Date introduced: 8 May 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

DIGEST OF BILL

Purpose

To establish a Parliamentary Commission of Inquiry to investigate the behaviour of Mr Justice Lionel Murphy.

Background

Mr Justice Lionel Murphy was appointed to the bench of the High Court in 1975 and rapidly developed a reputation as a reformist judge.

In February 1984 the Age published transcripts of illegally obtained tapes of telephone conversations between a solicitor and a judge. Later in February and early in March 1984 the solicitor and judge were identified as Mr Morgan Ryan and Mr Justice Lionel Murphy.

On 28 March 1984 a Senate resolution established a Select Committee on the Conduct of a Judge to examine whether the tapes and transcripts revealed misbehaviour or incapacity. The Select Committee consisted of six Senators, three from the ALP (Senators Tate, Bolkus and Crowley), two from the Liberal Party (Senators Durack and Lewis) and the Leader of the Australian Democrats (Senator Chipp). The Select Committee's findings were split along party lines with Senator Chipp also dissenting. The Select Committee considered allegations by NSW Chief Magistrate that Mr Justice Lionel had asked him 'Now what about my little mate?' in relation to a charge against Mr Morgan Ryan.

A further Senate Select Committee was established pursuant to a Senate motion of 6 September 1984 to investigate allegations concerning the judge. This inquiry
was to review the allegations by Mr Breise and comprised two ALP Senators (Senators Tate and Bolkus), a Liberal Party Senator (Senator Lewis) and an Australian Democrats Senator (Senator Haines). A majority of the Select Committee (i.e. Senators Tate, Lewis and Haines) found that, on the balance of probabilities, Mr Justice Lionel Murphy had spoken in an attempt to influence the course of justice.[1] The findings were presented on 31 October 1984 and the same day Mr Justice Lionel Murphy stood aside from the High Court to challenge the allegations.

On 14 December 1984 the Director of Public Prosecutions charged Mr Justice Lionel Murphy with attempting to pervert the course of justice. There were two charges, first that concerning Mr Clairie Breise and secondly that Mr Justice Lionel Murphy had attempted to influence Judge Paul Flannery of the NSW District Court who conducted the trial of Mr Morgan Ryan. On 16 April 1985 Mr Justice Lionel Murphy was committed for trial on both charges. Subsequently Mr Justice Lionel Murphy was convicted on the charge relating to Mr Clairie Breise but acquitted on the other charge. On 28 November 1985 the NSW Court of Appeal ordered a retrial as a result of misdirections to the jury at the original trial. At the retrial, which began on 14 April 1986 and ended on 28 April 1986, Mr Justice Lionel Murphy was acquitted.

Following allegations by a former Federal Police Officer and the presentation of a secret volume of the Stewart Royal Commission's findings, Mr Justice Lionel Murphy advised, on 5 May 1986, that he would voluntarily refrain from sitting on the High Court. In the News Release announcing this decision the Attorney-General stated that 'Mr Justice Murphy's statement by way of an answer is to be made available for consideration to the Court, the Attorney-General, the Leader of the Opposition and the Leader of the Democrats'. This led to speculation that Mr Justice Lionel Murphy would be judged by his peers on the bench. This view was rejected by the Chief Justice Sir Harry Gibbs in a statement issued on 6 May 1986.

This Bill was introduced on 8 May 1986 to establish a Commission to investigate allegations against Mr Justice Lionel Murphy.
Main Provisions

Clause 4 will establish the Commission which shall consist of three members appointed by resolutions of both Houses. All members must be, or have been, a judge.

The function of the Commission is to consider specific allegations and determine if Mr Justice Lionel Murphy's conduct could amount to proved misbehaviour. The Commission is to have regard to previous inquiries and is generally not to look at the matters dealt with in the criminal trials (clause 5).

The Commission is only to rely on evidence admissible in a court and Mr Justice Lionel Murphy is not to be required to give evidence unless the Commission believes it has evidence of misbehaviour (clause 6).

Proceedings are to be in private unless the Commission thinks circumstances require otherwise (clause 7).

The Commission is to report its findings of facts and its conclusions regarding misbehaviour by 30 September 1986 or such later date as is resolved by both Houses. The Commission may prepare a separate report, that will not be laid before Parliament, to contain material it considers would be prejudicial to a person's fair trial, an investigation, confidentiality or a person's safety or reputation (clause 8).

If a member dies or becomes incapacitated, the Commission will be constituted by the remaining two members (clause 9).

Questions are to be decided on a majority basis or, if there are only two members, by the Presiding Members vote (clause 10).

Division 2 of Part II of the Bill (clauses 11 to 18) deals with the powers of the Commission. They are generally similar to the normal powers of a Royal Commission and include the powers to

- summon witnesses (clause 11);
- issue search warrants (clause 12);
arrest witnesses who fail to appear (clause 17).

Part III of the Bill (clauses 24 to 33) lists a number of offences. They include:

- failure to attend as a witness or to produce documents (clause 24);
- giving false or misleading evidence (clause 28); and
- bribing witnesses (clause 32).

Clauses 34 to 37 deal with miscellaneous matters. Clause 34 will allow information relating to the Commission of an offence against Commonwealth, State or Territory laws to be communicated to a number of people including an Attorney-General, the National Crime Authority or a police force.

Clause 35 deals with contempt of the Commission. Such a contempt will be punishable by a $2000 fine or 12 months imprisonment.

Clause 36 will appropriate the sums necessary for the functioning of the Bill.

For further information, if required, contact the Law and Government Group.

19 August 1986

Bills Digest Service
Legislative Research Service
Reference

1. Senate Select Committee on Allegations Concerning a Judge, Report to the Senate, October 1984, p.37.