Honourable Angelo Vasta (Reversal of Removal) Bill 2017

Explanatory Notes

Short title

The short title of the Bill is Honourable Angelo Vasta (Reversal of Removal) Bill 2017

Policy objectives and the reasons for them

The purpose of the Bill is to set aside or revoke the decision of the Queensland Parliament, made on 8 June 1989, to remove The Honourable Justice Angelo Vasta ("the Judge") as a Judge of the Supreme Court of Queensland.

On 8 June, 1989, the Governor of Queensland accepted the recommendation of the Legislative Assembly to dismiss the Judge from office as a Judge of the Supreme Court of Queensland.

At the time, a Supreme Court Justice could be removed by the Governor following an address by the Legislative Assembly and subsequent motion being passed by the House. This is the only occasion since Federation that any Parliament in Australia has removed a Supreme Court Justice from office.

Prior to the address to the Parliament, a Statutory Commission of Inquiry was hastily established by the Legislative Assembly to advise the Assembly if any behaviour by the Judge warranted his removal from office.

It is acknowledged that there were numerous deficiencies in the legislation that established the Parliamentary Judges Commission of Inquiry ("the Commission"), with the most serious being:

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;
d) 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.

The Commission scrutinised wide ranging allegations of behaviour of the Judge, including the Judge's involvement in a company largely managed by his brother-in-law and with the Judge's family trust company. The Commission's report essentially contained five areas of conduct relating to the Judge, which if reviewed collectively may cause the Parliament to vote to remove the Judge from office. The Commission was at pains to point out that there was absolutely no evidence that there was anything untoward concerning the Judge's discharge of his judicial duties.

Since the Report of the Commission of Inquiry was tabled in the Legislative Assembly in 1989, a number of the allegations have since been dismissed or proven to be untrue. The 1995 Report of the International Commission of Jurists (Australian Chapter) ("ICJ Report") into the dismissal of the Judge outlines the allegations that have since been dismissed or proven to be untrue.

The first allegation the ICJ Report addressed was in relation to alleged false evidence given by the Judge in a defamation hearing. The Commission did not accept as true the evidence of the Judge. In the case of an ordinary citizen, the procedure for determining whether deliberately false evidence has been given is the commencement of criminal proceedings for the offence of perjury. No such proceedings were ever commenced against the Judge. The High Court of Australia in *Smith v New South Wales Bar Association (1992) 176 CLR 256* in the joint judgment of Justices Brennan, Dawson, Toohey and Gaudron stated:- "*There is a difference between the rejection of a person's evidence and a finding that he or she deliberately lied*."

Another allegation was in relation to an alleged sham loan that was arranged to gain an income tax advantage. A company that was formed to serve the role as trustee for a family trust for the Judge was given a loan from the Judge's brother-in-law's family company which created a tax advantage. The Commission found this loan to be a sham and this matter should be taken into consideration by the Parliament when deciding whether to dismiss the Judge or not. However, the Australian Tax Office ("the ATO") and the Commissioner of Taxation eventually accepted that the Judge's tax affairs were legitimate and no sham loan existed.

There were a number of other allegations relating to the Judge's tax affairs that have since been determined and are in contradiction of the Commission's Report. One allegation was regarding consultancy fees paid to the Judge by his brother-in-law's company, Cosco. From 1987 to 1989 Cosco paid the Judge the sum of $5,000 per year as a consultancy fee. In exchange for these payments, the Judge gave advice and discussed matters with his brother-in-law on an *ad hoc* basis. The Commission concluded that there was no genuine consultancy agreement and that is was a device to obtain a taxation benefit for the Judge.

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.

It was also alleged that the Judge arranged a sham involving the lease of a Gold Coast unit. While the Judge owned the Gold Coast unit he leased it to his brother-in-law's company, Cosco Holdings Pty Ltd ("Cosco").

The Commission concluded 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". Following the Commission's report, the ATO sought also to treat the lease as a sham and to deny the Judge any deductions in respect of the unit. The Judge appealed to the Administrative Appeals Tribunal, which upheld the Judge's objections and allowed deductions in respect of the Gold Coast unit.

The final allegation was that the Judge made false claims for a tax deduction in respect of the lease of a library. As some members of the legal profession do, the Judge made arrangements to purchase a law library and transfer it to a family company which in turn leased it back to him. The lease payments were then claimed as a taxation deduction.

There was some delay in the setting up of the direct debit from the Judge to the Trust. It is accepted by the Judge that he included the first two lease payments as a deduction in his income tax return since the intention was that the lease commence after the library had been purchased. The library was purchased and delivered in March. The March and April months were not deducted since the direct debit had not commenced to operate.

The ICJ Report stated *"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 and its inclusion of this matter as a ground for dismissal appears to be completely unjustified.

There were never any allegations of misconduct or wrongdoing in relation to actions and decisions that the Judge had made in court, his legal career, or in his role as a Judge of the Supreme Court. The Judge was never charged with any offence resulting from the Commission.

The opinion of the Commission is contained on page 163 and 164 of the Commission's report which is set out below.

> ***12. <u>THE OPINION OF THE COMMISSION</u>***
>
> ***12.1 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.***
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> ***12.2 The matters which warrant his removal are those which may briefly be described as follows:***

(a) Giving false evidence regarding the AAT 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 has 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 advantage:

(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 finding in relation to these matters are set out in the report.

12.3 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.

12.4 In 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.

12.5 The decision whether an address for removal of the Judge should be presented in these circumstances lies within the discretion of the Legislative Assembly.

It must be carefully noted that the Commission emphasised how **i**mportant it was that the matters contained in 12.2(a) to 12.2(e) be viewed ***"in conjunction with one another."***

The then Opposition Leader, Mr Wayne Goss, saw the significance of this observation by the Commission when he said in the Legislative Assembly on 7 June 1989:

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.***

The Judge was permitted to address the Legislative Assembly at the Bar of the House on 7 June 1989 to show cause why he should not be removed from his judicial office. After an extremely lengthy and detailed address by the Judge, the Parliament debated a motion requesting the Governor to remove the Judge from office on the grounds of alleged misconduct in his private dealings.

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. There was also a concerted effort to allow for a conscience vote for all Members of Parliament. This was denied when Government Ministers instructed all Government Members to vote *en bloc*.

Although the Judge comprehensively proclaimed that he should not be removed from office, the motion was passed by the Assembly at approximately 3am with only the support of the Government but with intense disapproval from the Opposition and other Parties. The vote was determined only by voting on the voices and no division was called.

It is suggested that the Commission made a glaring error when the Commissioners delved into the Judge's taxation matters. Prior to the Inquiry there had been not the slightest suggestion that there was anything untoward in relation to the Judge's taxation matters.

The Commission expressed its view about certain transactions and called them *"shams".* This was not only wrong but quite unfair because at that time there was no evidence of *"shams."* It was merely the opinion of the Commission. There was a failure to prove any wrongdoing by the Judge. In his address to Parliament, the judge stated:

> ***Insofar as the commission stated that I arranged sham transactions, which are referred to in (d) on page 163, to gain income tax advantages, it exceeded its powers. That is because the commission had no power to make any decisions that are the province of another body or court. There can be no evidence of any tax sham until the Taxation Department has submitted to the tax-payer amended assessments. Thereafter, the tax-payer has a right of appeal to the Administrative Appeals Tribunal, called AAT for short, and to the Federal Court and by special leave to the High Court. Until there has been a determination that the transactions in question are shams according to law, there is no proof of misbehaviour. At the inquiry there was no evidence that the Taxation Department issued amended assessments.***
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> ***To illustrate the point I make, may I emphasise that this was not a case in which there was evidence that in my tax returns during the period of my tenure of office there were instances of transactions which were declared by the Taxation***

> ***Department as shams. Prior to the commencement of the inquiry the Taxation Department had never queried my tax returns. The commission therefore, in declaring these transactions as shams, has usurped the jurisdiction of another body and other courts and has no power to do so. The decision which the commission has made is, by the Act which set it up, as I say, unable to be challenged in any court. The decision is plainly wrong and it can be corrected only by this House. This is not a submission, Mr Speaker, which is lightly made. It is an argument which is plainly correct.***

The force of this argument was noted by the Judge's State Member of Parliament, Mr Terry Mackenroth who said in Parliament on 7 June 1989:

> ***The financial dealings involved in (c), (d) and (e) are wrong if the judge engaged in them—or was aware of them—to gain taxation advantages by breaking Commonwealth taxation laws. The commissioners say in the report that those dealings do not come within their jurisdiction, yet they find him guilty of them.***
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> ***The proper course of action was that the matter should have been dealt with by the taxation authorities before the report came before the Parliament for debate on whether or not the judge should be sacked. If the judge is found guilty in a court of tax evasion or tax fraud, this Parliament should find him guilty and sack him. We should not find a person guilty of something that these three judges state that they are not competent to decide upon, yet find him guilty*** *of.*

The Judge on the same point said in his address to Parliament:

> ***Put in a slightly different manner, the question of the behaviour unbecoming is identified with the setting-up of alleged shams. Whether such shams exist is a matter for the Taxation Department. There was no evidence before the commission that either the department or a tribunal or a court of law considered the transactions shams. Accordingly, there has been no evidence of conduct unbecoming. May I stress that this is an argument which has to be considered seriously and, in that regard, you may consider that it cannot be made today. I would request that this House consider the matter carefully and to that end the decision may be sought to be postponed to a later date.***
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> ***This submission is not made in order to avoid making explanations concerning the transactions referred to as the Gold Coast unit lease; the loan of $75,000 from Cosco to me and the exchange of cheques. If these transactions are queried by the Taxation Department, there are complete answers to them. If those answers are not accepted, there are avenues of appeal to higher courts or tribunals. 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?"***

This part of the Judge's address contained prophetic words because this is precisely what has happened. The so called tax shams were accepted by the ATO as legitimate commercial transactions. One can therefore appreciate the enormity of such an injustice.

Only hours after the debate had finished and the motion passed, the Queensland Government Gazette published on 8 June 1989 a notice that the Judge's appointment had been revoked.

One may well ask why was this undue haste necessary? After all, Queensland is the only State that has a unicameral parliament.

In all other States, the dismissal of a superior court judge requires the address of both Houses of Parliament. Therefore, a vote in one House for the removal of a judge does not mean that a similar vote will be carried in the other House. This is so especially when there is time to reflect during the inevitable delay between the taking of the vote in each House.

A number of Members of Parliament, from all sides of politics, publically and privately voiced their dismay at the events surrounding the dismissal of the Judge from the Supreme Court of Queensland. There were claims that the Judge was collateral damage and a scapegoat of the Government trying to politically distance itself from the findings of the Fitzgerald inquiry.

After the dismissal of the Judge there was a range of criticisms of the procedures that had been followed. They focused on the role of the Parliament and the role of the Commission of Inquiry.

There was criticism of the Queensland Government's failure to pay the legal costs that the Judge had incurred in being represented at the Inquiry and in defending his office; costs including interest amounted to $1.1million. In 1996, the Queensland Government paid the Judge the sum of $600,000. This payment was not an acknowledgment of wrongdoing by the government or an admission of error.

On 12 September 1995, the Honourable Neil Turner raised the matter of the Judge's dismissal as a Matter of Public Interest and subsequently tabled the ICJ Report to the Legislative Assembly.

Mr Turner sought to have the Parliament review this matter and he highlighted the events which show clearly that Parliament was in error in the decision to recommend the dismissal of the Judge by the Governor-in-Council. With no support forthcoming from the Government or Opposition, the matter did not proceed any further.

This Bill does not reinstate Mr Vasta as a judge as the Judge is now aged 76 and beyond the statutory retiring age for a Supreme Court judge. However, the Judge's reputation and that of his family will be forever tainted until this matter is resolved and corrected.

The Judge has continued to practice as a barrister and has been very stoic. Despite being dismissed, the Judge continues to this day to dedicate his life to the Queensland legal fraternity.

Nevertheless, this injustice continues to be a blot on the Queensland Parliament and on the Queensland Judiciary. On 8 June 2017, twenty-eight years will have elapsed since that shameful and unjust act.

The time has come to correct that wrong.

Achievement of policy objectives

To achieve the policy objective to formally exonerate the Judge of any wrongdoing or misconduct, reinstate his good standing, the Bill will set aside the decision of the Queensland Parliament recommending the removal of The Honourable Justice Angelo Vasta as a Supreme Court Judge. The Bill will also revoke the decision of the Governor in Council on 8 June 1989 to remove the Judge from office.

Alternative ways of achieving policy objectives

Setting aside and revoking the decision of the Queensland Parliament to remove Angelo Vasta as a Judge of the Supreme Court of Queensland is the only way of achieving the policy objectives. That is because the Judge was deprived of any right of appeal, either through the courts or the Parliament. In addition, since the Parliament removed the Judge it is only the Parliament that can set aside that decision and the decision by the Governor in Council.

Estimated cost for government implementation

Costs associated with implementation of the Bill are expected to be minor and will be met from within existing departmental allocations.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with fundamental legislative principles.

Consultation

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.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland; it sets aside and revokes a decision of the Queensland Parliament and the consequent decision of the Governor in Council for the removal of the Judge on 8 June 1989.