

## INFORMATION SHEET

# The Complaint Process

### Role of the Commission

The Commission can only investigate certain matters about certain people that work within the court system. The Commission can only investigate a complaint that is about the *behaviour* or *ability* of the following Officers:

1. a non-judicial member of the Victorian Civil and Administrative Tribunal (VCAT); or
2. a judicial officer, which means:
  - a. a judge, reserve judge, associate judge or reserve associate judge of the Supreme Court of Victoria;
  - b. a judge, reserve judge or reserve associate judge of the County Court of Victoria;
  - c. a judge or reserve judge appointed to VCAT;
  - d. a magistrate or reserve magistrate of the Magistrates' Court of Victoria;
  - e. a magistrate or reserve magistrate appointed to the Children's Court, Coroners Court or VCAT;
  - f. a coroner or reserve coroner of the Coroners Court of Victoria; or
  - g. a judicial registrar of the Supreme Court, County Court, Magistrates' Court, Children's Court or the Coroners Court.



#### The Commission has no power to:

- investigate complaints about the correctness of a decision or overturn an Officer's decision for error, mistake or other legal grounds. Reviews of this type are the function of appellate courts. If you are unhappy about the merits or lawfulness of a decision or procedural ruling made by an Officer, you may wish to seek legal advice about your rights of appeal;
- investigate a complaint about an Officer who has resigned or retired;
- investigate a complaint against a federal judicial officer (this means the Federal Court, Federal Circuit Court, Family Court, High Court or Administrative Appeals Tribunal) or a judicial officer of a court in another State;
- investigate a complaint against other staff that work in courts or VCAT (for example registry staff, a court clerk or an associate) or about court process or procedure. If you are unhappy about the conduct of court staff or court process, you may wish to consider making a complaint directly to the relevant court;
- remove an Officer from hearing a case;
- remove an Officer from their position; or
- impose punishments or penalties on an Officer.

## Investigative Process

Now that the Commission has received your complaint, the Commission will commence an investigation. The investigation will consider the details of your complaint and take into account the relevant material provided by you. Any information or documents not included with your complaint may not be taken into account by the Commission.

The Commission will also decide whether or not it needs further information from you or the relevant court or tribunal. For example, the Commission has the power to request the court or tribunal produce the court file, audio recordings or other material, to assist the Commission's investigation. In some limited circumstances a response to the complaint may also be sought from the Officer.

Whilst you can make a complaint at any time, in some circumstances the Commission will adjourn the investigation. This will usually occur where the complaint relates to a proceeding *currently* being heard by the Officer or where a judgment or decision is not yet delivered. An Officer is not required to excuse themselves from hearing your case if you have made a complaint about them.

Following an investigation, the Commission *must* take one of the following actions:

- dismiss the complaint;
- refer the complaint to an independent investigating panel (IIP); or
- refer the complaint to the relevant head of jurisdiction (HOJ).

## Dismissing a complaint

There are a range of grounds upon which matters are dismissed.

### MANDATORY DISMISSAL GROUNDS

Your complaint *must* be dismissed unless the Commission is satisfied:

- it could, if substantiated warrant removal from office;
- it may or has affected the performance of the Officer's functions; or
- the conduct may have infringed the standards generally expected of Officers.

Even where the Commission is satisfied of the above, your complaint *must* still be dismissed by the Commission if:

- it is not about a judicial officer or non-judicial member of VCAT;
- it relates solely to the merits or lawfulness of a decision or procedural ruling;
- the matter occurred before the Officer was appointed and is not conduct that would warrant removal from office;
- it relates to the Officer's private life and does not affect the performance of their functions or suitability to hold their position;
- it is frivolous, vexatious or not made in good faith; or
- the Officer has resigned or retired.



## DISCRETIONARY DISMISSAL GROUNDS

Your complaint *may* be dismissed by the Commission if:

- it is not substantiated;
- it occurred too long ago; or
- having regard to all the circumstances, investigation is unnecessary or unjustified.

If your complaint is dismissed the Commission will, as soon as practicable after the determination is made, inform you in writing and provide the reasons<sup>1</sup> for dismissing your complaint. This will include reference to the relevant provisions of the legislation that have been applied in the handling and determination of your complaint. The Officer, and relevant HOJ will also be advised in writing of the Commission's determination.



## Referral of a complaint to an IIP

If your complaint is not dismissed and the Commission is satisfied that it is of such seriousness that if substantiated it would warrant the removal of the Officer from their position, the complaint must be referred to an IIP. The Officer will be informed of the complaint and the fact it is to be referred to an IIP and given the opportunity to respond.

Referrals to an IIP are rare and only occur in relation to the most serious of matters and only after certain requirements under the Act are satisfied.

An IIP is made up of 3 members appointed by the Commission. Two members are former or current Officers and one member is an appointed community member. An IIP has a wide range of powers to conduct an investigation, including holding public or private hearings, issuing a witness summons, compelling witnesses to attend and applying for a search warrant. However, an IIP does not have power to remove an Officer from their position.

**Having investigated your complaint, an IIP must take one of the following actions:**

- dismiss the complaint;
- refer the complaint to the relevant HOJ with recommendations about the future conduct of the Officer concerned; or
- if there is proven misbehaviour or incapacity, prepare a report for the Governor or Attorney General recommending the officer be removed from office.

Where a complaint is referred to an IIP, the Commission will, as soon as practicable after the decision is made, advise you and the Officer of the action taken.

<sup>1</sup> In accordance with section 23(2) of the Act and noting section 111 of the Act