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3 **A Bill for an Act to provide for parliamentary**
4 **commissions to investigate allegations of judicial**
5 **misbehaviour or incapacity, and for related**
6 **purposes**

7 **Part 2—Establishment, functions and membership etc. of**
8 **Commissions**

9 **13 Membership**

10 (1) A Commission consists of 3 members appointed on the nomination
11 of the Prime Minister.

Comment [A1]: This should be 5 members appointed (see below for additional appointment).

Comment [A2]: The member should only be appointed by the Prime Minister. Leaders of other parties should also be able to nominate a member. Otherwise the nominations would be politically biased as can be seen in the appointment of Judges.

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Part 2 Establishment, functions and membership etc. of Commissions

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Section 14

1 (2) Before nominating a member, the Prime Minister must consult
2 with the Leader of the Opposition in the House of Representatives.

3 (3) At least one member of each Commission must be:

4 (a) a former Commonwealth judicial officer; or

5 (b) a judge, or former judge, of the Supreme Court of a State or
6 Territory.

7 4. **At least one member must be a lawyer appointed by the
8 Law Society or Bar Association of the State in which the
9 Judicial Officer presides, and the lawyer must practice in
10 the Court in which the Judicial Officer presides.**

11
12 5. **One other member.**
13

14 Appointment of members

15 (1) A member is appointed by force of this subsection if each House of
16 the Parliament passes, in the same session, a resolution to appoint
17 the member.

18 (2) A person must not be appointed if he or she is a Commonwealth
19 judicial officer.

20
21 (3) A member is by force of this subsection appointed as the presiding
22 member if:

23
24 (a) the Prime Minister nominates the member to be the presiding
25 member; and

26
27 (b) each House of the Parliament passes, in the same session, a
28 resolution to appoint the member as the presiding member.

29 (4) A member is appointed on a part-time basis.

Comment [A3]: This should be appointing.

Comment [A4]: The reason for adding this paragraph is that many lawyers experience the same problems with specific judges and magistrates, however most would not want to make individual complaints to a commission for fear of reprisal if the judge or magistrate remains in office, or possibly by other magistrates or judges. If the State Law Society and/or Bar Association had a person appointed to receive complaints from lawyers, that person would have information that could be valuable to a commission.

Comment [A5]: This would be to ensure that there is a majority vote.

Comment [A6]: This would better be the leader of each party. There is already bias of appointment of Judges and Magistrates by the sitting party. If only the Prime Minister can nominate commission members this will lead to further bias even though it also has to pass through parliament.

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Establishment, functions and membership etc. of Commissions **Part 2**

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Section 15

15 Vacancy in membership

If at any time a Commission is not properly constituted in accordance with the requirements of section 13 because one or more members have ceased to be a member then, despite section 13:

- (a) the Commission continues in existence (even if there are no remaining members); and
 - (b) the Commission consists of the remaining members (if any); and
 - (c) the provisions of this Act (other than this section) have effect, at that time, as if the Commission were properly constituted in accordance with the requirements of section 13; and
 - (d) the Houses of the Parliament must, as soon as practicable after that time, each pass a resolution to appoint replacement members, in accordance with the requirements of sections 13 and 14.
- (d) **No decision will be made about the Judge or Federal Magistrate in question until there is full membership.**

Comment [A7]: This should be added. Otherwise too much power may be given to a minority membership and will ensure speedier appointment of new members.

16 When a Commission ceases to exist

- (1) The parliamentary presiding officers may jointly determine, in writing, that a Commission is to cease to exist if the officers are satisfied that:
 - (a) the Commission's functions have been performed; or
 - (b) the person in relation to whom an allegation of misbehaviour or incapacity is being investigated by the Commission has ceased to be a Commonwealth judicial officer (due to retirement, resignation, death or any other reason).
- (2) The Commission ceases to exist at the time specified in the determination.
- (3) A determination made under subsection (1) is not a legislative instrument.

Comment [A8]: the current investigation of complains about a Judge or Federal Magistrate has been settled...The Commission should continue to exist so that other investigations of complains about Judges or Federal Magistrates can be made without having to pass another Bill. The members of the Commission can be terminated and new members or the same if appropriated be appointed for further investigations.

Comment [A9]: Investigate a complaint

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Part 3 Investigations of Commissions

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Section 19

1 **Part 3—Investigations of Commissions**

2 **19 How a Commission is informed**

- 3 (1) A Commission is not bound by the rules of evidence and may be
4 informed on any matter in any manner it thinks fit.

5 *Previous official inquiries and investigations*

- 6 (2) In considering an allegation, a Commission must consider the
7 outcome of any previous official inquiry or official investigation
8 into the allegation so far as the Commission thinks it necessary or
9 desirable to do so.

- 10 (3) The Commission is not (subject to subsection (4)) precluded by:

11 (a) any other Australian law; or

12 (b) any privileges of either House of the Parliament;

13 from obtaining access to the records of evidence given at, or
14 findings made as a result of, such an inquiry or investigation.

- 15 (4) Subsection (3) is not intended to limit or otherwise affect the
16 operation of section 16 of the *Parliamentary Privileges Act 1987*.

17 *Official inquiries and investigations*

- 18 (5) Without limiting the meaning of ***official inquiry***, that expression
19 includes:

20 (a) a Royal Commission within the meaning of the *Royal*
21 *Commissions Act 1902*; and

22 (b) a Royal Commission of a State or a Territory; and

23 (c) a commission of inquiry of the Commonwealth, a State or a
24 Territory.

- 25 (6) Without limiting the meaning of ***official investigation***, that
26 expression includes:

27 (a) an investigation into a complaint about a Judge within the
28 meaning of the *Federal Court of Australia Act 1976*; and

29 (b) an investigation into a complaint about a Judge within the
30 meaning of the *Family Law Act 1975*; and

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Investigations of Commissions **Part 3**
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Section

- 1 (c) an investigation into a complaint about a Federal Magistrate
2 within the meaning of the *Federal Magistrates Act 1999*; and
3 (d) the consideration of a matter by the Director of Public
4 Prosecutions of the Commonwealth, a State or a Territory;
5 and
6 (e) an investigation by the Australian Federal Police.
7 (f) an investigation into complaints about Family and
8 Federal Magistrate Court Family Consultants and Family
9 Reporters.
10 (g) an investigation into complaints about Family Lawyers
11 and their qualification to practice in Family Law.
12 (h) an investigation into complaints about experts in the
13 Family and Federal Magistrate Courts.
14 (i) an investigation into complaints about Independent
15 Childrens' Lawyers and Judicial Reliance on their
16 opinions.
17 (j) an investigation into complaints about Juvenile
18 Investigation Response Teams (or equivalent in each
19 State) and Family and Community Services (or
20 equivalent in each State) as they are involved in cases
21 before the Family Courts and Federal Magistrates'
22 Courts.
23 (k) an investigation into the allocation of Commonwealth
24 Funds as they are administered by the States.

25 **20 Natural justice**

- 26 (1) A Commission must act in accordance with the rules of natural
27 justice.
28 (2) Without limiting subsection (1), if an allegation of misbehaviour or
29 incapacity is being investigated by a Commission in relation to a
30 Commonwealth judicial officer:
31

Comment [A10]: (f) to (k) might be better as part of a separation commission into family law issues.

There are many complaints about memorandas provided to the Judge or Federal Magistrate by Family Consultants and Family Reports.

Comment [A11]: Family Law cases are extremely complex and involve a number of psychological and psychiatric issues that most lawyers are not trained to understand or identify and who often are not trained to be able to comprehend expert reports. The communication between lawyers, the judiciary and social science and medical experts is flawed by lack of training about both disciplines. Family Lawyers should be appropriately qualified in Law, Family Law and with some psychological issues such as understanding development psychology, abnormal psychology, social psychology, family dynamics, cognitive functions, dr...

Comment [A12]: Some Judges and Federal Magistrates rely heavily on ICLs who have only had training in law and a weekend on being an ICL. They have had no training in developmental, psychoses or other relevant psychological or psychotic issues. Like other family lawyers they do not have the training to comprehend exp...

Comment [A13]: While under State authority, these departments are often involved in cases before the Family and Federal Magistrates Court. They do not have the appropriate training about the psychological aspects involved in childrens' cases, do not take into consideration the evidence before the ...

Comment [A14]: step-father do not have the financial resources Legal Aid Funding is totally inadequate on a case by case basis.

Many people who do not meet the very low financial criteria cannot afford the costs of court proceedings while others receive ...

Comment [A15]: Include all of the people named in 19 as they apply or else have a separate commission into all issues relating to Family Law.