Parliamentary Committees



Honourable Angelo Vasta (Reversal of Removal) Bill 2017

Report No. 64, 55th Parliament
Legal Affairs and Community Safety Committee
September 2017

Legal Affairs and Community Safety Committee

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Acknowledgements

The committee acknowledges the assistance provided by Mr Robbie Katter MP and the Queensland Parliamentary Library.

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Abbreviations

AAT	Administrative Appeals Tribunal
Bill	Honourable Angelo Vasta (Reversal of Removal) Bill 2017
Commission / Commission of Inquiry	The Parliamentary Judges Commission of Inquiry established under the *Parliamentary (Judges) Commission of Inquiry Act 1988* (Qld)
Commissioners	The Commissioners who constituted the Commission of Inquiry, namely the late Sir Harry Gibbs, presiding, the late Sir George Lush and the late Hon Michael M Helsham QC
Commission of Inquiry Act	The *Parliamentary (Judges) Commission of Inquiry Act 1988* (Qld)
Commission of Inquiry Report	First Report of the Parliamentary Judges Commission of Inquiry issued on 12 May 1989
committee	Legal Affairs and Community Safety Committee
Cosco	Cosco Holdings Pty Limited
ICJ	International Commission of Jurists (Australian Section)
ICJ Report	The report by the International Commission of Jurists (Australian Section) titled 'The Dismissal of Mr Angelo Vasta of the Supreme Court of Queensland' dated 27 March 1995
Fitzgerald Inquiry	The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct presided over by the Hon Mr Gerald Edward (Tony) Fitzgerald AC QC.
Fitzgerald Inquiry Report	*The Report of a Commission of Inquiry pursuant to Orders in Council* dated July 1989, issued by the Hon Mr Gerald Edward (Tony) Fitzgerald AC QC.
LSA	*Legislative Standards Act 1992*
Salroand	Salroand Pty Limited

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Honourable Angelo Vasta (Reversal of Removal) Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of parliament.

The committee has recommended that the Bill not be passed.

I would like to thank Mr Vasta for his valuable contribution to the inquiry. In examining this Bill, the committee has been mindful that the issues and questions before it largely revolve around the reputation and career of one individual, namely Mr Vasta. In this regard, the committee acknowledges the impact of the decision on Mr Vasta and his family and the potential impact that re-examining relevant issues will have.

I would also like to thank the Hon Michael (Mike) Ahern AO and Mr Bob Katter MP for attending and participating in the public hearing.

On behalf of the committee, I also thank those individuals and organisations who lodged written submissions on the Bill. I also thank Mr Robbie Katter MP, the committee's secretariat and the Queensland Parliamentary Library for their assistance.

I commend this report to the House.

Duncan Pegg MP

Chair

Recommendations

The committee recommends the Honourable Angelo Vasta (Reversal of Removal) Bill 2017 not be passed.

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Justice and Attorney-General, Training and Skills, and
- Police, Fire and Emergency Services, and Corrective Services.

Section 93(1) of the *Parliament of Queensland Act* 2001 provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

On 2 March 2017, the Honourable Angelo Vasta (Reversal of Removal) Bill 2017 (Bill) was introduced into the Legislative Assembly by Mr Robbie Katter MP, Member for Mount Isa, and referred to the committee. In accordance with the Standing Orders, the committee was required to report to the Legislative Assembly by 4 September 2017.

1.2 Inquiry process

On 12 May 2017, the committee wrote to Mr Katter seeking a written briefing on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The committee received written advice from Mr Katter on 22 May 2017 and received eight submissions (see **Appendix A**).

Given the nature of the inquiry, the committee wrote to Mr Angelo Vasta QC on 22 March 2017 to seek his views on the policy to be enacted by the Bill and any other matter he would like to bring to the committee's attention. Mr Vasta responded to the committee on 11 April 2017. The committee received additional correspondence from Mr Vasta dated 21 June 2017.

The committee held a public briefing with Mr Katter on 24 May 2017 (see **Appendix B**). A public hearing was held on the Bill on 9 August 2017 (see **Appendix B**).

The submissions, the correspondence from Mr Katter and Mr Vasta and the transcripts of the public briefing and the public hearing are available on the committee's webpage at www.parliament.qld.gov.au.

1.3 Policy objectives of the Honourable Angelo Vasta (Reversal of Removal) Bill 2017

The Bill is described as '[a]n Act to reverse the removal of the Honourable Angelo Vasta from office as a Supreme Court Judge'.[2]

The explanatory notes provide that the purpose of the Bill is to set aside or revoke the decision of the Queensland Parliament made on 8 June 1989 and the consequent decision of the Governor of Queensland to remove the Honourable Justice Angelo Vasta as a Judge of the Supreme Court of Queensland.[3]

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1 *Parliament of Queensland Act* 2001, section 88 and Standing Order 194.

2 Bill, long title.

3 Explanatory notes, p 1 and 8.

The Bill calls for a declaration that:

(a) the findings stated in the First Report of the Parliamentary Judges Commission of Inquiry[4] (the Commission Inquiry Report) did not warrant the removal of Mr Vasta from office as a Supreme Court Judge

(b) the exercise of the power to remove[5] Mr Vasta from office as a Supreme Court Judge is:

(i) invalid, and

(ii) taken to have never happened

(c) Mr Vasta did not, as a result of matters mentioned in the Commission of Inquiry Report, avoid his office as a Supreme Court Judge under the *Supreme Court Act 1867*, repealed section 12

(d) Mr Vasta is taken to have retired from office as a Supreme Court Judge under the *Supreme Court of Queensland Act 1991*, section 21(1).[6]

1.4 Relevant background information

In considering the Bill, the committee has referred to a number of key sources of information which provide relevant background and context to the issues addressed in the Bill. In particular, the committee has referred to:

- the speech made by Mr Vasta before the bar of the parliament on 7 June 1989[7]
- the subsequent debate in parliament on 7 and 8 June 1989 regarding the motion to remove Mr Vasta[8]
- the detailed Ministerial Statement made by Mr P J Clauson, then Member for Redlands and former Minister for Justice and Attorney-General on 25 October 1988 regarding the Security of Tenure and Removal of Office of Judges[9]
- the Second Reading Speech by Mr Clauson in relation to the Parliamentary (Judges) Commission of Inquiry Bill 1988[10]
- the Commission of Inquiry Report
- the report by the International Commission of Jurists (Australian Section) titled the 'Dismissal of Mr Justice Angelo Vasta of the Supreme Court of Queensland' dated 27 March 1995 (ICJ Report)
- numerous newspaper clippings and media articles relating to the relevant events.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

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4 This is a reference to the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988* (see definition in section 3(2) of the Bill).

5 The "power to remove" is defined in the Bill (section 3(2)) to mean a power to remove a judge under:
(a) the *Constitution Act 1867*, repealed section 15 and 16; or
(b) the repealed *Supreme Court Act 1995*, section 195.

6 In particular, see Queensland Parliament, Record of Proceedings, 25 October 1988, 20 April 1989, 30 May 1989, 7 June 1989 and 8 June 1989.

7 Queensland Parliament, Record of Proceedings, 7 June 1989, pp 5215-5260.

8 Queensland Parliament, Record of Proceedings, 7 June 1989, pp 5261-5348.

9 Queensland Parliament, Record of Proceedings, 25 October 1988, p 1748.

10 Queensland Parliament, Record of Proceedings, 15 November 1988, pp 2553-2575.

After examination of the Bill, including the policy objectives which it would achieve and consideration of the information provided by Mr Katter and from submitters, the committee recommends that the Bill not be passed.

Recommendation 1

The committee recommends the Honourable Angelo Vasta (Reversal of Removal) Bill 2017 not be passed.

2. Background

2.1 Overview

On 8 June 1989, Mr Angelo Vasta QC's commission as a Judge of the Supreme Court of Queensland was cancelled by the then Governor of Queensland, the late Sir Walter Campbell AC QC. The action taken by the Governor followed a motion of the Queensland Parliament passed the day before to remove Mr Vasta from the Supreme Court due to behaviour which in the opinion of a Parliamentary Judges Commission of Inquiry (referred to as either the Commission or the Commission of Inquiry) warranted his removal from office.

During his introductory speech, Mr Katter, provided the following overview:

> *In 1989, the parliament moved to dismiss the judge from his office on the basis of findings from a commission of inquiry established by the parliament. This is the only occasion since Federation that any parliament in Australia has removed a Supreme Court judge. The decision to remove the judge was made after a statutory commission of inquiry, established by an act of parliament, found that the judge's behaviour in some personal affairs warranted his removal from office. The allegations of this statutory commission included giving false evidence regarding the AAT incident at the defamation hearing; making and maintaining allegations that the then Chief Justice, Attorney-General and Mr Fitzgerald QC had conspired to injure him; arranging sham transactions to gain income tax advantage; and making false claims for taxation deductions in respect of the lease of a library.*[11]

Wanna and Arklay describe the removal of Mr Vasta as 'an event rare in the annals of parliamentary history, when the parliament sits effectively as a higher court deciding on the fate of judicial officers.'[12]

In his introductory speech, Mr Katter referred to a number of members of parliament who at the time of the removal, and subsequently, publicly or privately voiced their concern at the events surrounding the removal of Mr Vasta.[13]

Mr Katter concluded:

> *Angelo Vasta, at 76 years of age, is now too old to be re-admitted. This is about righting the wrongs of the past and the parliament doing the right thing. It is not about condemning anyone who was involved in the decision. It is important to note that there is no issue of compensation, it is just about clearing someone's name.*[14]

2.2 Chronology of events

The following chronology summarises key events in the removal of Mr Vasta from office and provides additional background and context to the Bill:

Date	Event
9 February 1984	Mr Angelo Vasta was appointed a Judge of the Supreme Court of Queensland.[15]

11 Introductory speech, Queensland Parliament, Record of Proceedings, 2 March 2017, p 468.

12 John Wanna and Tracey Arklay, *The Ayes Have it- The history of the Queensland Parliament 1957-89,* ANU E Press, 2010, p 621.

13 Introductory Speech, Queensland Parliament, Record of Proceedings, 2 March 2017, p 469.

14 Introductory Speech, Queensland Parliament, Record of Proceedings, 2 March 2017, p 469.

15 Supreme Court Library Queensland, *The Honourable Angelo Vasta,* http://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/avasta - accessed on 29 August 2017.

Date	Event
March 1986	Mr Vasta commenced a defamation action in the Supreme Court of Queensland against the magazine *Matilda* for articles published in November 1985 and March 1986 on a number of issues, including his friendship with Sir Terence Lewis who was the then Queensland Police Commissioner.[16]
10 September 1986	Mr Vasta gave evidence in a hearing before the Supreme Court of Queensland in relation to the defamation action, including evidence regarding his relationship with Sir Terence Lewis.[17]
May 1987	The Hon Tony Fitzgerald AC QC was appointed to preside over the 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct' (the Fitzgerald Inquiry) which was ordered by the then Acting Premier, the late Hon William Angus Gunn.[18]
April and May 1988	A request for a statement to the Fitzgerald Inquiry was made to Mr Vasta resulting from Mr Vasta being one of a number of persons referred to in the diaries of Sir Terence Lewis.[19] However, Mr Vasta declined to provide a statement to the Fitzgerald Inquiry.[20]
17 October 1988	Mr Vasta was given notice by a Senior Counsel assisting the Fitzgerald Inquiry that evidence might emerge which brought his conduct into question. One concern was in relation to the truthfulness of sworn evidence which Mr Vasta had given on 10 September 1986 in the course of his defamation action against the magazine, *Matilda*.[21]
24 October 1988	Mr Vasta stood down from judicial duties.[22]
17 November 1988	The *Parliamentary (Judges) Commission of Inquiry Act 1988* (Qld) (Commission of Inquiry Act) was assented to and came into force.[23]
12 May 1989	The Commission of Inquiry Report was submitted to the Speaker.[24] In its report, the Commission advised the Legislative Assembly that the behaviour of Mr Vasta in relation to certain nominated matters, viewed in conjunction with one another, warranted his removal from office as a Judge of the Supreme Court. The Commission also noted that an address for removal of the Judge should be presented to the parliament and that such removal lay

16 The Parliamentary Judges Commission of Inquiry established under the *Parliamentary (Judges) Commission of Inquiry Act 1988* (Qld)(Commission of Inquiry Report), p 14.

17 The Hon Tony Fitzgerald AC QC, *Report of a Commission of Inquiry pursuant to Orders in Council*, July 1989, p 325 (the Fitzgerald Inquiry Report).

18 Fitzgerald Inquiry Report, p 70.

19 Fitzgerald Inquiry Report, p 324.

20 Fitzgerald Inquiry Report, p 324.

21 Fitzgerald Inquiry Report, p 325.

22 The Commission of Inquiry Report notes that it is not entirely clear whether Mr Vasta stood down or was stood down. In any case, the Commission found that "it does not matter which is correct" (Commission of Inquiry Report, p 14.)

23 Commission of Inquiry Report, p 1.

24 Commission of Inquiry Report (Correspondence).

Date	Event
	within the discretion of the Legislative Assembly.[25]
7 June 1989	Mr Vasta appeared at the bar of the Queensland Legislative Assembly and addressed the House regarding the findings of the Commission of Inquiry.[26]
8 June 1989 (at 3:00am, following the 7 June 1989 sitting)	A motion was agreed by the Legislative Assembly to present an address to the Governor to remove Mr Vasta from the office of Judge due to behaviour which in the opinion of a Commission of Inquiry warranted his removal from office, with which opinion the Legislative Assembly concurred.[27]
8 June 1989	Mr Vasta's commission as a Judge of the Supreme Court of Queensland was cancelled by the Governor acting by and with the advice of the Executive Council.[28]
27 March 1995	Report issued by the International Commission of Jurists (Australian Section) (ICJ) titled the 'Dismissal of Mr Justice Angelo Vasta of the Supreme Court of Queensland'.
12 September 1995	The late Hon Neil John Turner, then Member for Nicklin, raised the matter of Mr Vasta's removal as a matter of public interest in parliament.
1996	A sum of $600,000 was paid to Mr Vasta by the government.[29]

2.3 The removal of Mr Vasta

The process that was followed in the removal of Mr Vasta from office is summarised below.

Standing down of Mr Vasta

As noted in the chronology above, Mr Vasta either stood down or was stood down as a Judge of the Supreme Court of Queensland after evidence of his friendship with the suspended Police Commissioner Sir Terence Lewis was given at the Fitzgerald Inquiry the previous week.[30] Mr Vasta was reported to have requested that the government allow him to answer his accusers before the bar of parliament or a panel of retired judges.[31] On 28 October 1988, the Hon Michael John (Mike) Ahern AO, then Member for Landsborough and Premier and Treasurer and Minister for State Development and the Arts, announced that the Cabinet had decided to seek advice about commissioning a panel of judges.[32]

Commission of Inquiry

During the Second Reading Speech of the Parliamentary (Judges) Commission of Inquiry Bill, Mr Clauson outlined why it was necessary to establish a parliamentary commission of judges to advise the

25 ICJ Report, p 3.
26 ICJ Report, p 4.
27 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5261 and p 5343.
28 *Queensland Government Gazette*, (No 53A), 8 June 1989, p 718A.
29 Explanatory notes, p 7 and Public hearing transcript, p 3.
30 Commission of Inquiry Report, p 14.
31 *Fitzgerald Police Corruption Inquiry – Vasta alleges conspiracy, gets panel hearing*, The Canberra Times, 28 October 1988 (http://trove.nla.gov.au/newspaper/article/102017837; accessed 22 August 2017).
32 *Fitzgerald Police Corruption Inquiry – Vasta alleges conspiracy, gets panel hearing*, The Canberra Times, 28 October 1988 (http://trove.nla.gov.au/newspaper/article/102017837; accessed 22 August 2017).

House:

> *Because of the serious nature of these matters, it is proper that a parliamentary commission of judges or retired judges be appointed to advise this House, firstly, as to the substance of the matters which have been raised in relation to both judges and, secondly, as to whether such matters, in the opinion of the commissioners, are such as would warrant the removal of a judge from office. Only if specific advice is received that removal is warranted should this Parliament be called upon to confront the issue as to whether it should make an address seeking the removal of a Supreme Court judge.*[33]

Mr Clauson also acknowledged the unique nature of this legislation:

> *Mr Speaker, this legislation is unique for Queensland. I would hope that the situation will never arise again when it will be necessary for this House to give consideration to legislation of this type. However, as I have previously said, serious allegations have been raised which must be seriously confronted.*
>
> *This legislation will provide the mechanism whereby this Parliament may obtain the best possible advice to assist it to determine whether it will use the powers, which are latent but which it does possess, in relation to the maintenance of appropriate standards in the judiciary of Queensland.*[34]

The Commission of Inquiry Act was assented to and came into force on 17 November 1988.[35] Under this Act, three retired judges, namely Sir Harry Gibbs, Sir George Lush and the Honourable Michael Helsham QC, (the Commissioners) were appointed to the Commission of Inquiry to advise the Legislative Assembly, among other things, whether:

> *… any behaviour of the Honourable Mr Justice Angelo Vasta since his appointment as a Judge of the Supreme Court constitutes such behaviour, as either of itself or in conjunction with any other behaviour, warrants his removal from office as a Judge of the Supreme Court.*[36]

The Commission of Inquiry heard nearly 45 days of evidence and submitted its lengthy report to the Speaker on 12 May 1989.[37] The Commission set out in detail the procedures and processes used throughout its inquiry and highlighted in its judgement that under section 5(4) of the Commission of Inquiry Act:

> *… the Commission is required to submit with any report made to the Speaker not only its findings of fact and its conclusions as to the behaviour of the two judges but also a record of so much of the evidence before it as it thinks necessary to substantiate those findings of fact and conclusions.*[38]

During the hearing concerning Mr Vasta, 411 exhibits were tendered to the Commission, including a number of tapes which when transcribed resulted in 3,111 pages of transcript.[39]

Commission of Inquiry Report

In its report, the Commission found '[i]n the judge's favour, there is not the slightest reason to believe that he has been guilty of misconduct in carrying out, or in connection with, the duties of his office as a judge.'[40]

Additionally, the Commission found nothing improper in the meetings or discussions between Mr

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33 Queensland Parliament, Record of Proceedings, 15 November 1988, 2554.
34 Queensland Parliament, Record of Proceedings, 15 November 1988, 2555.
35 Commission of Inquiry Report, p 1.
36 Section 4 of the Commission of Inquiry Act.
37 Commission of Inquiry Report, p 163.
38 Commission of Inquiry Report, p 6.
39 Commission of Inquiry Report, p 6.
40 Commission of Inquiry Report, p 46.

Vasta and the then Sir Terence Lewis.[41]

However, the Commission concluded that the behaviour of Mr Vasta in relation to certain nominated matters, viewed in conjunction with one another, warranted his removal from office as a Judge of the Supreme Court. The Commission also noted that an address for removal of the judge should be presented to parliament and that such removal lay within the discretion of the Legislative Assembly.[42]

The Commission detailed the matters it considered warranted Mr Vasta's removal:

> *The Commission advises the Legislative Assembly that in the opinion of the members of the Commission the behaviour of Mr Justice Vasta in relation to the matters mentioned in the following paragraph, viewed in conjunction with one another, warrants his removal from office as a Judge of the Supreme Court.*
>
> *The matters which warrant his removal are those which may briefly be described as follows:*
>
> *(a) Giving false evidence regarding the AAT* [Administrative Appeals Tribunal] *incident at the defamation hearing;*
>
> *(b) Making and maintaining allegations that the then Chief Justice, the Attorney-General and Mr Fitzgerald QC had conspired to injure him;*
>
> *(c) Falsely stating to the accountant who was preparing the income tax returns of Cosco that the cost of the company's plant was $14m and, knowing that the company had been deceiving the income tax authorities with regard to the cost of the plant, taking no steps to end the deception;*
>
> *(d) Arranging the following sham transactions to gain income tax advantages:*
>
> *(i) the loan from Cosco to Salroand;*
>
> *(ii) the consultancy fee;*
>
> *(iii) the lease of the Gold Coast unit; and*
>
> *(iv) the exchange of cheques relating to overseas travel expenses.*
>
> (e) *Making false claims for taxation deductions in respect of the lease of the library*.
>
> *The findings in relation to these matters are set out in the report.*
>
> *The behaviour of the Judge in giving at the defamation hearing evidence which he knew to be incorrect was of a kind which would normally be very serious but the evidence was given in circumstances that are explained in s.3 of the report. The allegations of conspiracy, similarly, may be regarded as isolated and irrational behaviour caused by stress. The Commission did not need to consider whether either of the matters mentioned in this paragraph by itself would have warranted removal, because they did not stand alone. …*
>
> *The decision whether an address for removal of the Judge should be presented in these circumstances lies within the discretion of the Legislative Assembly.*[43]

The Speaker tabled the Commission of Inquiry Report in the House on 30 May 1989 together with the accompanying documents. The Speaker further advised the House that copies of the Commission of Inquiry Report would be circulated during the recess that day and that the eight boxes of accompanying documents may be inspected in the Table Office.[44]

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41 Commission of Inquiry Report, p 25. Terence Lewis was stripped of his knighthood in March, 1993.

42 Commission of Inquiry Report, p 11 and p 164.

43 Commission of Inquiry Report, pp 163-4.

44 Queensland Parliament, Record of Proceedings, 30 May 1989, pp 5116-7.

Address by Mr Vasta to the parliament

On 7 June 1989, Mr Vasta was given leave to appear at the bar of the Queensland Legislative Assembly to address the House. The initial time allowed for his address was not to exceed 75 minutes, although this time period was extended to approximately two and half hours and was limited to the findings of the Commission.[45]

After moving a motion for Mr Vasta to 'show cause' before the parliament, the Premier stated:

> *The commissioners have found and reported to Parliament that there has been behaviour by the judge such that his removal from office is warranted. No responsible Parliament could in those circumstances do other than call upon the judge to show cause why he should not be removed. That course is consistent with history, convention, the law and proper constitutional practice. The resolution proposed by the Government will give the judge full and proper opportunity to show cause without embarking upon a re-examination of those matters so minutely and carefully examined by the commissioners.*[46]

Mr Vasta raised a number issues during his address at the bar of the parliament, many of which have arisen again during the committee's inquiry. Some of the points raised by Mr Vasta are summarised below.

Mr Vasta spoke about the lack of precedent for the removal of a judge for behaviour unconnected with the judge's judicial functions:

> *May I mention at the outset that, according to my researches, there is no precedent in England, and certainly there is no case in Australia, where a superior court judge has been removed from office because of behaviour unconnected with the discharge of his judicial functions and where that behaviour has not resulted in a conviction for an infamous offence.*[47]

The test for determining whether a judge was unfit for office was described by Mr Vasta as being whether the parliament could find the judge's behaviour so morally wrong that it demonstrated an unfitness for office:

> *And so in the case of the late Honourable Mr Justice Murphy the Commissioners Sir George Lush, Sir Richard Blackburn and the Honourable Andrew Wells, QC, had to decide whether "misbehaviour" as contained in section 72 of the Australian Constitution meant only (a) misconduct in office and (b) conviction for an infamous offence. The commissioners ruled that to remove a judge for behaviour not connected with his judicial duties it was unnecessary that there be a conviction. They ruled, and the parliamentary commission in my case followed that ruling, that a judge may be removed for behaviour other than misconduct in office if and only if a judge was guilty of conduct—*
>
> > *"whether criminal or not and whether or not displayed in the actual exercise of judicial functions, as, being morally wrong, (and) demonstrates unfitness for office of the judge in question."*[48]

Mr Vasta stressed that the decision to remove a Supreme Court Judge cannot be delegated:

> *The removal of a Supreme Court judge is one for the Parliament and for the Parliament only. It is not a function that can be delegated. The report of the Parliamentary Judges Commission of Inquiry is to assist you in the discharge of that duty. You cannot salve your conscience by saying "This is their opinion and I will follow it blindly." The decision that you make will not be for today or tomorrow but for all time. What you are deciding is a most important question. It is not to be*

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45 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5216 and ICJ Report, p 4.

46 Queensland Parliament, Record of Proceedings, 30 May 1989, p 5147.

47 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.

48 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.

treated as a formality and this House ought not to be seen as a mere rubber stamp endorsing the opinions of others, no matter how eminent you may consider those holding the view expressed.[49]

During his address, Mr Vasta examined each of the five matters considered by the Commission as warranting his removal. Mr Vasta provided reasons and evidence, in some cases new evidence, why each of the matters should not be relied upon. He then concluded his address with the following:

I would ask you, honourable members, to consider the matters I have put to you carefully and that your ultimate decision be one with which you feel you can live for the rest of your lives. May I, at the risk of being repetitive, emphasise the fact that the conduct you have to examine does not concern behaviour connected with the discharge of judicial duties. Nothing adverse has been found with regard to that. … Honourable Members, the short question you will have to ask yourselves is: has it been demonstrated that the conduct of this judge has been so morally wrong as demonstrates his unfitness for office as a judge? Each of you must answer this question according to your own individual conscience. Irrespective of your collective answer to the question, may I say: I know that I will got to my grave and to my God with a clear conscience knowing that I have done no such wrong.[50]

Mr Vasta also discussed the lack of appeal rights available to him during his address:

The knowledge that dire consequences flow from your adverse decision and the fact that from the commissioners' findings there are no avenues of appeal dictate that, in the interests of basic fairness and justice, you look at this matter carefully.[51]

Mr Vasta also highlighted his concern that he had no possibility of reinstatement in the event of an adverse decision of the parliament:

What comfort is it to me if you vote against me on these vital matters and these transactions will be found to have been made in accordance with the provisions of the Income Tax Assessment Act? Can I come back to this House and appeal and say, "Will you reinstate me?"[52]

Mr Vasta also considered the possibility that the Commissioners could have made a mistake:

The commissioners are very distinguished retired superior court judges. With the greatest respect, however, they are not the Blessed Trinity and are prone to ordinary human fallibility. Our system of justice recognises that judges make errors and, for this reason, we have structured avenues of appeal.[53]

The address concluded at 6:07pm and the parliament was suspended until 8:00pm.

Motion to remove Mr Vasta

At 8:00pm on 7 June 1989, the then Premier, Hon Mike Ahern moved a motion that an address be presented to His Excellency the Governor to ask him to remove Mr Vasta from the office of Judge of the Supreme Court of Queensland. After moving the motion, the Premier provided the following introductory remarks:

In addressing us, the judge has, as he is entitled to do, sought to cover again the facts that have been so carefully and exhaustively explored by the retired judges. In doing so, the judge has effectively told us that the retired judges were wrong, having had the advantage of hearing all the evidence, having seen all the witnesses and having watched those who gave evidence contrary to the judge be vigorously cross-examined, and that the Parliament—not trained or

49 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.
50 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5260.
51 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.
52 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5232.
53 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.

experienced as judges—should now reach an entirely different conclusion from that of the retired judges.

If an advocate were here to address us on the other side, he would refer in detail to all the evidence that runs counter to that to which the judge has today drawn our attention. Such an advocate would also tell us that appeal courts only very rarely interfere with the finding of fact made by a single judge who has first heard the case and listened to all the witnesses. Here that role has been performed by three of the most highly experienced judges in Australia, with a collective judicial experience well in excess of 50 years.[54]

In relation to the AAT matter, the Premier commented as follows:

This House should also appreciate that, in respect of the AAT incident, the judge does not say that it was not such as to constitute misbehaviour. He says simply, contrary to the most explicit findings of the retired judges, that it did not happen.[55]

In relation to the tax matters, the Premier observed:

As to the claims of the judge that the commission has usurped the powers of the commissioner of income tax, I am bound to say that such a contention is utterly without foundation. It is wrong in both fact and law. The income tax commissioner may do exactly as he wishes in relation to the matter. Nothing that he does or chooses not to do will alter the facts found by the retired judges.

It often happens that courts and tribunals do sit in parallel and do decide facts that will fall to be considered by both of them. Of course, the reason why the commissioner of income tax may not have treated the relevant transactions as shams is that, as the retired judges demonstrate by their findings, the true facts were either concealed or obscured by Mr Justice Vasta and others.[56]

In relation to the conspiracy allegations, the Premier stated:

Here today the judge has sought to rely on a proposition that I had believed him to have abandoned; that there was an arrangement, a common aim, of Sir Dormer Andrews, Mr Fitzgerald, QC, and the Attorney-General—in short, a conspiracy between them—to make him give corroborative evidence to obtain a conviction for perjury against Sir Terence Lewis. Even though when pressed the judge admitted that there was no such conspiracy, he claims that he was entitled at the time to believe that such a conspiracy existed. The absurdity of that as a proposition can be immediately demonstrated. No-one could possibly believe that it would or should be necessary to impose any pressure on a judge—a judge of the Supreme Court—to come along to give, if he was aware of it, evidence of the commission of a criminal offence by another. That is the moral duty of any citizen, I would hope, and any fit judge would know that he should bring to the attention of appropriate authorities any evidence that he had of criminal activity.[57]

In conclusion, the Premier made the following remarks:

I have studied the findings of the commissioners. I have listened with great care and attention to everything that has been said by the judge. I am fully aware of the critical importance of the independence of the judiciary. I am conscious that in the whole of the history of Queensland this Parliament has never found it necessary to seek finally of the Crown the removal of a judge for misbehaviour. But as I have said in this House on earlier occasions, the Government is irrevocably committed to the best possible standards of conduct in public life. Nothing could be more important than that the judiciary stand at the highest level of public esteem and confidence.

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54 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5261.
55 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5262.
56 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5262.
57 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5262.

In their report the commissioners have reaffirmed with clarity and certainty that a judge in his life off the bench as well as on it must maintain the very highest standards of circumspection and probity.

It could give no mover of such a resolution any pleasure to do so. But the findings of the commissioners are explicit, unequivocal and ultimately inescapably damning. No more time, no more money and no more effort should be expended in discharging the duty that the judge's behaviour imposes on us.

I ask only one thing of honourable members: that they make this historic but regrettable occasion as brief and as mercifully painless as possible. To do otherwise will make more difficult the task of those judges who daily honestly and conscientiously discharge their duties on and off the bench.[58]

The Premier's motion was seconded by Mr Clauson, who stated:

Along with all other honourable members, I listened carefully and considered at some length what was said by His Honour. Regrettably, I have to inform the House that I was not moved, by anything that was said, to fail to act upon the clear advices tendered by the Parliamentary Judges Commission of Inquiry in its first report. Any person who has read that report would be in no doubt that this House has the unhappy but necessary duty of supporting this motion and ensuring that Mr Justice Vasta is removed as a judge of the Supreme Court.

Having read the report of the commission, I was left in no doubt whatsoever that His Honour has engaged in conduct of a type that is totally unbecoming of a judge. In order that the public retains its respect for the judiciary and for the system of justice, it is incumbent on us to support this motion. In saying this, I am cognisant of the unique and unhappy precedent that this sets.[59]

Mr Clauson then considered each of the grounds that the Commission found warranted Mr Vasta's removal and reminded the House of the process that had been undertaken by the Commission in coming to its conclusions:

But let me turn once again, and let me emphasise it once again, to the Parliamentary Judges Commission of Inquiry, which heard almost 45 days of evidence regarding this matter. It had the benefit of seeing the judge and other witnesses give their evidence and be cross-examined at length. It was able to form opinions as to the credit of witnesses and consider the evidence for a considerable period of time and made its findings as a result. We, on the other hand, have heard an address of the judge of some two and a half hours that raised nothing new that would affect the findings of the commission. The judge has been given his opportunity to address us and he has done so, but he has not produced anything of substance that detracts from the clear and compelling findings of the commission.[60]

Mr Clauson noted the distinction between the findings concerning Mr Vasta's judicial duties and his extra-judicial activities:

The findings of the commission which I have outlined relate solely to His Honour's extra-judicial activities. No-one has suggested, and no evidence has been produced, to show that His Honour, in exercising his judicial duties, did not act otherwise than in an appropriate manner. It is His Honour's extra-judicial activities that have caused this unhappy situation to arise and it is absolutely critical and important, both for the reputation of His Honour and the Supreme Court, that it be placed on public record that no responsible person has claimed that, in carrying out his duties as a judge, he acted improperly.[61]

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58 Queensland Parliament, Record of Proceedings, 7 June 1989, pp 5263-4.

59 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5264.

60 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5268.

61 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5269.

Mr Clauson explained to the House the relevance of extra-judicial activities when considering whether Mr Vasta should be removed from office:

> *Whilst I am both disappointed and disturbed by the extra-judicial activities of Mr Justice Vasta, I am satisfied that as a judge he fulfilled in a competent and professional way the duties that his office demanded of him. It has long been accepted that a judge's extra-judicial activities are of relevance in determining his fitness to remain on the bench. In a 1986 address, Mr Justice Demack, a judge of the Supreme Court, said—*
>
> > *"A judge's private life should be as impeccable as his public life. The reason for this lies in the very broad range of human experience and conduct with which he has to deal and upon which he has to pronounce judgment. If he is required publicly to condemn what he privately practises, it is inevitable that in a short time his bias will come through."*
>
> *I endorse these comments, which need to be carefully considered by honourable members when assessing whether His Honour's extra-judicial activities as found by the commission were appropriate for a judge of the Supreme Court. Judges hold an important and privileged position in our society. Much power and authority is vested in them and much trust is reposed in their office.*[62]

At 8:40pm, the late Hon Wayne Goss, the then Member for Logan and Leader of the Opposition, rose to speak. He commenced his statement with the following:

> *Today, we are witnessing a tragedy both in personal terms and for the institution of the Supreme Court and the judiciary in general. Given the nature of this occasion, both the historic and the momentous nature of what we do, it is most important that we not rush this debate and the decision.*[63]

The Hon Goss acknowledged that the Opposition's view in relation to the removal of Mr Vasta had changed:

> *I would say that the Opposition came to this Parliament today with the overwhelming view that the recommendation for the removal of the judge should be supported but, frankly, I should tell the House that after hearing the judge there is an increased number of members of the Labor Party who have misgivings, who have doubts, who have either changed their minds or who want more time to consider the matter. They want an opportunity to read some of the transcript. They want an opportunity to read the judge's speech. People took some rough notes. Nobody that I know of apart from representatives of the media, has got a copy of the judge's speech*.[64]

Mr Max Richard Menzel, former Member for Mulgrave, expressed concern about the evidence and process undertaken regarding the removal of Mr Vasta:

> *It is an historic occasion, but it is also a sad occasion, because, after reading the report, I am not totally convinced of the findings of the commission, no matter how eminent its members are. Today the judge raised new points which I believe must be looked into.*
>
> *…*
>
> *I believe that Mr Justice Vasta, rightly or wrongly, was charged, convicted and hung by the media long before the commission of inquiry was set up. To me he appeared to be a marked man. I believe in a fair go for everyone. I believe that in this place members of Parliament should be able to stand and say what they feel*.[65]

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62 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5269.
63 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5269.
64 Queensland Parliament, Record of Proceedings, 7 June 1989 p 5271.
65 Queensland Parliament, Record of Proceedings, 7 June 1989 p 5291.

Mr Menzel also stated:

> *I am expressing my views as a member of Parliament. I am not pointing the finger at anyone. As a member of Parliament representing my electors in Mulgrave, it is my duty to draw the attention of members of this House to anomalies that exist. If that right is taken away from me as a member of Parliament, it will be a sad day for Queensland*.[66]

The Hon Goss also raised concerns regarding the taxation matters being determined by the Commission instead of being considered by the Deputy Commissioner of Taxation:

> *In relation to the taxation matters, the findings of false claims, the findings of sham transactions—there is a strong view amongst members of the Opposition that they would like to check those sections of the transcript, that they would like to consider in more detail and seek some advice in relation to the proposition advanced by the judge that a sham is not a sham until it is so found by the Deputy Commissioner of Taxation. There is a strong view—and it is one that I can understand, although I do not share it—which warrants further consideration, that is, if it is a taxation matter, if it is a false claim, if it is a sham transaction, then it is not one for the commission; it is one that should be left to the Deputy Commissioner of Taxation for an assessment and a prosecution, if that is appropriate.*[67]

The speed at which the matter was being considered was also raised as a concern by the Hon Goss:

> *In conclusion, I point out that the Opposition has a grave concern. A number of members were given cause to doubt some of the findings and the appropriateness of making a decision tonight before they had a chance, with the opportunity of calm reflection, to read the judge's comments and to read sections of the transcript. They would seek that opportunity. The Opposition would argue that a further opportunity should be given to do that. Legal points have been raised. Questions of fact have to be considered*.[68]

The need to be satisfied on all five matters was also highlighted as a concern by the Hon Goss:

> *We have to remember that even if four out of the five adverse findings made by the commissioners are accepted, they said that the five go together. We must remember that repeatedly in their report, having made an adverse finding against the judge, the judges say, "This is not of itself sufficient to warrant his removal." We must bear that in mind when we look at the five together. I do not believe that Members can simply on a rush basis condemn him on two, three or four of the findings; it seems that we have to be satisfied in relation to the five—the totality. In that regard the report is quite unsatisfactory in a number of respects.*[69]

In conclusion, the Hon Goss stated:

> *How can any Member in conscience abide by last week's decision to receive the report and give the judge a hearing and then make a decision tonight without an adequate opportunity to consider what the judge said and to go away and research those issues—whether they be the legal points or the transcript— or simply to sit back and take a day or two to read the judge's speech calmly and carefully and compare it with that very voluminous report?*
>
> *The inquiry lasted 43 days and the recommendations comprise a couple of hundred pages, but nobody has read the 2 000 pages of transcript that are down in the basement. Tonight the judge gave a lengthy speech which I believe warrants favourable and further consideration. I do not think that it will budge me, but to be comfortable I want to look at it further*.[70]

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66 Queensland Parliament, Record of Proceedings, 7 June 1989 p 5293.
67 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5272.
68 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5273.
69 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5273.
70 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5274.

The Hon Goss then moved a motion that the debate be adjourned for seven days.[71] This motion was seconded by Mr Kenneth Victor (Ken) McElligott, the then Member for Thuringowa, who concluded his remarks on the motion with the following:

> *I support strongly the motion of the Leader of the Opposition that the debate be now adjourned for a period of seven days. It is a matter of such importance that I do not believe that any Member of this House would believe that it needs to be rushed. It must be acknowledged that the Opposition made the point very clearly that it is our responsibility as a democratically elected House of Representatives of the people to ensure that, in this important issue, the judge have every opportunity to present his case.*
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> *…*
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> *We in the Opposition appeal for a similar display of common sense and understanding to be given to the judge on this occasion. We should have the opportunity to seek that additional advice; we should have the opportunity to examine the transcripts, particularly in relation to those matters where the evidence differs, or appears to differ, in very important aspects from the report of the inquiry and the comments that have been made to the House today by the judge. We need that information before we make what for all of us, I think, will probably be the most important decision that we make in our lives.*[72]

The former leader of the Liberal Party and then Member for Sherwood, Mr John Angus Mackenzie (Angus) Innes MBE, made the following comments concerning the motion for the adjournment for the debate:

> *After discussions during the dinner recess, the Liberal Party had formed precisely the same view as that indicated by the Leader of the Opposition. …*
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> *It would be unreasonable to proceed kangaroo-court style immediately to deliver the coup de grace on the basis of some preconceived view. Certainly, Members of my party want time to consider those submissions, to peruse the Hansard record of the two- hour address, to look again at the recommendations themselves, to discuss with me the implications of the claim of new evidence and to be* [sic] *satisfy themselves that, after giving full recognition to all the arguments and all the evidence, they can support or disagree with this historic finding—historic motion—that they are being called upon to support.*[73]

Speaking on the motion to adjourn for seven days, the Premier responded:

> *The plain facts are that this Parliament created a commission as a fact-finding body to give the Parliament expert advice on the behaviour of judges, plural. The commission has conducted a wide-ranging investigation and has found as a fact five areas on which the removal of Judge Vasta is justified. If the Parliament defers consideration of the issue, it is seeking to put itself in place of a commission that is a fact-finding body and is failing to accept the advice of the commission, that is, that the behaviour of Judge Vasta warrants his removal. The House is not an appropriate body to conduct a fact- finding exercise. It should accept the advice of three eminent, retired judges on the standards of behaviour of a judge. It should do that without delay.*[74]

Despite the views expressed by Mr Menzel, and a number of other members, they voted against the motion to adjourn the parliament's debate for seven days, and accordingly, the motion failed with 38 Ayes and 43 Noes.[75]

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71 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5274.
72 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5275.
73 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5276.
74 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5277.
75 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5278.

After further detailed debate, which continued until 3:00am on 8 June 1989, the Premier's motion that an address be presented to the Governor to ask him to remove Mr Vasta from the office of Judge of the Supreme Court of Queensland was carried on the voices.[76]

2.4 The International Commission of Jurists Report (1995)

In May 1995, six years after the removal of Mr Vasta from the Queensland Supreme Court Bench, the Council of the Australian Section of the International Commission of Jurists (ICJ) issued a report titled the *Dismissal of Mr Justice Angelo Vasta of the Supreme Court of Queensland, Australia* (ICJ Report). The ICJ Report was prepared by a committee of the ICJ, comprising the Honourable Justice Kirby AC CMG, the Honourable Mr Justice Dowd AO, Dr S.C. Churches, M.R. Gracie, N.E. Abadee and D.W. Allen. The committee was formed following representations made to Mr Justice Kirby, in his position as President of the Australian Section of the ICJ, by Councillor Kerry Smith of the Gold Coast City Council, on behalf of the 'Justice for Vasta Committee'.[77]

The issues for consideration by the ICJ were whether:

(a) the dismissal of Mr Vasta was in accordance with basic principles of justice

(b) the Commission of Inquiry and the parliament of Queensland had given proper weight to an important principle underpinning the rule of law, namely, judicial independence, and

(c) the mode of dismissal of Mr Vasta represented an unwarranted termination of his judicial tenure.[78]

The ICJ Report discussed each of the matters considered by the Commission. The ICJ Report separately investigated each sub-matter identified in the Commission of Inquiry Report and therefore referred to a total of "eight counts" rather than to "five matters" as they are referred to in the Commission of Inquiry Report. A summary of the ICJ's findings on each matter is set out below.

Count One: Alleged false evidence during the defamation hearing regarding the AAT incident

The facts of the first matter relate to an alleged discussion between Mr Vasta, his wife and two journalists, and are set out in detail in the Commission of Inquiry Report and summarised in the ICJ Report. The ICJ Report noted:

> *A special inquiry of three former judges formed an unfavourable view of this evidence (and that of his wife) compared with that of the two journalists. The comment can be made that in any litigation a court may prefer the evidence of one party to that of another but that falls a long way short of constituting established perjury and may have no consequence other than the loss of the civil action.*[79]

The ICJ Report noted that the findings of the Commission, in this regard, differed from the findings of Master Lee in the original defamation proceedings.[80] The ICJ Report also noted that no finding was made that this matter of itself warranted Mr Vasta's removal.[81]

Count Two: Making and maintaining allegations that the then Chief Justice, the Attorney-General and Mr Fitzgerald QC had conspired to injure him

The ICJ Report referred to this matter as 'the most serious allegation made against Mr Justice Vasta'.[82] The facts of this matter are discussed at length in the Commission of Inquiry Report and also summarised in the ICJ Report. During the Commission of Inquiry, Mr Vasta withdrew his allegation of

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76 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5343.
77 ICJ Report, p 1.
78 ICJ Report, p 5.
79 ICJ Report, pp 8-9.
80 ICJ Report, p 10.
81 ICJ Report, p 8.
82 ICJ Report, p 10.

a 'conspiracy' between the then Chief Justice, the Attorney-General and the Hon Tony Fitzgerald AC QC.[83]

The ICJ Report noted that while the Commission concluded that the making and maintaining of the allegations constituted behaviour inappropriate in a judge, the Commission did acknowledge that Mr Vasta was 'under enormous media and political pressure at the relevant time' and that such behaviour did not of itself warrant his removal as a Judge of the Supreme Court.[84]

> *The Commission condemns the publication of the allegations as behaviour of a judge that was wrong, misguided, lacking in judgement and without foundation. But a sincere belief in the truth of the allegations was held, a desire to have wrongs put right motivated it, and it was action taken by a judge under enormous strain whose life and work was being caused to collapse around him. In all the circumstances, the Commission has formed the opinion that the behaviour of Mr Justice Vasta in making public allegations was, as a separate head of behaviour, not such as would warrant his removal as a Judge of the Supreme Court.*[85]

Count Three: Alleged false statement as to the cost of Cosco's plant etc

In broad terms, the third matter related to Mr Vasta allegedly falsely stating to the accountant who was preparing the income tax returns of Cosco Holdings Pty Limited (Cosco)[86] that the cost of the company's plant was $14 million. Mr Vasta was also alleged to have known that the company had been deceiving the income tax authorities with regard to the cost of the plant and had allegedly failed to take steps to end the deception.[87] The details of this matter are set out in the Commission of Inquiry Report and summarised in the ICJ Report.[88]

The ICJ Report noted that the Commission preferred the testimony of the accountant, Mr Maloney, from Coopers & Lybrand, over that of Mr Vasta, although it acknowledged that Mr Maloney may have had a motive to protect himself in respect of his previous preparation of the income tax returns concerning a figure of $14 million.[89] The ICJ Report also noted that, although Mr Vasta was no longer a director of Cosco, the Commission considered that 'as the husband of a director and close associate of another', Mr Vasta had an obligation to take steps to bring the true facts as to the cost of the acquisition to the knowledge of the Commissioner of Taxation.[90]

The Commission, as the ICJ Report pointed out, did not state that this matter was one that warranted his removal but was one 'which must be taken into account in deciding whether any behaviour of the Judge is such as warrants his removal'.[91]

Count Four: Alleged sham loan from Cosco to Salroand to gain an income tax advantage

This matter related to tax deductions claimed for interest paid to Cosco in relation to a loan to Salroand Pty Limited (Salroand), a company formed to serve the role as trustee for a family trust for Mr Vasta. The ICJ Report noted that '[t]he Commission said it was difficult not to conclude that the purported loan by Cosco was a sham and that Salroand obtained tax benefits to which it was not entitled'.[92]

The ICJ Report however disagreed with this conclusion of the Commission and noted that:

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83 ICJ Report, p 11.

84 ICJ Report, p 11.

85 ICJ Report, pp 11-12.

86 Cosco Holdings Pty Limited was a company in respect of which Mr Vasta's brother-in-law, Mr Coco, was the Chairman, Managing Director and largest shareholder.

87 Explanatory notes, p 4.

88 Commission of Inquiry Report, Section 8 and ICJ Report, pp 12-14.

89 ICJ Report, p 14.

90 ICJ Report, p 14.

91 ICJ Report, p 14.

92 ICJ Report, p 14.

… it might be thought that these were matters more properly for investigation by the Commissioner of Taxation. Subsequently, on becoming acquainted with the report of the Commission of Inquiry, the Commissioner of Taxation did not take any steps to disallow the claims made in 1987 and 1988 by the family trust for the interest of $15,000 and $10,500 respectively paid to Cosco for the $75,000 loan. This would suggest that the Australian Tax Office did not, upon its investigation, regard the loan as a "sham" or the payment of interest in respect of it as non-deductible.[93]

Count Five: Alleged consultancy fee sham

This matter relates to the $5,000 paid to Mr Vasta as a consultancy fee for the financial years 1987 and 1989 by Cosco. The ICJ Report noted that 'the Commission of Inquiry concluded that there was no genuine consultancy agreement'.[94]

However, the explanatory notes state:

After the final tax assessments and appearances before the Administrative Appeals Tribunal, the ATO and the Commissioner of Taxation marginally reduced the Judge's deductions relating to his consultancy role but did acknowledge that the Judge was a consultant for his brother-in-law's company.[95]

The ICJ Report noted:

The final adjustment sheets issued by the Commissioner of Taxation following the Commission of Inquiry did not adjust the Judge's income to delete the consultancy amount as an item of income.[96]

Count Six: Arranging an alleged sham of a lease of a Gold Coast unit

This matter relates to the lease of a Gold Coast unit owned by Mr Vasta to Cosco. Although the rent payable under the lease was calculated at the then market rate, the ICJ Report noted that:

The Commission of Inquiry was concerned at the apparently limited use of the premises by Cosco compared with the use from time to time by Mr Justice Vasta and his family. This and some other aspects led the Commission to the conclusion that the lease to Cosco was a sham and that the "exercise" undertaken by the Judge "was not behaviour such as this society would regard as consistent with the holding of judicial office".[97]

After the Commission of Inquiry Report was issued, the Australian Taxation Office investigated the matter. The ICJ Report noted:

… the Australian Taxation Office sought also to treat the lease as a sham and to deny the former Mr Justice Vasta any deductions in respect of the unit. The former Mr Justice Vasta appealed to the Administrative Appeals Tribunal. Following conferences and appearances before the Tribunal, in determinations made by consent on 21 December 1993, the Tribunal upheld the former Mr Justice Vasta's objections on this matter and allowed very substantial deductions in respect of the Gold Coast unit.[98]

The ICJ Report concluded:

The decision of the Tribunal is quite distinct from and inconsistent with the findings of the Commission of Inquiry. One found a sham; the other, the regular statutory body appointed by the Federal Parliament to hear and determine such matters according to law, allowed tax

93 ICJ Report, p 15.
94 ICJ Report, p 16.
95 Explanatory notes, p 2.
96 ICJ Report, p 17.
97 ICJ Report, p 18.
98 ICJ Report, pp 18-19.

deductions on the basis of a legitimate lease. This somewhat anomalous situation casts considerable doubt upon this finding of the Commission of Inquiry.[99]

Count Seven: Exchange of cheques relating to overseas travel expenses

This matter relates to the payment of travel expenses and tax deductions claimed by Mr Vasta in respect of a trip to Athens, where he delivered a paper at a conference.

The ICJ Report summarised the Commission's conclusions:

The Commission of Inquiry held that the effect of the arrangement with Cosco was to invalidate any deduction for the airfare on the basis that it was not in truth paid by Mr Justice Vasta but rather by the company.[100]

The ICJ Report then summarised the Commissioner of Taxation's conclusions:

The Commissioner of Taxation adopted a different approach and disallowed any deduction for the airfare … The Commissioner did not treat the exchange of cheques as a "sham"… The Commissioner of Taxation did not levy any penalty although the claim deduction was disallowed.[101]

The ICJ Report concluded that 'the circumstances are not free from doubt. It is difficult to regard this matter, standing alone, as providing substantial grounds for the dismissal of a judge'.[102]

Count Eight: Alleged false claims for a taxation deduction regarding the lease of a library

This matter related to a tax deduction claimed in respect of the lease of a law library by Mr Vasta from his company trust. The ICJ Report concluded that:

… the matter does not seem to warrant inclusion as a matter for consideration of his dismissal. For the ordinary citizen, the question of whether such lease payments were properly claimed is, at least in the final instance, a matter between the Commissioner of Taxation and the tax payer with an appeal to the Administrative Appeals Tribunal and superior courts. No deliberately misleading conduct was specifically found by the Commission of Inquiry and its inclusion of this matter as a ground for dismissal appears to be completely unjustified.[103]

ICJ Report conclusions on the method of removal

The ICJ Report concluded that the procedures utilised in the removal of Mr Vasta were not fair and reasonable and did not accord with the wider concept of the rule of law.[104] The ICJ Report supported this conclusion with the following arguments:

A. <u>The Parliamentary (Judges) Commission of Inquiry Act</u> 1988 ("the Act") was ad hoc legislation intended to investigate the conduct of two judges. It altered the law of Queensland which previously would have required the issues to be determined by the Queensland Parliament alone, using Parliamentary Committees and procedures. …

The Act, by its terms, substituted the proper role of parliamentary decision making in the case of the removal of a judge from office.

The traditions of the common law require that this ultimate finding should always be reserved to a parliamentary decision and not delegated, in effect, to be a decision made by retired judges appointed by the Legislative Assembly …

99 ICJ Report, p 19.
100 ICJ Report, p 20.
101 ICJ Report, p 20.
102 ICJ Report, p 21.
103 ICJ Report, p 21.
104 ICJ Report, pp 22-26.

The criticism concerns the terms of the legislation. The Commission of Inquiry should have been limited to making findings of fact rather than an opinion and ultimate finding as to whether Mr Justice Vasta should be removed from office. …

In this respect, the Queensland Parliament received the findings of the Commission of Inquiry which contained the conclusion that the behaviour of Mr Justice Vasta warranted his removal from office. The Government simply adopted that conclusion and, perhaps then understandably, formally moved the Parliament for the removal of Mr Justice Vasta from office. This was flawed legislation and a flawed procedure, and seriously so.

B. The members of the Commission of Inquiry embarked on a wide ranging inquiry dealing with issues far removed from those which originally gave rise to the Inquiry in the first place. In particular, the Inquiry spent much time on the taxation affairs of Mr Justice Vasta involving the relationships between himself, his wife, his businessman brother-in-law and the latter's companies. It is not inaccurate to describe the inquiry as an inquisition into an extremely wide variety of Mr Justice Vasta's life. None of the matters investigated by the Commission related specifically to the performance of Mr Justice Vasta's duties as a judge.

C. The members of the Commission of Inquiry did not find that any single one of the matters investigated warranted Mr Justice Vasta's removal from office. … Then in a very short final section of its report the Commission simply stated its opinion that the eight matters "viewed in conjunction with one another warrant the removal of the Judge from office". There is no indication of the relative weight given to the different matters and, with every respect, no convincingly argued conclusion; merely a stated opinion. …

D. A further disquieting feature of the events is the manner in which Parliament performed its constitutional role in the removal of Mr Justice Vasta from office. The Premier's motion for removal was carried on the voices at 3am on 8 June 1989. There was no "cooling off" period after the address to the House by Mr Justice Vasta sufficient to enable a proper reflection of the extremely important and novel issues then before Parliament. In retrospect, Parliament should have devised a mechanism of its own to permit a fair and balanced consideration of the issues arising from the report of the Commission of Inquiry. Although the section does not presume to advise the Queensland Parliament how best to deal with the exceptional situation surrounding the removal of Mr Justice Vasta from office, it is essential that Parliament's consideration of the issues raised by the Commission's report be carefully considered outside the potentially highly politicised environment of proceedings in the Legislative Assembly. It would appear that, in part at least, the very terms of section 4(a) requiring the Commission of Inquiry to form a conclusion as to whether the findings of fact by it warranted the removal of the Judge from office, prevented this process from occurring.

Under the Act, Mr Justice Vasta had no right of appeal to the ordinary courts from the findings and opinions of the three members of the Commission.

Although it is true that Mr Justice Vasta was given and exercised the right to address the Queensland Parliament in relation to the Commission's findings, this was not in any sense a right of appeal for the reasons referred to above.

E. By reason of the subsequent decisions of the Commissioner of Taxation and the findings of the Administrative Appeals Tribunal in respect of the taxation affairs of Mr Justice Vasta, there is now, at the least, a serious doubt cast on the ultimate findings of the Commission of Inquiry made on the basis of the materials then before it. …

None of the findings of the Commission of Inquiry on their own were held to warrant the removal of the judge from office. …

The significant events in relation to the taxation affairs of Mr Justice Vasta since the findings of the Commission of Inquiry, suggest the need for a reconsideration by the Queensland Parliament of all issues raised in this report.[105]

2.5 "Matter of Interest" concerning Mr Vasta raised in the House (1995)

On 12 September 1995, the Hon Turner raised a Matter of Public Interest in the Legislative Assembly concerning Mr Vasta.[106] The explanatory notes state:

Mr Turner sought to have the Parliament review the matter and he highlighted the events which clearly show that Parliament was in error in the decision to recommend the dismissal of the Judge by the Governor-in-Council.[107]

The Hon Turner noted that because Queensland is a unicameral system, the former judge had no opportunity to have his case reviewed by an Upper House. He also stated that it was a 'great tragedy' that the legislation setting up the Commission of Inquiry did not allow Mr Vasta to appeal. In the Hon Turner's view if there 'had there been such a right of appeal, there is no doubt that the findings and recommendations of the inquiry would have been set aside'.[108]

The Hon Turner also stated that his opinion was supported by Mr Justice Kirby and a former Queensland Supreme Court Judge, the late Mr Justice Connolly.[109]

The Hon Turner tabled a copy of the ICJ Report and noted the 'ICJ's principal recommendation' that '[f]airness to Mr Vasta requires that the Queensland Parliament reconsider its decision to remove him from judicial office'.[110]

In concluding, the Hon Turner noted:

This Parliament voted as it did by following slavishly a report of the Parliamentary Judges Commission of Inquiry which was questioned seriously at the time by the former judge himself and by astute members of this House and which report has since been demonstrated to have been seriously flawed. Any injustice brought about by this House should be corrected by it. That is a fundamental principle. It should not be a matter of party politics. People over a wide spectrum of the community, including people from interstate, have voiced their concern.

What more can Angelo Vasta do to clear his name? He has been cleared by the Taxation Office. He has been cleared by the International Commission of Jurists. His name and position have yet to be restored. Only this Parliament can correct the injustices perpetrated against this man.

If this Parliament fails to address this issue, it will continue the character assassination of this man, and there has been too much of that in Queensland in recent history. I urge the Premier to outline the Government's view and take whatever action is necessary to address this matter. In conclusion, it is my belief that former Justice Angelo Vasta was a sacrificial lamb to the altar of expediency, reform and so-called accountability. There is an old saying that justice must not only be done, it must be seen to be done. In this man's case, justice has not been done and cannot be seen to have been done.[111]

2.6 Compensation for costs paid by the government to Mr Vasta (1996)

Mr Vasta incurred significant costs in defending his position at the Commission of Inquiry which,

105 ICJ Report, pp 22-29.
106 Queensland Parliament, Record of Proceedings, 12 September 1995, p 94.
107 Explanatory notes, p 7.
108 Queensland Parliament, Record of Proceedings, 12 September 1995, p 94.
109 Queensland Parliament, Record of Proceedings, 12 September 1995, p 94.
110 Queensland Parliament, Record of Proceedings, 12 September 1995, p 95.
111 Queensland Parliament, Record of Proceedings, 12 September 1995, pp 95-6.

including interest, amounted to $1.1 million.[112] The Commission of Inquiry recommended that the Government should at least meet part of the costs of Mr Vasta.[113] At the time, no re-imbursement for any costs were made to Mr Vasta.

The ICJ Report in 1995 recommended:

> *The Queensland Government should pay to Mr Vasta his costs of defending himself before the Commission of Inquiry. It should also consider payment of compensation which a proper investigation of this report and of events which have occurred since his dismissal by Parliament reveals to be warranted.*[114]

In 1996, the Queensland Government paid Mr Vasta $600,000. The explanatory notes provide, '[t]his payment was not an acknowledgement of wrongdoing by the government or an admission of error.'[115]

Mr Vasta confirmed receipt of this payment at the committee's public hearing and confirmed the explanation provided in the explanatory notes.[116]

During the public hearing, the Hon Ahern was asked if he knew about the $600,000 payment to Mr Vasta. He replied that he had not been aware, but that he thought 'it is appropriate that some payment was made'.[117]

2.7 Procedure for removing a Supreme Court Judge in Queensland

The procedure for removing a Supreme Court Judge in Queensland at the time of these events[118] was discussed at length in a Ministerial Statement by Mr Clauson on 25 October 1988 regarding the Security of Tenure and Removal of Office of Judges.[119] It was also discussed in the Commission of Inquiry Report.[120]

In summary, in 1988 and 1989 in Queensland there were two Acts which dealt with the removal of a Queensland Supreme Court Judge from the office of judge. These were the *Supreme Court Act 1867* and the *Constitution Act 1867-1978*.

In his 25 October 1988 Ministerial Statement, Mr Clauson provided the following information about the procedures for the removal of a Supreme Court Judge set out in the *Supreme Court Act 1987* and the *Constitution Act 1867-1978*:

> *In view of recent happenings, it is appropriate that I inform this House of some of the factors relating to the security of tenure and the removal from office of judges of the superior courts of Queensland. …*
>
> *In the Supreme Court Act of 1867, section 9 provides as follows—*
>
> *"Commission of judges. The commissions of the present and any future judges of the said Supreme Court shall be continue and remain in full force during his or their good behaviour*

112 Explanatory notes, p 7.
113 Commission of Inquiry Report, p 165.
114 ICJ Report, Recommendation 6, p 32.
115 Explanatory notes, p 7.
116 Public hearing transcript, Brisbane, 9 August 2017, p 4.
117 Public hearing transcript, Brisbane, 9 August 2017, p 20.
118 Note that the situation in Queensland is now different due to section 61 of the *Constitution of Queensland 2001* (Qld) which provides that a judicial officer may be removed from office by the Governor in Council, on an address by the Legislative Assembly for proved misbehaviour justifying removal from the office or proved incapacity to perform the duties of the office, which must have been proved on the balance of probabilities before a three Member tribunal established for that purpose. See also Cathryn Cummins, *Who else can judge the judges?: The role of Parliament in the removal of judicial officers from judicial office*, Parliamentary Law, Practice and Procedure Course, Winter 2011, Final Paper, p 3.
119 Queensland Parliament, Record of Proceedings, 25 October 1988, p 1748.
120 ICJ Report, pp 8-9.

notwithstanding the demise of Her Majesty or of her heirs and successors any law usage or practice hereof in anywise notwithstanding.

Provided always that it shall be lawful for Her Majesty her heirs and successors to remove any such judge or judges upon the address of both Houses of the Legislature."

Sections 15 and 16 of the Constitution Acts 1867-1988 also provide as follows—

"15. Judges continued in the enjoyment of their offices during their good behaviour notwithstanding any demise of the Crown. The commissions of the present judges of the Supreme Court of the said colony and of all future judges thereof shall be continue and remain in full force during their good behaviour notwithstanding the demise of Her Majesty (whom may God long preserve) or of her heirs and successors any law usage or practice to the contrary thereof in anywise notwithstanding.

16. But they may be removed by the Crown on the address of Parliament. It shall be lawful nevertheless for Her Majesty her heirs or successors to remove any such judge or judges upon the address of the Legislative Assembly."[121]

The Commission of Inquiry also referred to section 9 of the *Supreme Court Act 1867* and sections 15 and 16 of the *Constitution Act 1867-1978*. After quoting these provisions, the Commission of Inquiry stated:

It is to be noted that neither Act specifies the basis of or grounds for exercise of the power of Parliament to remove a judge. In this regard the position is different from that which pertains in relation to Federal Judges. The Australian Constitution, s 72 reads, in part:

"72. The justices of the High Court and of other Courts created by the Parliament - … (b) shall not be removed by the Governor-General in Council, or on address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity …"[122]

The Commission of Inquiry stated:

However, since a Judge of the Supreme Court of Queensland holds his commission as a judge during good behaviour … the Commission accepts that whatever other powers exist to remove judges, the Legislative Assembly may exercise its power to address the Crown for the removal of a judge on the ground of misbehaviour.[123]

The Commission of Inquiry Report discussed the standard of judicial behaviour required and what behaviour would warrant the removal of a judge. The Commission noted that the Queensland system was based on the custom or convention adopted as part of the British system of parliamentary government and the separation of powers.[124] However, the Commission was guided by the 'Special Report' of the Parliamentary Commission of Inquiry dated 5 August 1986,[125] which dealt with the meaning of misbehaviour in the federal sphere for the purposes of section 72 of the *Commonwealth of Australia Constitution Act*.

The Commission of Inquiry commented:

However, having read the report of the 5 August 1986, this Commission states its view that in Australia, or at any rate in Queensland, misbehaviour of a judge as defined and adopted in that

121 Queensland Parliament, Record of Proceedings, 25 October 1988, p 1748.

122 Commission of Inquiry Report, pp 8-9.

123 Commission of Inquiry Report, p 9.

124 Commission of Inquiry Report, p 9.

125 The Special Report of the Parliament Commission of Inquiry dated 5 August 1986 was set up to investigate whether the late Mr Justice Lionel Murphy should be removed from the High Court of Australia.

> *report does not differ from the kind of behaviour that would warrant the removal of a Judge of the Supreme Court within the meaning of s.4 of the Act.*[126]

The Commission of Inquiry concluded as follows:

> *The Commission therefore expresses its view that before an opinion can be reached that behaviour of a Judge of a Supreme Court warrants his removal from office, the behaviour must be such that, having regard to all the relevant surrounding circumstances, no right thinking member of the community could regard the fact of its having taken place as being consistent with the continued proper performance by the judge of judicial duties, and hence with the holding of judicial office. Put another way, if the behaviour is such that, in the circumstances, the judge would, in the eyes of right thinking members of the community, no longer be fit to continue to remain a judge, then the judge has fallen below the standard demanded of members of the judiciary.*[127]

The Commissioners considered that the civil standard of proof on the balance of probabilities was the proper standard to apply.[128]

126 Commission of Inquiry Report, p 9.
127 Commission of Inquiry Report, p 10
128 Commission of Inquiry Report, p 13.

3. Examination of the Bill

This section of the report discusses the key issues that arose during the committee's examination of the Bill.

3.1 Legislation establishing the Commission of Inquiry

A key issue raised during the committee's examination of the Bill was whether the Commission of Inquiry Act, being the legislation establishing the Commission of Inquiry, was appropriate.

The explanatory notes stated there were numerous deficiencies in the legislation that established the Commission of Inquiry. In particular:

(a) the terms of reference were too wide and examined all aspects of the Judge's life

(b) the legislation prevented any decisions of the Commission to be made the subject of review in a court of law

(c) there was no provision for the Judge to appeal any adverse findings of the Commission, and

(d) if the parliament sought to have the Commission make findings of fact to assist the Legislative Assembly, any provision that gave the Commission the authority to submit an opinion as to whether the Judge should be removed was wrong and possibly unconstitutional, since that power belongs to the parliament and to the parliament alone and cannot be delegated.[129]

During his address to the parliament on 7 June 1989, Mr Vasta highlighted a number of concerns regarding the Commission of Inquiry Act:

> *A precedent had been set for legislation of this kind in the inquiry into the late Mr Justice Murphy. This was model legislation. It was fair in its terms and thorough in its powers of investigation. That legislation provided for an inquiry into that judge's conduct to ascertain whether there had been any "proved misbehaviour".*
>
> *The legislation passed by this House with indecent haste called for an inquiry into my behaviour "either of itself or in conjunction with other behaviour". Therefore this legislation empowered inquiry into every facet of my life, of my personal affairs.*
>
> *The Murphy legislation forbade the making of a finding except upon evidence which would be admissible in a court. This was not a requirement in my case.*
>
> *The Murphy inquiry was conducted in private. The inquiry into my behaviour was not only in public but also publicised with the utmost of sensational flavour.*
>
> *By virtue of section 6 of that Act, Mr Justice Murphy was not required to give evidence unless the commission was of the opinion that there was evidence of misbehaviour.*
>
> *The legislation passed by this House contained no such provision.*[130]

The legislation relating to the late Mr Justice Murphy was the *Parliamentary Commission of Inquiry Act 1986* (Cth).

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129 Explanatory notes, p 1.

130 Queensland Parliament, Record of Proceedings, 7 June 1989, pp 5249-50.

As noted above, the ICJ Report was critical of the Commission of Inquiry Act. The ICJ Report's main criticisms of the Commission of Inquiry Act as 'flawed legislation'[131] were as follows:[132]

- The Commission of Inquiry Act altered the law of Queensland which previously would have required the issues to be determined by the Queensland Parliament alone, using Parliamentary Committees and procedures. Instead, the new legislation provided for a special Commission of Inquiry.
- The Commission of Inquiry Act, by its terms, substituted the proper role of parliamentary decision making in the case of the removal of a judge from office. Section 4(a) required the Commission of Inquiry to make findings and express an opinion as to whether Mr Vasta should be removed from office. The traditions of the common law require that this ultimate finding should always be reserved to a parliamentary decision and not delegated, in effect, to be a decision made by retired judges appointed by the Legislative Assembly.
- It is undesirable in principle for retired judges to be performing the functions required of them in section 4(a) of the Act.[133]
- The Commission of Inquiry Act should have limited the Commission of Inquiry to making findings of fact rather than an opinion and ultimate finding as to whether Mr Vasta should be removed from office.
- The Commission of Inquiry Act allowed for a wide ranging inquiry which dealt with issues far removed from those which originally gave rise to the inquiry. In particular, the ICJ Report was critical of the time spent on the taxation affairs of Mr Vasta, his wife, his businessman brother-in-law and the brother-in-law's companies. The ICJ Report noted that '[n]one of the matters investigated by the Commission related specifically to the performance of Mr Justice Vasta's duties as a judge'.
- The Commission of Inquiry did not provide any avenue of appeal for Mr Vasta.[134]

During his introductory speech, Mr Katter raised the following concerns about the Commission of Inquiry Act which led him to introduce the Bill:

> *The legislation that established the statutory commission of inquiry was done hastily, with numerous deficiencies identified by subsequent reviews of the case, with the most serious deficiencies being that the terms of reference were too wide and examined all aspects of the judge's life; the legislation prevented any decisions of the commission to be made the subject of review in a court of law; there was no provision for the judge to appeal any adverse findings of the commission; and, finally, if the parliament sought to have the commission make findings of fact to assist the Legislative Assembly, any provision that gave the inquiry the authority to submit an opinion as to whether the judge should be removed was wrong and possibly unconstitutional since that power belongs to the parliament and to the parliament alone and cannot be delegated.*[135]

A number of submissions raised concerns that there was no legitimate legal basis for the removal of Mr Vasta. Additionally, concerns were raised that the matters considered by the Commission of Inquiry were broad and strayed beyond the terms of reference.

For example, Mr Howard Hobbs, a former Member for Warrego who was a member of parliament at

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131 ICJ Report, p 26.

132 ICJ Repot, pp 23-29.

133 This criticism was based on the 1987 Report of the Judicial System to the Constitutional Commission which concluded that retired judges should not be exclusively involved in the process of investigating the conduct of a judicial officer (ICJ Report, p 23).

134 ICJ Report, pp 22-30.

135 Introductory speech, Queensland Parliament, Record of Proceedings, 2 March 2017, p 469.

the time Mr Vasta was removed as a Judge of the Supreme Court, observed:

> *The terms of reference given to the Parliamentary Judges Commission was far too wide and forced the Commission to make hasty decision on those subjects even though they were generally irrelevant, which has since proved to be the case.*[136]

During the parliament's consideration of the removal of Mr Vasta, Mr Menzel expressed concern that the Commission of Inquiry was established with pre-conceived ideas:

> *When we talk about accountability, we must be consistent. If we are not careful, we will have to investigate everyone. It is grossly unfair to conduct a witch-hunt in relation to one person. It seemed to me that the commission of inquiry was set up to go looking for something, which is a strange attitude to take.*[137]

Ms George from DG Accounting and Taxation, submitted:

> *The Supreme Court of Queensland on the 7th June 1989 lost a brilliant legal mind with no substance to the removal.*
>
> *The Honourable Angelo Vasta should never have been removed as a Judge of the Supreme Court of Queensland as there were no grounds or legal basis for his removal.*
>
> *It is incomprehensible that the basis for the removal was founded on allegations of Honourable Angelo Vasta's **private affairs**. Private affairs which have absolutely nothing to do with removing a Judge as they are NOT based on Honourable Angelo Vasta's discharge of his judicial duties, which I understand could be such a basis to remove a Judge. …*
>
> *The Honourable Angelo Vasta **should never** have been removed as there were no grounds to do so. Further when such unfounded accusations into his private life, which bear nothing on his judicial function were dismissed or proved to be untrue, the Honourable Angelo Vasta should have been reinstated straight away.*[138]

3.2 Judgement of the Commission of Inquiry

The explanatory notes to the Bill raised the following concerns with the judgement of the Commission of Inquiry:

(a) the Commission's report stated that the matters warranting Mr Vasta's removal as a judge should be viewed 'in conjunction with one another'

(b) the Commission should not have investigated Mr Vasta's taxation affairs as there was no evidence prior to the Inquiry suggesting that there was anything untoward

(c) the Commission commented on Mr Vasta's tax affairs calling them 'shams', but without these issues having been determined by the Taxation Department.[139]

As noted above, the Commission of Inquiry was constituted by three very senior retired judges, namely the late Sir Harry Gibbs,[140] presiding, the late Sir George Lush[141] and the late Honourable Michael M

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136 Submission 7, p 2.

137 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5292.

138 Submission 3 pp 1-2.

139 Explanatory notes, pp 4-5.

140 The Right Honourable Sir Harry Gibbs, GCMG, AC, KBE, QC (1917 – 2005) was Chief Justice of the High Court of Australia from 1981 to 1987 and a High Court Justice from 1970 to 1981. Before that he was a Judge on the Supreme Court of Queensland and the Federal Court of Bankruptcy.

141 Sir George Lush (1912 – 2000) was appointed to the Supreme Court of Victoria in 1966. He served in that capacity until 1982. He also served as Chancellor of Monash University between 1982 and 1992. He was chairman of the Parliamentary Commission investigating the conduct of the then High Court Justice, Mr Justice Lionel Murphy.

Helsham QC.[142]

During the public hearing, the then Premier spoke about the calibre of the Commissioners and how and why they were chosen:

> *We selected Gibbs and the other two gentlemen who were eminent in the law. In Australia you could not have had anyone better. It was an expensive thing to do, but it was timely that this be done, that there be a framework to say, 'What is a judge's good behaviour?' It is not good enough to say a person is okay provided they do not go to jail, provided they have not offended against a statute, because a judge's conduct has to be of a higher category. It is like a premier and/or a minister: you are now required to address a code of behaviour which is above the statutes. That is the sort of thing the public needed to know: what are the rules? The judges needed to know: what are the rules?*[143]

After Mr Vasta appeared at the bar of the parliament, the Premier told the House:

> *I have studied the findings of the commissioners. I have listened with great care and attention to everything that has been said by the judge. I am fully aware of the critical importance of the independence of the judiciary. I am conscious that in the whole of the history of Queensland this Parliament has never found it necessary to seek finally of the Crown the removal of a judge for misbehaviour. But as I have said in this House on earlier occasions, the Govemment is irrevocably committed to the best possible standards of conduct in public life. Nothing could be more important than that the judiciary stand at the highest level of public esteem and confidence.*

During parliamentary debate on whether Mr Vasta should be removed, Mr Clauson reminded the House that the Commission of Inquiry had heard:

> *… almost 45 days of evidence regarding this matter. It had the benefit of seeing the judge and other witnesses give their evidence and be cross-examined at length. It was able to form opinions as to the credit of witnesses and consider the evidence for a considerable period of time and made its findings as a resul*t.[144]

As noted above, during Mr Vasta's address at the bar of the parliament, Mr Vasta stated that judges are 'prone to ordinary human fallibility'.[145]

During the public hearing, Mr Vasta commented:

> *It must be remembered that the decision to remove a judge has to be that of parliament and not some other delegated person or some other delegated body. What happened in the parliament was that, because of the eminence of the three judicial officers—the ex-judges—it was considered, 'They know best and who are we to question them?' That is where it went fundamentally wrong. For this committee to now recommend to parliament that the matter be reversed because of such an august trio getting it wrong may appear to be such a daunting task. My respectful submission to this committee is that the argument that the commission got it wrong, and fundamentally so, is overwhelming. …*[146]
>
> *My respectful submission is that, despite the fact that you have had three eminent judges comprising the commission, that is not to say they were infallible. Our whole system of justice is structured upon that basis that courts do err despite the eminence of the members of the bench. It is not a reflection on the memory of Sir Harry Gibbs if this committee recommends and concludes that the parliament got it wrong at all. Sir Harry Gibbs, when he was a Supreme Court*

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142 The Honourable Michael Helsham (1921 – 2002) AO, DFC, RFD, QC was a Chief Judge (Equity) on the Supreme Court of New South Wales.

143 Public hearing transcript, Brisbane, 9 August 2017, p 17.

144 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5268.

145 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5217.

146 Public hearing transcript, Brisbane, 9 August 2017, p 1.

> *judge, was subject to appeals to a higher court. That is the way in which our whole system of justice is structured. They do acknowledge that, no matter how eminent you are, you do get it wrong.*[147]

During the parliament's consideration of this matter on 7 June 1989, Mr Menzel stated:

> *I have grave reservations about this report. It is a long report. I just wonder how many honourable members have read it right through. It is very easy to make a quick decision or very hard, as the case may be, but once the decision is made it is a decision that affects somebody, and it is a final decision. I ask that this Parliament and the Government consider allowing Mr Justice Vasta to resign so that he is not debarred from practising as a barrister.*[148]

The ICJ Report raised concerns about the findings of the Commission of Inquiry, especially in light of subsequent decisions of the Commissioner of Taxation and the findings of the Administrative Appeals Tribunal, in respect of the taxation affairs of Mr Vasta. In this regard, the ICJ Report noted, '[t]here is now, at the least, a serious doubt cast on the ultimate findings of the Commission of Inquiry made on the basis of the materials then before it'.[149]

The ICJ Report noted concerns that the members of the Commission of Inquiry did not find that any single one of the matters investigated warranted Mr Vasta's removal from office but that all of the matters when 'viewed in conjunction with one another warrant the removal of the Judge from office'. As noted above, the ICJ Report commented that it found the approach of giving no indication of the relative weight to the different matters 'disquieting'.[150]

As part of its conclusion, the ICJ Report stated:

> *The significant events in relation to the taxation affairs of Mr Justice Vasta since the findings of the Commission of Inquiry, suggest the need for a reconsideration by the Queensland Parliament of all issues raised in this report. Having been accorded no relative weight, the question must now be asked whether, standing alone, the remaining two findings did in fact warrant the extremely grave constitutional step of the removal of Mr Justice Vasta from office. One count at least (Count Two) did not in the opinion of the Commission on its own warrant the removal of Mr Justice Vasta from office.*[151]

The Hon Lionel Powell, then Speaker of the Legislative Assembly, submitted to the committee:

> *The Commission of [I]nquiry that brought the charges against Judge Vasta was composed of eminent retired Judges and it was surprising to read their Report. The five matters on which the Government relied to bring Judge Vasta before the House on and upon which they relied to dismiss him had very little weight. …*[152]
>
> *That a mistake was made on 7 & 8 June 1989, is certain in my view. A dispassionate review of all the evidence presented to the Parliament would prove that a gross injustice was summarily delivered to Mr Vasta. That a man as successful as Mr Vasta could be brought down for the very minor indiscretions of which he was charged but that he refuted, is a pinnacle of injustice. None of the five counts relied upon by the Government for his dismissal called into question his impartiality as a Judge. That surely should have been the measure on which he was judged.*[153]

In correspondence with the committee, Mr Vasta noted:

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147 Public hearing transcript, Brisbane, 9 August 2017, p 2.
148 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5293.
149 ICJ Report, p 29.
150 ICJ Report, p 27.
151 ICJ Report, p 30.
152 Submission 4, p 1.
153 Submission 4, p 2.

It is not uncommon for courts of law to set aside findings of Commissions of Inquiry, where, for example, a Commission has been held to have been biased. (See Connolly Ryan Inquiry and Morris Inquiry). In addition, in Ainsworth v Criminal Justice Commission *(1992) 175 CLR 564, the High Court allowed an appeal from the decision of the Queensland Full Court on the basis (inter alia) that the Criminal Justice Commission had denied to the appellants' natural justice. That specific provision (s.3 of the Judges Inquiry Act) denied to me such avenues of redress. Checks and balances in legislation that touch upon a citizen's rights and afford procedural fairness to subjects of an inquiry are enacted because it is acknowledged that no matter how erudite a Commissioner or Commissioners may be, errors are made and appellate courts have been set up to try to correct any such errors*.[154]

In the same correspondence, Mr Vasta provided the committee with an example of where the decision of a Royal Commission had been overturned:

… when Captain Robertson was found by a Royal Commission to have been largely responsible for the maritime disaster in the collision between the HMAS Melbourne and the naval carrier, the Voyager, a champion who considered that the Royal Commission findings had wronged Captain Robertson emerged. His name was Edward St John Q.C. who spoke out in the Federal Parliament. Ultimately, St John succeeded in convincing the government to hold a second Royal Commission which exonerated Captain Robertson.

Edward St John Q.C. in a letter he wrote in September 1990 to the Sydney Morning Herald cautioned against attempts to stifle criticism of particular court decisions. He wrote:-

> *"…The search for truth and justice is sometimes long, arduous and costly. Politicians and journalists speaking and writing in good faith to further that search deserve our thanks not our condemnation. We must never forget the Chamberlain case, the Voyager Royal Commission, the Dreyfus case or the recent Irish cases in the United Kingdom – to mention only a few times when citizens, lawyers, politicians and the media refused to accept "decisions of courts of competent jurisdiction" and were, in the event fully vindicated."*[155]

During the parliamentary debate on the motion regarding whether to remove Mr Vasta as a judge, at least one member of parliament was critical of a member of the Commission of Inquiry. The late Hon Thomas James (Tom) Burns, then Member for Lytton (ALP) referred to Sir Harry Gibbs as 'Sir Harry "lying" Gibbs' and criticised him as 'the man who found no prostitution and no bagmen in the National Hotel royal commission. He found no fault with Tony Murphy or Lewis in that matter.'[156]

3.3 Parliamentary process

A number of submitters commented on the process adopted by the parliament at the time Mr Vasta was removed from office. Key issues raised are summarised below.

The explanatory notes to the Bill raised the following concerns with the process adopted by the parliament concerning the removal of Mr Vasta from office:

- the Government voted on the motion without any adjournment to allow consideration of Mr Vasta's address in parliament
- Members of the government were instructed to vote 'en bloc' by Ministers of the government, therefore a conscience vote was not allowed
- the vote was supported by members of the government, but was not supported by the Opposition or other parties, and

154 Correspondence dated 11 April 2017, p 2.

155 Correspondence dated 11 April 2017, p 4.

156 Queensland Parliament, Record of Proceedings, 7 June 1989, p 5338.

- the vote was taken on the voices and no division was called.[157]

As previously noted, a motion to adjourn the parliament's debate for seven days to allow for the transcript of Mr Vasta's address to be considered and other information investigated, was defeated. In this regard, the explanatory notes provide:

> *Despite robust attempts by a number of Members of Parliament to adjourn such a significant debate for seven days, the Government continued with the debate and put the motion to a vote of the House without adjournment. Many Members of Parliament voiced serious concerns at not being able to thoroughly consider and research the matter over a number of days.*[158]

The ICJ Report also identified issues about the process adopted in parliament on the night Mr Vasta was removed from office. The ICJ Report described the manner in which parliament performed its constitutional role in the removal of Mr Vasta from office as 'a further disquieting feature of events'.[159] In particular, the ICJ Report noted the following concerns:

- The then Premier's motion for removal was carried on the voices at 3:00am on 8 June 1989.
- There was no 'cooling off' period after the address to the House by Mr Vasta sufficient to enable a proper reflection on the unique issues before the parliament.
- It was incumbent on the parliament to carefully consider the issues raised by the Commission of Inquiry's report outside of the politicised environment of proceedings in the Legislative Assembly.
- Under the Commission of Inquiry Act, Mr Vasta had no right of appeal to the ordinary courts from the findings and opinions of the three members of the Commission of Inquiry. While the ICJ Report acknowledged that Mr Vasta was given the right to address the Queensland Parliament in relation to the Commission's findings, 'this was not in any sense a right of appeal'.[160]

The Hon Powell submitted to the committee:

> *It is far past time that this matter should be revisited. As Independent Speaker of the Parliament at the time, I was saddened and reviled with the actions of the Government in accelerating this matter through the Parliament without giving Members due time to consider Judge Vasta's address to the Parliament*.[161]

The Hon Powell also stated:

> *Please take your time in considering this very important matter. If you decide to support Mr Katter's Bill you will be sending a very clear message to future Governments. They may be less anxious to set up a 'kangaroo court' in the Parliament. I firmly believe that the Ahern Government abused their position by bringing Mr Justice Vasta before the Parliament and further abused their power by pushing through the resolution to sack him in the one sitting day.*[162]

The Hon Ahern, in his submission, provided the following context on these points regarding the parliamentary process:

> *In all my dealings in* [regard to the Fitzgerald Inquiry], *I was determined to ensure that all matters coming to me were treated professionally and only after the best advice was taken beforehand. This was a highly charged atmosphere and I was always aware that my decisions would be subject to scrutiny by interested parties across the board and the years.*[163]

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157 Explanatory notes, p 5.
158 Explanatory notes, p 5.
159 ICJ Report, p 28.
160 ICJ Report, p 29.
161 Submission 4, p 1.
162 Submission 4, p 3.
163 Submission 2, p 1.

The Hon Ahern explained how he approached matters arising from the Fitzgerald Inquiry which related to members of the judiciary and the process adopted in relation to Mr Vasta:

> *One of the most serious matters brought to me concerned members of the judiciary. These were matters of the utmost sensitivity. I had at my side, Justice Ian Callinan, later to become Justice of the High Court of Australia.*
>
> *I asked him many years later if our actions then were still valid today. He replied "Absolutely". He said he had reviewed all of the notes again recently and was confident that all actions were correctly carried out.*
>
> *We decided that a Judicial Commission should be appointed by the Parliament to advise it. Hearings should be in public. Judges should have the opportunity to speak.*
>
> *Recommendations should be made to the Parliament on the matters. This was done and on receipt of the recommendations, a debate was held and a motion to accept was put to the House. The motion was carried.*
>
> *The Constitution of Australia gives the power over the dismissal of judges to the Parliament. This is what happened. Parliament chose to appoint a judicial Commission to advise it. That was a safe think to do. The Chairman presiding was a former Chairman of the High Court of Australia. Parliament debated the matter and passed the motion. The process was robust and fair.*[164]

In response to these comments, Mr Vasta noted in correspondence with the committee:

> *The only criticism I would make of Mr Ahern is that the manner in which the debate was rushed could only have been done for the purpose of his displaying a decisiveness that the government of the day hoped would resonate in the electorate.*[165]

Mr Lyle Thomas Schuntner, Member for Mount Coot-tha during the relevant period, noted:

> *My recollection is that I felt that proper processes were followed. I am not a lawyer but my understanding was and is that, as part of those processes, the Parliament sought and obtained legal advice prior to making a decision*.[166]

Mr Schuntner elaborated on this point:

> *On the aspect of the grounds for removal of the judge, I believe that the facts of the case led to legal advice supporting a vote for removal. While I recall feeling a significant degree of caution in supporting such a major step as the removal of a judge, I well recall the thorough debate we had in the party room as well as in the Parliament itself and the address to the House by the judge. Ultimately, taking into account all the evidence and views surrounding me, I felt that voting in support of removal was the right decision*.[167]

In her submission, Ms Danielle George questioned why an adjournment or conscience vote was not permitted:

> *During the process, members of parliament wished to adjourn this for seven days, however the Government declined and pushed with a motion to a vote of the house without adjournment. They also denied a concerted effort for a conscience vote for all members of parliament. None of these actions were fair or executed in the spirit of the law, no division was called and there was intense disapproval from the opposition and other parties. The vote was determined only by voting on the voices.*[168]

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164 Submission 2, p 1.
165 Correspondence dated 21 June 2017, p 1.
166 Submission 6, p 1, para 3.
167 Submission 6, p 1, para 4.
168 Submission 3, p 2.

In contrast, Mr Toby Chambers considered that Mr Vasta was afforded sufficient time:

> *The decision to formally remove Justice Vasta was most certainly not achieved at whim, as might be suggested in the narrative of events in support of this Bill. …*
>
> *A period of approximately eight months had elapsed since the allegations against Justice Vasta surfaced and the formal decision by the Qld Legislator to formalize his more permanent removal from Public Office. This was achieved after very careful consideration. In contrast to most legal hearings Justice Vasta was afforded the luxury of a very fair hearing that in fact is rarely offered to most litigants in Courts of Law.*[169]

3.4 Subsequent investigation by Commissioner of Taxation

Three of the five matters which formed the basis of the Commission of Inquiry's judgement involved tax matters. The explanatory notes provide that the Taxation Department subsequently investigated Mr Vasta's tax affairs and determined that the issues considered to be 'shams' by the Commission were 'legitimate commercial transactions'.[170]

As discussed above, the ICJ Report looked at each of the tax matters in considerable detail. In relation to the tax matters, the ICJ Report concluded:

> *By reason of the subsequent decisions of the Commissioner of Taxation and the findings of the Administrative Appeals Tribunal in respect of the taxation affairs of Mr Justice Vasta, there is now, at the least, a serious doubt cast on the ultimate findings of the Commission of Inquiry made on the basis of the materials then before it. …*
>
> *None of the findings of the Commission of Inquiry on their own were held to warrant the removal of the judge from office. …*
>
> *The significant events in relation to the taxation affairs of Mr Justice Vasta since the findings of the Commission of Inquiry, suggest the need for a reconsideration by the Queensland Parliament of all issues raised in this report.*[171]

During the public hearing, the Hon Bob Katter MP, Federal Member for Kennedy, stated as follows:

> *The only thing that I ever understood to come out against Vasta was the tax department questioning him. The official formal outcome of that was that the tax department paid him $80,000. He was not guilty; they were wrong—but they said that he had an outstanding amount. They questioned all of us. Every single person who served in cabinet—there were 31 of us—had our tax records gone over with a fine toothcomb. The outcome in each case was kept private. In the case of Vasta, it was not. They said he owed the tax department this amount of money. That was the only thing that ever went on the public record. When it was finally decided—he should not have been judged by a plaintiff saying he is guilty and the defendant saying he is innocent. We do not decide that because the plaintiff says you are guilty you are guilty. Subsequently, the courts decided that not only was Vasta totally innocent but also the tax department owed him money. The outcome was that the money was paid to him, not the other way around.*[172]

A number of submitters also commented on matters relating to Mr Vasta's tax affairs, and in particular, that the tax matters had not been tested or reviewed in the courts or by the Australian Taxation Office. Further, when the matters raised by the Commission of Inquiry were investigated, no action was taken against Mr Vasta.

Ms George submitted:

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169 Submission 8, p 5.
170 Explanatory notes, p 6.
171 ICJ Report, pp 29-30.
172 Public hearing transcript, Brisbane, 9 August 2017, p 10.

The ATO upon investigation found that the Honourable Angelo Vasta's tax affairs were legitimate.

Other fictitious, unfounded accusations into Honourable Angelo Vasta's private affairs have since been dismissed or proven to be untrue.[173]

Similar concerns were raised by Mr Hobbs:

My view at the time was, why are we here dealing with taxation and other highly charged political matters, that did not have an impact on this Judge's ability to carry out his work on the Bench !!!!

I spoke with the Premier Hon Mike Ahern and said to him, to the best of my recollection, "why are we doing this to Judge Vasta this is a matter for the Taxation Department not this House"

His response was, to the best of my recollection, "we have got no choice the three Judges made a decision"

This was a compelling and valid argument, however I was still troubled by the decision. …

Since then, I am advised, it has be found that the majority of allegations against Mr Justice Vasta have either been dismissed or proven to be untrue.[174]

3.5 No appeal available

A number of submitters expressed concern at the lack of right of appeal afforded to Mr Vasta.

For example, Mr Hobbs told the committee '[t]here was no avenue for an appeal to any adverse findings, to fully test those findings, even murderers get a chance to appeal.'[175]

Ms George highlighted the following:

In closing, I must say that is not only a classic case of gross miscarriage of justice but it is also an important case of denial of natural justice in that even convicted criminals have a right of appeal against heinous crimes. Honourable Angelo Vasta was denied any right of appeal against these allegations into his private affairs, allegations which were dismissed or proved to be untrue, that were used to unlawfully remove his appointment from the Supreme Court in 1989.[176]

In correspondence with the committee, Mr Vasta also highlighted the consequences of the lack of any right of appeal, stating '[t]he specific denial of any appeal or recourse to the courts of law contained in the legislation was a great travesty of basic human rights.'[177]

Mr Chambers argued that Mr Vasta could have sought permission from the High Court to appeal to the Privy Council, under section 74 of the Constitution of the Commonwealth of Australia.[178] Mr Chambers submitted further that:

… exercising an appeal to the Privy Council would expedite the main body of argument for this Bill more efficiently than seeking to overturn a previous decision by Parliament that is Statute Barred from being overturned as the Sunset Clause has already expired on 31 December 1989. The Sunset Clause has not been revoked by this Bill.[179]

At the public hearing, Mr Vasta responded on the question whether he could have appealed to the Privy Council:

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173 Submission 3, p 1.
174 Submission 7, pp 1-2.
175 Submission 7, p 2.
176 Submission 3, p 2.
177 Correspondence dated 21 June 2017, p 1.
178 Submission 8, p 2.
179 Submission 8, p 2.

The fact is that if there was an avenue of appeal it would not have been to the Privy Council. The avenue of appeal would have been to our Supreme Court, to the Court of Appeal and then to the High Court. This business about my having a right to go to the Privy Council is absolute arid nonsense and it is not based on anything at all. He also says that I should not really be worthy of a position on the bench because I did not know anything as fundamental as exercising my rights to the Privy Council. Well, again that is nonsense.[180]

3.6 Lied under oath

One submitter considered that the correct decision was made in 1989 due to Mr Vasta allegedly lying under oath.

In his submission, Mr Stephen Bishop noted that '[t]he Queensland Parliament is considering exonerating a judge who was found to have deliberately lied on oath (par 12.3 p163, First Report of the Parliamentary Judges Commission of Inquiry, May 12 1989).'[181]

Mr Bishop elaborated:

The commission found five matters which, it said, taken together warranted his removal from office. …

The fifth finding was that he had lied on oath during a defamation case in 1986, an act that strikes at the very heart of the justice system. The commission found Vasta had denied that an incident had taken place and that this denial was "false, and deliberately so".[182]

One of Mr Bishop's main concerns was that it is not appropriate to exonerate a judge who has been found to have lied, even if the other four findings of the Commission of Inquiry are 'found to be wanting'.[183] Mr Bishop's submission is that Mr Vasta was found to have lied on a number of occasions as 'not only did the commission find Vasta had lied at the defamation case, but that he had also lied to the commission about the same matter'.[184]

Mr Bishop further contended that 'this was not the only issue on which Vasta was found to have lied'.[185] To support this claim, Mr Bishop referred to Mr Vasta's description of Sir Terry Lewis as an acquaintance at a defamation hearing, whereas the Commission of Inquiry found that Mr Vasta and Sir Terence Lewis were friends.[186]

To highlight the significance of his point, Mr Bishop referred to Legal Aid Queensland website's definition of perjury, '[a]nyone who deliberately gives false (untrue) evidence for a judicial proceeding is guilty of a crime called perjury.'[187]

Mr Bishop also quoted from a report issued by the Victorian Parliamentary Law Reform Committee, which examined the offence of perjury:

… offences such as perjury and perverting the course of justice are regarded by governments, judges and society as a whole as very serious crimes. The common feature of these offences and the reason why they are viewed so seriously, is the threat they pose to the due administration of justice.[188]

180 Public hearing transcript, Brisbane, 9 August 2017, p 6.
181 Submission 1, p 1.
182 Submission 1, p 1.
183 Submission 1, p 1.
184 Submission 1, p 2.
185 Submission 1, p 2.
186 Submission 1, p 2.
187 Submission 1, p 1.
188 Submission 1, p 2.

In correspondence with the committee, Mr Vasta disputed the line of argument put forward by Mr Bishop. In response to Mr Bishop's view that Mr Vasta 'deliberately lied on oath', Mr Vasta countered:

> *This was a reference to what became known as the AAT incident. The evidence I gave and the evidence my wife gave was rejected in favour of the evidence given by two journalists. Such a finding does not amount to a finding that perjury was committed. The problem that is caused by the Judges commission using this as a partial basis to recommend my removal was laid bare by the Report of the I.C.J. (Australian Section) dated 21 March 1995 which states at p.8: -*
>
> > *In the result therefore, Mr Justice Vasta in one sense has been placed at a disadvantage compared to the ordinary citizen. A special inquiry of three former judges formed an unfavourable view of his evidence (and that of his wife) compared with that of the two journalists. The comment can be made that in any litigation a court may prefer the evidence of one party to that of another but that falls a long way short of constituting established perjury and may have no consequence other than that loss of the civil action*.[189]

Mr Vasta considered that references to the Legal Aid website definition of perjury and the Victorian Parliamentary Law Reform Committee examination of perjury, have 'no relevance if perjury has not been shown to have been committed in the first place'.[190]

3.7 Political climate

Some current and former members of parliament who witnessed the events involving the removal of Mr Vasta submitted that it was essential to consider the political climate of the time when considering this matter.

The Hon Powell submitted:

> *To understand the events surrounding the historic event in the life of the Queensland Parliament, one has to have some understanding of the political climate in Queensland at that time. The media had for some time been carrying out a vendetta against the Government and were delighted that they were able to convince a majority of National Party members to move against the Premier, Sir Joh Bjelke Petersen. They had Mike Ahern installed in his stead and Ahern became their puppet*.[191]

Similarly, Mr Hobbs commented about how the background situation contributed to the chain of events involving Mr Vasta:

> *During the lead up to this unprecedented event in Queensland history it is important to understand the highly charged political environment that Queensland was in at the time. The Fitzgerald Inquiry was the news every day, political people and high ranking Public Servants were being investigated and a long term Premier has recently resigned. The long term Government of the day of which I was a member was struggling in the highly charged political climate, the media was hostile and the ALP was invigorated and they and their supporters were ever present at the public hearings.*
>
> *During Mr Justice Vasta's lengthy address members were very attentive and it reminded me of the phrase "you could hear a pin drop". …*
>
> *During the dinner break the ALP Caucus met and the word was that a strong debate occurred and they reluctantly approved to support the motion.*

189 Correspondence from Mr Vasta to the committee dated 21 June 2017, p 3.

190 Correspondence from Mr Vasta to the committee dated 21 June 2017, p 4.

191 Submission 4, p 1.

This is interesting and reflects the highly charged political climate at the time considering the ALP had called for Judge Vasta to be stood down, well before the special Parliamentary Judges Commission was appointed, and were now trying to support him. …

There was a lynch mob mentality in Queensland developing prior to and after this event that no doubt clouded the views of many Queenslanders.

I recall some political Members who were convicted of offences at the time however when similar offences by similar people occurred at a later time no action was taken.[192]

During the public hearing, the Hon Bob Katter also spoke about how he perceived the background political climate over the relevant time period:

It was a period of great terror for me. … It was terrifying. I hope none of you ever have to go through it. There was corruption deep in the police force. When there are 44 dead bodies hanging around the place and no-one has ever been put in jail for any of them and someone starts asking questions, there are going to be a lot more dead bodies around the place. I did not want mine to one of them. It was cowardice on my part. You have to understand that we did not go there because we were all scared.[193]

3.8 Impact on Fitzgerald reform agenda

In his submission, the Hon Ahern highlighted the consequences that might arise should the Bill be passed:

To review the process taken all those years ago now, would entail the appointment of another judicial commission of the same standing as Mr Gibbs. Perhaps new calls for submissions should be made. Maybe there is more evidence now that the years have passed. This, if proceeded, will trigger calls for review of other decisions. The Commissioner for Police's case is still debated by lawyers. If the resolution of the Parliament then, is overturned, the public of Queensland might gain the impression that today's Parliament is running away from the Fitzgerald Reform agenda. I doubt the Queensland people would approve of that.

My view is that the work was well done. The matter should be left to rest.[194]

3.9 Other matters

Mr Vasta's appointment as a Judge

Evidence was received by the committee that Mr Vasta's appointment as a Supreme Court Judge was unpopular within the legal community, due to his perceived premature promotion. In this regard, the Hon Powell submitted:

Mr [Angelo] Vasta had been promoted to the Supreme Court from being Chief Crown Prosecutor. This move by the Bjelke Petersen Government was derided by many of the existing Judiciary and by the Opposition. In his job as a judge Vasta proved all his detractors wrong and had a very successful and busy career as a judge. As Judge Vasta's speech indicates he presided over approximately 150 criminal trials out of which there were only seven successful appeals. His record can be compared very favourably with those of his fellow judges. …

The accusations were certainly politically charged and from my perspective I was convinced that Mr Vasta was not guilty of any misdemeanour that called his impartiality as Judge into question. That Judge Vasta did not enter the judiciary by the usual means is hardly a sacking offence when his behaviour as a Judge is examined and found exemplary.[195]

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192 Submission No 7, pp 1-3.

193 Public hearing transcript, Brisbane, 9 August 2017, p 12.

194 Submission 2, pp 1-2.

195 Submission 4, pp 1-2.

Masonic Lodge

One submitter, Mr Trevor Payne, considers that Mr Vasta's circumstances resulted from his refusal to join the Masonic Lodge:

> *I wish to thank Mr Katter for presenting this bill. It has been a long time coming for the House to recognise and restore a man it wrongfully dismissed. But as I have read, I have also realised that this case is one that appears incongruous to most. But I am convinced that this lies in people not* ***having more of the evidence****. … The clue that opens one's mind to understanding is that [Judge Vasta] had been getting pressure, when on the Court Bench, to join the Masonic Lodge – he had refused, being a good Christian. The resulting tax issues and sacking appears to arise out of this situation*.[196]

In his submission, Mr Payne calls for 'an investigation into the role of the Masonic Lodge in this issue'.[197]

Mr Payne further noted:

> *I know that may appear somewhat from out-there, but it is vital that this opportunity for true Justice be carried out. Please consider this submission carefully and see that there was something far more than just a case of unfair dismissal, but of outside and outright interference in the working of the Judicial system and our parliament.*[198]

New evidence

In his submission, Mr Schuntner, expressed the view that the committee should ascertain if there is 'new and compelling evidence' that required consideration, and:

> *If there is, that consideration should obviously occur. Whether there is or is not new evidence, the committee should and would trawl over Hansard and come to its view as to the soundness of the Parliament's decision in 1989.*[199]

In conclusion, Mr Schuntner remarked:

> *In summary, my view is that the 2017 Bill should be rejected unless there is new and compelling evidence which, after thorough examination by the committee is seen as warranting a reversal of the 1989 decision.*[200]

Differences of opinion

The Hon Ahern, in his submission, also noted that matters of this nature often result in differences of opinion:

> *There are always disputes and differences of opinion in the legal arena. This one is no different. One retired Justice opined that the Judicial Commission report should have been referred to a Select Committee of the Parliament for report before the definitive decision was made. Given the parliamentary context at the time, my view is that such a course would have been very unwise.*[201]

In correspondence with the committee, Mr Vasta questioned the accuracy of these comments:

> *In this regard he is absolutely incorrect. This matter is quite different. In all of the cases where charges were brought, each defendant had a right of appeal to various appellate courts right through to the High court. I had NONE (emphasis added). Therefore, my case which was the first*

196 Submission 5, p 1.
197 Submission 5, p 1.
198 Submission 5, p 2.
199 Submission 6, p 1, para 5.
200 Submission 6, p 1, para 6.
201 Submission 2, p 1.

removal of a superior court judge since Federation, should have been considered more carefully.[202]

Powers of the parliament

Mr Toby Chambers argued that it is beyond the legislative powers of the Queensland Parliament, as proposed in the Bill, to overturn the original decision to remove Mr Vasta from office, until such time as the original Act being the Commission of Inquiry Act is amended or repealed.[203] Mr Chambers submitted further that:

Unfortunately under the original Act unless it is repealed in full or amended or the Sunset Clause is extended, no other external commission apart from that specified under the Act has the legal powers to inform the Qld Legislator.[204]

Mr Chambers argued that the Queensland Parliament must disregard any subsequent reports on this matter based on sections 3 and 4 of the Commission of Inquiry Act:

In essence it is submitted in considering this Bill, the Qld Legislator has to totally disregard any further external Commissions of Inquiry Reports, such as the cited ICJ Report. Any further reports other than the original report tabled to the Speaker that may have partially or wholly exonerated Angelo Vasta are ultimately superfluous to the decision by the Qld Legislator to remove Justice Vasta from Public Office. The Qld Legislator can only be guided by the Investigation, Report and Recommendation that was tabled to the Speaker by the Commission appointed to review the conduct of Justice Vasta. If the Qld Legislative Assembly were to base the decision to revoke the original decision to remove Justice Vasta and this were based on the ICJ Report, that differs from the original Commissions Report and Investigation, this in itself would be a breach of the very legislation that was enacted to consider and report on the allegations against Justice Vasta.[205]

Mr Chambers considered that the 'sunset clause' in the Commission of Inquiry Act, which specified that the Commission of Inquiry Act expired on 31 December 1989 'ultimately has the implied and intention of Statute Barring any further action including the presentation of this Reversal Bill in Qld Parliament.'[206]

Mr Chambers further argued:

The Sunset Clause with a specific expiry date of 31 December 1989 in effect and in law gives an "Absolute and definitive finality," to Justice Vasta's removal from public office, unless of course the Legislative Assembly agrees to amend and extend the expiry date of Section 17 of the Act beyond the 31 December 1989. Only then can Parliament if after having successfully voted for an amendment to the expiry date of the Act, proclaim that this Bill be considered further by the Qld Legislative Assembly.[207]

3.10 Committee comment

In examining this Bill, the committee has been mindful that the issues and questions before it largely revolve around the reputation and career of one person. That a piece of legislation would apply to an individual person - rather than broad policy that does not identify people by name - highlights the significance of the decision that was made by the parliament and the Governor of Queensland in 1989.

202 Correspondence from Mr Vasta to the committee dated 21 June 2017, p 1.
203 Submission 8, p 8.
204 Submission 8, p 8.
205 Submission 8, p 8.
206 Submission 8, p 10.
207 Submission 8, p 10.

The committee acknowledges the impact of the decision on Mr Vasta and his family, and the potential impact that re-examining relevant issues will have, and thanks Mr Vasta for his valuable contribution to the inquiry.

The committee is also aware that it is a luxury to be able to review a decision with the benefit of time, and that the Commission of Inquiry and the parliament made its findings and decision in the context of a different time period and circumstances.

Despite assurances from Mr Katter that it is not intended that the Bill would provide compensation to Mr Vasta, the committee is concerned that, without amendment, the Bill may provide grounds for Mr Vasta to seek to be reimbursed for lost wages, superannuation entitlements and interest.

Government members comment

While government members respect the decision that was made in 1989, there is now more evidence available about the matters that were relied upon by the Commission of Inquiry, and subsequently the Queensland Parliament, in relation to Mr Vasta's removal. In addition, Government members have concerns about the process undertaken to remove Mr Vasta from office and that there was no avenue of appeal for Mr Vasta, even in the light of new evidence and consider that the decision to remove Mr Vasta as a judge of the Supreme Court warrants further review.

Non-government members comment

Non-government members believe there is no conclusive evidence to support the argument that the decisions relating to Mr Vasta made by the Parliament and the Government of 1988-1989 were wrong. A panel of eminent judges was appointed to inquire into the matter, Mr Vasta was given an opportunity to address the Parliament, and the then Governor took his own advice before endorsing the motion of the Parliament and removing Mr Vasta from his judicial office. In addition to the possibility of reimbursement to Mr Vasta, non-government members are concerned that the Bill could also potentially lead to calls for other cases at the time to be reviewed.

4. Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

4.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill.

Section 23(1) of the LSA sets out the content requirements for an explanatory note, providing that the explanatory note must include the information required under paragraphs (a)-(i) in clear and precise language.

While the explanatory notes provide considerable detail to explain the background to the Bill, they arguably lack sufficient detail to allow thorough consideration of some of the content requirements in subsection 1, namely:

(e) a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs but not the cost of developing the Bill.

The explanatory notes advise '[c]osts associated with implementation of the Bill are expected to be minor and will be met from within existing departmental allocations.'[208]

This advice appears correct in that the administrative costs of implementing the Bill as it currently stands would be expected to be minor, for example, the amendment of historical records could be a potential administrative cost.

It does however appear possible that the combined operation of paragraphs (b)-(d) in clause 3(1) of the Bill could potentially (and there may be other unknown factors that mitigate against this) provide grounds for Mr Vasta to seek to be reimbursed for lost wages, superannuation entitlements, other entitlements and interest on those amounts from the time of his removal from office in 1989 to the time he reached the statutorily mandated retirement age for judges of 70.

This seems a possibility because of the combined operation of paragraphs (b)-(d) which provide that –

- Mr Vasta's removal from the position of Supreme Court Judge was invalid (clause 3(1)(b))
- his position was not 'avoided' under repealed section 12 of the *Supreme Court Act 1867* (clause 3(1)(c)), and
- he is to be taken to have retired from office under the *Supreme Court of Queensland Act 1991,* section 21(1), which provides that a judge must retire at 70 (clause 3(1)(d)).

Whilst Mr Vasta may not be concerned with receiving 'compensation' for reputational damage/distress etc, this might be distinguished from a claim for back wages and other entitlements which presumably could arise as an issue when a dismissal decision is subsequently invalidated and

[208] Explanatory notes, p 8.

the person had a reasonable expectation that they could have remained employed 'during their good behaviour'[209] until the age of 70 if they so desired.

(g) a brief statement of the extent to which consultation was carried out in relation to the Bill.

The explanatory notes advise that 'the majority of stakeholders support the Bill and its intent. According to Office of Best Practice Regulation guidelines, the Bill does not require further analysis under the Regulatory Impact Statement System.'[210]

The stakeholders consulted are not identified, nor is the method of consultation undertaken.

(h) a simple explanation of the purpose and intended operation of each clause of the Bill.

There is no simple explanation of the purpose and intended operation of each clause of the Bill as required under this provision.

Key declaratory statements made in this Bill are that:

Clause 3(1) It is declared that -

*(a) the findings stated in the First Report of the Parliamentary Judges Commission of Inquiry (the **report**) did not warrant the removal of the Honourable Angelo Vasta from office as a Supreme Court judge; and*

(b) the exercise of the power to remove the Honourable Angelo Vasta from office as a Supreme Court judge is –

i. invalid; and

ii. taken to have never happened; and

Had the explanatory notes contained the simple explanation of the purpose and intended operation of each clause as required under section 23(1)(h) of the LSA, then that explanation could have stepped readers of the explanatory notes through how, specifically, the findings of the Commission of Inquiry Report did not warrant the removal of Mr Vasta.

Arguments in support of this conclusion are variously scattered throughout the policy objectives part of the explanatory notes (pp 1-7), however it would have assisted readers in weighing the evidence if the explanatory notes had advised exactly how, at law, the findings of the Commission of Inquiry Report did not warrant the removal of Mr Vasta from office as a Supreme Court Judge.

Further, it would have been helpful if the explanatory notes had contained a simple explanation as to why, at law, the exercise of the power (by the then parliament) to remove Mr Vasta from the Supreme Court is considered to have been an invalid exercise of its sovereign powers, as declared under clause 3(1)(b)(i).

4.3 Committee comment

The committee has examined the application of fundamental legislative principles to the Bill. It is considered that this Bill does not contain any issues of fundamental legislative principle. However, the committee notes the significant of the matters found by the Technical Scrutiny of Legislation Secretariat regarding shortfalls in the explanatory notes and the potential implication of those shortfalls.

209 See s.15, *Constitution Act 1867.*

210 Explanatory notes, p 8.

Appendix A – List of submitters

Sub #	Submitter
001	Mr Stephen Bishop
002	Hon Mike Ahern AO
003	Ms Danielle George
004	Hon Lionel Powell
005	Mr Trevor Payne
006	Mr Lyle Schuntner
007	Mr Howard Hobbs
008	Mr Toby Chambers

Appendix B – List of witnesses at public hearing

- Mr Angelo Vasta QC
- Hon Bob Katter MP, Member for Kennedy
- Hon Michael Ahern AO, Former Premier of Queensland

Statement of Reservation

Non-government members do not believe that it should be the role of this Parliament to stand as judge and jury of the actions of members of the Legislative Assembly almost three decades ago. The decision in 1989 was the decision of the day. It remains, and should remain, a decision of that day.

There are two reasons put forward for the passage of this Bill – firstly that it rights a wrong done to Mr Vasta and secondly that it restores his professional and personal reputation.

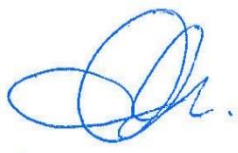
In relation to the first point, there is no conclusive evidence to say that the decisions undertaken by the Parliament and the Government of 1988-1989 were wrong. Secondly, Mr Vasta has continued to practice law as a Barrister despite alleged grievances about the effect of the 1989 removal on his integrity and reputation.

While the actions of the Parliament to remove a sitting Supreme Court judge may have been extraordinary, it is important to remember that it was an extraordinary time in Queensland politics. Decisions that were made during that period may not have been made in a different political climate but such decisions have to be examined in the light of the circumstances of the time.

It is also important to note the evidence provided to the Committee by former Premier, Hon. Mike Ahern AO -

"When it comes down to it, you as members of parliament are accountable to the people. That is your responsibility, and that was mine at that time: to be accountable to the people. What do the people want out of their judges? The process went on. We had to then decide on the legislation. We had to decide then on the personalities. We gave people adequate hearing and the parliament delegated to that group of judges. The delegation was there. We had the right to do it on our own, but we delegated that to people of high quality to come up with the right information and recommendations. Then they reported and a discussion took place in the House with an address by the relevant judge. Then the Governor made his final definitive decision."

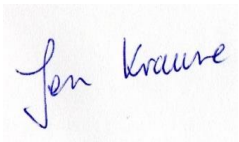
Mr Ahern also provided that the Governor of Queensland at the time, Sir Walter Campbell (a former Chief Justice) did not act solely on the advice of the Executive Government or the Parliament in relation to the removal of Mr Vasta but took his own advice before acting to endorse the motion of the Parliament and remove Mr Vasta from his judicial office.



Michael Crandon MP

Deputy Chair

Member for Coomera



Jon Krause MP

Member for Beaudesert

Janet (Jann) Stuckey MP

Member for Currumbin