



# Judicial Commission of Victoria

## Information for Legal Practitioners

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[www.judicialcommission.vic.gov.au](http://www.judicialcommission.vic.gov.au)

# About the Judicial Commission of Victoria

The Judicial Commission of Victoria (the Commission) is an independent statutory corporation established under the *Judicial Commission of Victoria Act 2016* (the **Act**) to investigate complaints about judicial officers and non-judicial VCAT members (Officers). The Board of the Commission (the **Board**) is comprised of the six heads of jurisdictions and four members nominated by the Attorney General who are of high standing in the community.

The Commission has been established to increase consistency and transparency in the way complaints are dealt with by creating a dedicated complaint handling body.

## Who can make a complaint?

Any member of the public or the legal profession can make a complaint to the Commission.

The Law Institute of Victoria and the Bar Association can refer complaints on behalf of their members without disclosing the identity of the complainant.

## What type of complaints can the Commission investigate?

The Commission can investigate complaints about the conduct or capacity of Officers. For example:

- excessive delay in handing down a judgment;
- inappropriate remarks made in the courtroom; or
- health issues which may affect the officer's ability to perform their official functions.

The Commission can't investigate certain matters including:

- the correctness of a decision made by a judicial officer or non-judicial VCAT member;
- a person who is no longer a judicial officer or non-judicial VCAT member; or
- complaints which don't relate to a judicial officer or a non-judicial VCAT member.

## How do I make a complaint?

To make a complaint to the Commission you should complete the complaint form available on the Commission's website ([www.judicialcommission.vic.gov.au](http://www.judicialcommission.vic.gov.au)) and submit it online together with any relevant documents or information.

The Law Institute and the Victorian Bar may make a complaint to the Commission on behalf of a member without disclosing the identity of the complainant.

## What actions can the Commission take when a complaint is made?

When the Commission receives a complaint it must either:

1. dismiss the complaint;
2. refer the complaint to the relevant head of jurisdiction; or
3. refer the complaint to an investigating panel.

## Dismissal of a complaint

The Act sets out a range of grounds upon which a complaint will be dismissed. For example, complaints which are trivial, vexatious, relate to a person who is no longer a judicial officer or a non-judicial member of VCAT, or relate solely to the correctness of a decision. If a complaint is dismissed the relevant head of jurisdiction, the judicial officer concerned and the complainant will be notified of the dismissal of the complaint.

<sup>1</sup> A judicial officer is defined by s.87AAA of the Constitution Act 1975 to include a Judge, reserve Judge, Associate Judge and a reserve Associate Judge of the Supreme and County Courts, a judge or reserve judge of the County Court who is appointed or assigned to VCAT, a magistrate, a reserve magistrate, a magistrate or reserve magistrate who is appointed or assigned to the Children's Court, the Coroners Court or VCAT, a reserve coroner, a person appointed under s. 94 of the Coroners Act 2008 and a judicial registrar.

## Referral to a head of jurisdiction

If the Commission has not dismissed a complaint or referred it to an investigating panel the Commission must refer the matter to the relevant head of jurisdiction.

The Officer concerned will be notified about the nature of the complaint and have the opportunity to respond, prior to a decision being made about whether to refer the complaint to the head of jurisdiction.

If a complaint is referred to the head of jurisdiction, the Officer concerned and the head of jurisdiction will be provided with a report which sets out the Commission's findings following investigation of the complaint and also the Commission's recommendations.

The head of jurisdiction must have regard to the Commission's report and may do one or more of the following:

- counsel the Officer in respect of the complaint;
- make recommendations to the Officer about future conduct; or
- exercise any other powers that the head of jurisdiction has.

After finalisation, the head of jurisdiction must provide a report to the Commission stating the outcome of the referral of the complaint and the reasons for that outcome. A copy of that report will also be provided to the complainant.

## Referral to an Investigating Panel

The Board must refer a complaint to an investigating panel if the Board is of the opinion that it could, if substantiated, amount to proved misbehaviour or incapacity such as to warrant removal from office.

An investigating panel is appointed by the Board and comprises of an Officer or VCAT member, a former Officer or VCAT Member and a person who has been appointed to a pool by the Attorney General.

An investigating panel has a broad range of investigatory powers including the power to conduct a hearing, the power to require production of documents and the power to issue witness summonses. A hearing is closed to the public unless exceptional circumstances exist.

## When can an Officer be stood down?

The relevant head of jurisdiction may stand down an Officer from office at any time if they believe that the continued performance of functions by the Officer is likely to impair public confidence in the impartiality, independence, integrity or capacity of that person or the relevant court or tribunal. The Commission or an Investigating Panel may make a recommendation that an Officer be stood down.

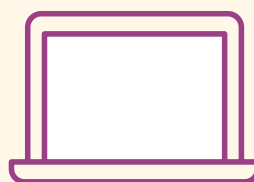
## When can an Officer be required to undergo a medical examination?

If the Board or an investigating panel reasonably believes an officer may be suffering from an impairment, disability, illness or condition that may significantly affect the Officer's performance of their functions, it may require an Officer to undergo any medical examination it considers necessary. The Officer concerned must be given a copy of the medical report. The Officer may then submit a medical report prepared by a registered medical practitioner which addresses the matters set out in the report provided to the Officer.

## Powers of Heads of Jurisdictions

The Act amends the relevant legislation to provide the heads of jurisdiction with the power to:

- ensure the effective, orderly and expeditious discharge of the business of the Court; and
- do all things necessary or convenient to perform these responsibilities.



## Further Information

The Judicial Commission website also provides information about the complaint process:

[www.judicialcommission.vic.gov.au](http://www.judicialcommission.vic.gov.au)