

# CONSTITUTIONAL REFORM ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 Duty to Convene Commission: Special Rules**

#### **Composition for Proceedings**

##### *Section 42: Composition*

169. Subsections (1), (2) and (3) provide for the basic rule that an uneven number of judges equal to or greater than three must be designated to hear any proceedings - there is no flexibility to designate an even number of judges. Given that an uneven number must be designated, permanent judges have to be in the majority in order to ensure that the composition is never wholly or predominantly of non-permanent judges (subsection (1) (c)).
170. This does not mean that the actual hearing cannot commence before an even number of judges, as the judges will by definition have been designated to hear proceedings in advance of the beginning of the hearing proper, and section 42 is, as subsection (4) makes clear, subject to section 43, which allows for additional flexibility. Subsection (5) makes it clear that the power to require more than three judges to be designated for particular proceedings or a particular class or classes of proceedings is exercisable by the President of the Court; and subsection (6) makes provision which ensures that the sections work on the basis that the Court is constituted for proceedings when the judges are designated to hear those proceedings (rather than when the hearing commences).