduct Commissioner and Judicial Conduct Panel Act to expand the actions that may be taken by the Commissioner to resolve a complaint. New section 15A allows the Commissioner to take no further action in respect of a complaint on the grounds that further consideration of it would be unjustified.

Examples of situations where the Commissioner might decide that a complaint is unjustified include where the complaint has been resolved to the complainant's satisfaction following an explanation by the Judge who is the subject of the complaint, or where the complaint, while genuine and made in good faith, is based on a misunderstanding.

We recommend inserting clause 12A to amend section 17(1) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act to clarify that where the Commissioner has exercised his or her power to take no further action on a complaint, the Commissioner is not required to refer the complaint to the Head of Bench. As the Commissioner under the Judicial Conduct Commissioner and Judicial Conduct Panel Act is not allowed to dismiss a complaint on the grounds that further consideration of it would be unjustified, the Commissioner would be required to refer such complaints to the relevant Head of Bench.

Appendix

Committee process

The Judicial Matters Bill was referred to the previous committee on 26 August 2008. The closing date for submissions was 3 October 2008. We received and considered one submission.

We received advice from the Ministry of Justice.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Paul Quinn

Hon David Parker

Lynne Pillay

Hon Dr Richard Worth

Judicial Matters Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Christopher Finlayson

Judicial Matters Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Judicial Matters Act **2008**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Amendments to Judicial Conduct
Commissioner and Judicial Conduct
Panel Act 2004

Principal Act amended 5

3 Principal Act amended

This **Part** amends the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

Deputy Commissioner

4 Interpretation 10

(1) Section 5 is amended by inserting the following definition in its appropriate alphabetical order:

“**Deputy Commissioner** means a Deputy Judicial Conduct Commissioner appointed under **section 8A**”.

(2) Section 5 is amended by repealing the definition of **Judicial Conduct Commissioner** or **Commissioner** and substituting the following definition: 15

“**Judicial Conduct Commissioner** or **Commissioner**—

“(a) means a Judicial Conduct Commissioner appointed under section 7; and 20

“(b) in sections 11 to 20 and 34, and clauses 7, 9, and 10 of Schedule 2, includes a Deputy Judicial Conduct Commissioner appointed under **section 8A** and carrying out his or her function under **section 8B**”.

5 Heading above section 7 amended 25

The heading above section 7 is amended by adding “*and Deputy Judicial Conduct Commissioner*”.

6 Functions and powers

(1) The heading to section 8 is amended by adding “**of Commissioner**” 30

(2) Section 8 is amended by inserting the following subsections after subsection (1):

- “(1A) In carrying out his or her functions in relation to a complaint, the Commissioner may decide that he or she has a conflict of interest in relation to the complaint.
- “(1B) The functions of the Commissioner—
- “(a) must not be carried out by the Commissioner if they relate to a complaint in relation to which the Commissioner has decided that he or she has a conflict of interest; and
 - “(b) are not carried out by the Commissioner in relation to any complaints in the situations specified in **section 8B(1)(b)(i) and (ii)**.
- “(1C) The Commissioner must refer promptly to the Head of Bench a complaint—
- “(a) referred to the Commissioner by the Deputy Commissioner under **section 8B(4)**; and
 - “(b) in relation to which the Commissioner has decided that he or she has a conflict of interest.”

7 New sections 8A and 8B inserted

The following sections are inserted after section 8:

- “**8A Deputy Judicial Conduct Commissioner** 20
- “(1) An office called the Deputy Judicial Conduct Commissioner is established.
- “(2) The Deputy Commissioner is appointed by the Governor-General on the recommendation of the House of Representatives.
- “(3) Before a recommendation may be made under **subsection (2)**, the Attorney-General must consult the Chief Justice about the proposed appointment and must advise the House of Representatives that the Chief Justice has been consulted. 25
- “(4) A person is not to be regarded as being employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 solely because of his or her appointment as the Deputy Commissioner. 30
- “**8B Function and powers of Deputy Commissioner**
- “(1) The function of the Deputy Commissioner is to carry out the functions of the Commissioner in relation to the following complaints (and no others): 35

- “(a) complaints (other than those that the Deputy Commissioner has referred to the Commissioner under **subsection (4)**) in relation to which the Commissioner has decided that he or she has a conflict of interest; and
- “(b) complaints of any kind in 1 or more of the following situations:
 - “(i) during the absence from office of the Commissioner;
 - “(ii) if the Commissioner is incapacitated in a way that affects the carrying out of his or her functions;
 - “(iii) during a vacancy in the office of Commissioner.
- “(2) In carrying out his or her function in relation to a complaint, the Deputy Commissioner may decide that he or she has a conflict of interest in relation to the complaint.
- “(3) After deciding that he or she has a conflict of interest in relation to a complaint, the Deputy Commissioner must—
 - “(a) not carry out his or her function in relation to the complaint; and
 - “(b) promptly refer the complaint to the Head of Bench (unless the Deputy Commissioner refers the complaint to the Commissioner as soon as practicable under **subsection (4)**).
- “(4) The Deputy Commissioner may refer a complaint to the Commissioner as soon as practicable (instead of referring it promptly to the Head of Bench under **subsection (3)(b)**) if the Deputy Commissioner—
 - “(a) is carrying out the Commissioner’s functions in relation to the complaint in 1 or more of the situations specified in **subsection (1)(b)(i) to (iii)**; and
 - “(b) decides that he or she has, in relation to the complaint, a conflict of interest; but
 - “(c) believes on reasonable grounds, after consulting the complainant (if any), that the Commissioner is likely to be able to begin to deal with the complaint within a reasonable time.
- “(5) The Deputy Commissioner has all the powers necessary for carrying out his or her function.
- “(6) The fact that the Deputy Commissioner carries out a function or exercises a power is, in the absence of proof to the contrary,

sufficient evidence of the Deputy Commissioner’s authority to do so.”

8 Duty to act independently

Section 9 is amended by adding the following subsection as subsection (2):

- “(2) The Deputy Commissioner must act independently in carrying out his or her function.”

9 Other provisions relating to Commissioner

- (1) The heading to section 10 is amended by adding “**and Deputy Commissioner**”.

- (2) Section 10 is amended by adding “and the Deputy Commissioner”.

- (3) Part 1 of Schedule 2 is amended in the manner indicated in **Schedule 1**.

Disposal of complaints

10 Commissioner must conduct preliminary examination

- (1) Section 15(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) there are any grounds for exercising his or her power under **section 15A** to take no further action in respect of the complaint; or”.

- (2) Section 15(5) is amended by inserting the following paragraph before paragraph (a):

“(aa) exercise his or her power to take no further action in respect of the complaint (**section 15A**); or”.

- (3) Schedule 1 is repealed and the Schedule 1 set out in **Schedule 2** of this Act substituted.

11 New section 15A inserted

The following section is inserted after section 15:

- “15A Commissioner’s power in certain circumstances to take no further action in respect of complaints**
- “(1) The Commissioner may take no further action in respect of a complaint if satisfied that further consideration of the complaint would, in all the circumstances, be unjustified. 5
- “(2) Reasons why further consideration of a complaint would, in all the circumstances, be unjustified, may be or include all or any of the following that apply to the complaint:
- “(a) that the complaint has been resolved to the complainant’s satisfaction following an explanation from the Judge who is the subject of the complaint: 10
- “(b) that the complaint is genuine and made in good faith, but is based on a misunderstanding:
- “(c) that the complaint is one in respect of which the Commissioner, having made all reasonable efforts to complete the preliminary examination required by section 15 and form the opinion required by section 15(1), does not have, and is unlikely to be able to obtain, enough information to form that opinion. 15
- “(3) The fact that a complaint has been resolved to the complainant’s satisfaction because of an apology by the Judge who is the subject of the complaint is not, by itself, a reason why further consideration of a complaint would, in all the circumstances, be unjustified. 20
- “(4) **Subsection (2)** does not limit **subsection (1)**. 25
- “(5) If the Commissioner exercises his or her power under this section to take no further action in respect of a complaint, he or she must give the complainant and the Judge who is the subject of the complaint written notification stating—
- “(a) that the Commissioner has exercised that power; and 30
- “(b) the grounds on which he or she is satisfied that further consideration of the complaint would, in all the circumstances, be unjustified.”
- 12 Commissioner must dismiss complaints that fail to meet required threshold** 35
- Section 16 is amended by inserting the following subsections after subsection (1):

“(1A) The Commissioner has previously considered the subject matter of the complaint for the purposes of subsection (1)(i) if he or she has exercised his or her power under **section 15A** to take no further action in respect of the complaint.

“(1B) **Subsection (1A)** does not limit subsection (1)(i).” 5

12A Commissioner’s power to refer complaints to Head of Bench

Section 17(1) is amended by inserting the following paragraph before paragraph (a):

“(aa) exercises his or her power under **section 15A** to take no further action in respect of the complaint; or”. 10

Savings provision

13 New heading and new section 36 inserted

The following heading and section are inserted after section 35:

15

“Savings provision

“36 Amendments do not apply to certain complaints

Complaints made before the commencement of the **Judicial Conduct Commissioner and Judicial Conduct Panel (Deputy Commissioner and Disposal of Complaints) Amendment Act 2008** must be dealt with as if that Act had not been enacted.”

20

Related amendments to other Acts

14 Coroners Act 2006 amended

(1) This section amends the Coroners Act 2006. 25

(2) Section 113(2) is amended by inserting “or the Deputy Commissioner” after “the Commissioner” in each place where it appears.

15 Official Information Act 1982 amended

(1) This section amends the Official Information Act 1982. 30

(2) Paragraph (1)(i) of the definition of **official information** in section 2(1) is amended by inserting “the Deputy Judicial

Conduct Commissioner,” after “the Judicial Conduct Commissioner,”.

- (3) Section 2(6)(f) is amended by inserting “, the Deputy Judicial Conduct Commissioner,” after “the Judicial Conduct Commissioner” in the first place where it appears. 5

Part 2

Amendment to Judicature Act 1908

Principal Act amended

16 Principal Act amended

This **Part** amends the Judicature Act 1908. 10

Associate Judges of High Court

17 Appointment of Associate Judges

Section 26C(2) is amended by omitting “6” and substituting “9”.

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|---|---------------|
| Schedule 1 | s 9(3) |
| Amendments to Part 1 of Schedule 2 | |
| Heading to Part 1 of Schedule 2 | |
| Add “and Deputy Judicial Conduct Commissioner”. | 5 |
| Heading to clause 1 | |
| Add “and Deputy Commissioner”. | |
| Clause 1(1) | |
| Insert “or as the Deputy Judicial Conduct Commissioner” after “Commissioner”. | 10 |
| Clause 1(2) | |
| Add “or as the Deputy Commissioner”. | |
| Clause 1(3) | |
| Insert “or the Deputy Commissioner” after “The Commissioner”. | |
| Clause 1(3)(a) | |
| Insert “or the Deputy Commissioner” after “the Commissioner”. | 15 |
| Clause 1(4) | |
| Insert “or the Deputy Commissioner” after “The Commissioner”. | |
| Clause 2 | |
| Insert after subclause (1): | 20 |
| “(1A) If a vacancy occurs in the office of Deputy Commissioner, the vacancy may be filled by the appointment of a successor by the Governor-General on the recommendation of the House of Representatives.” | |
| Clause 2(2)(a) | |
| Insert “specified in subclause (1) or (1A) ” after “a vacancy”. | 25 |
| Heading to clause 3 | |
| Add “or Deputy Commissioner”. | |

Clause 3

Insert “or the Deputy Commissioner” after “the Commissioner”.

Heading to clause 4

Insert “and Deputy Commissioner” after “Commissioner”.

Clause 4(1)

5

Repeal and substitute:

“(1) This clause applies to the Commissioner, to the Deputy Commissioner, and to every person engaged or employed in connection with the work of the Commissioner or the Deputy Commissioner.”

10

Clause 4(5)

Insert “or the Deputy Commissioner” after “the Commissioner”.

Clause 4(6)

Insert “or the Deputy Commissioner” after “the Commissioner”.

Clause 5(1)

15

Insert “and the Deputy Commissioner” after “The Commissioner”.

Clause 5(2)

Repeal and substitute:

“(2) The Commissioner or the Deputy Commissioner is entitled to receive from the funds of the Commissioner’s office the actual and reasonable costs for travelling and other expenses that relate to the performance of his or her duties and responsibilities as the Commissioner or as the Deputy Commissioner.”

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Clause 6

Omit “has” and substitute “and Deputy Commissioner have”.

25

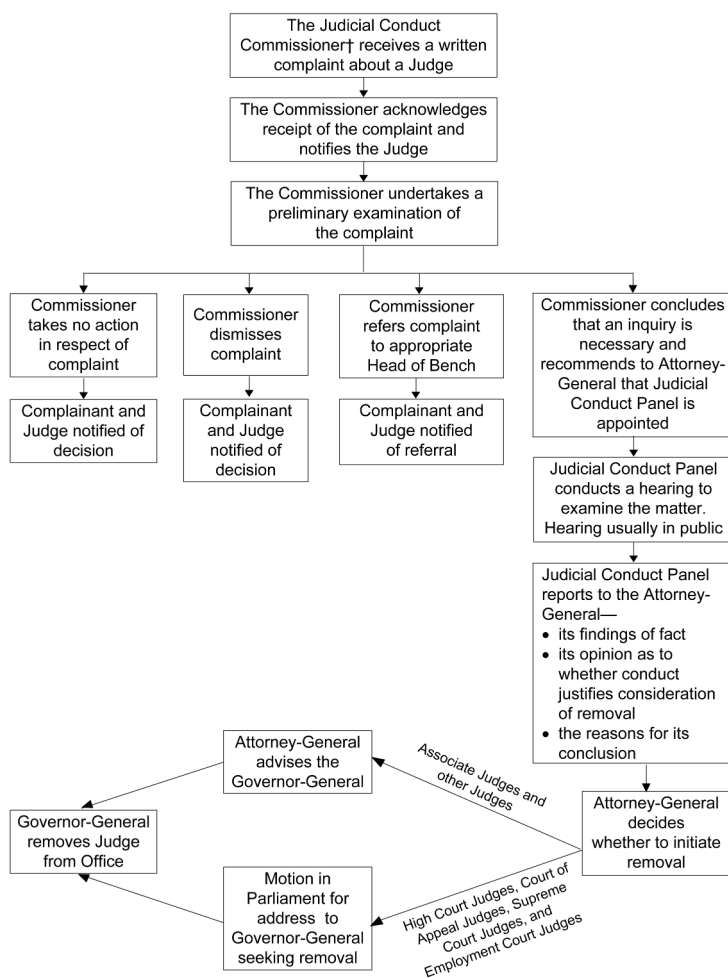
Omit “is located” and substitute “and the Deputy Commissioner are located”.

Schedule 2
New Schedule 1 substituted

s 10(3)

Schedule 1
Overview of process for Judicial Conduct
Commissioner and Judicial Conduct
Panel

s 3 5



†**Judicial Conduct Commissioner** or **Commissioner** includes a Deputy Judicial Conduct Commissioner carrying out the Commissioner's functions when the Commissioner has a conflict of interest, is absent from office, or is incapacitated, and during a vacancy in the office of Commissioner.

Judicial Matters Bill

Legislative history

24 June 2008

26 June 2008

Introduction (Bill 216-1)

First reading and referral to Justice and Electoral
Committee
