



Judicial
Commission
of Victoria

Guideline

Making a Complaint

Section 134(1) of the *Judicial Commission of Victoria Act 2016*





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May 2023

1. Purpose

1.1 The purpose of this Guideline is to:

- a) explain what the Judicial Commission of Victoria (the **Commission**) can and cannot investigate;
- b) outline a clear and transparent process for making a complaint about a judicial officer;¹ and
- c) explain the process for making a complaint including what information must be provided.

2. Who can the Commission investigate

2.1 The Commission can only investigate complaints about judicial officers and non-judicial members of the Victorian Civil and Administrative Tribunal (**VCAT**).²

2.2 A judicial officer includes:

- a judge of the Supreme or County Court (including a reserve or associate judge);
- a non-judicial member of VCAT;
- a magistrate (including a reserve magistrate);
- a coroner (including a reserve coroner); and
- a judicial registrar.³

3. What can the Commission investigate

3.1 The Commission can investigate complaints about the *conduct or capacity* of a judicial officer.

3.2 Conduct includes behaviour such as demeanour, manner of speaking, words, and tone of voice.

3.3 Capacity relates to a judicial officer's ability to carry out their judicial functions, for example, due to a physical or mental condition.

4. What can't the Commission investigate

4.1 The Commission cannot investigate complaints about:

- the outcome of a proceeding;
- the correctness of a decision or ruling;
- a judicial officer's assessment of the strength of evidence or credibility of a witness; or
- court processes.

¹ This Guideline does not relate to complaints by professional bodies or referrals made to the Commission.

² For ease of reference, judicial officers and non-judicial members of VCAT are both referred to as 'judicial officers' in this Guideline.

³ *Constitution Act 1975 (Vic)* section 87AAA.

5. Who can't the Commission investigate

- 5.1 The Commission cannot investigate complaints about:
- court or registry staff;
 - judicial officers in Federal courts (e.g., the High Court, the Family Court or the Federal Circuit Court);
 - former judges, i.e., judges who have resigned, retired or otherwise no longer hold judicial office;
 - solicitors or barristers;
 - police; or
 - other parties to a proceeding such as a self-represented litigant.

6. When can the Commission investigate

- 6.1 In most cases, the Commission cannot investigate a complaint while the relevant court or tribunal proceeding is ongoing. In this circumstance, the investigation of a complaint will ordinarily be adjourned until the proceeding concludes (section 18 of the *Judicial Commission of Victoria Act 2016* (the **Act**)).
- 6.2 It is also noted that a judicial officer who is conducting a proceeding is not required to disqualify themselves because a complaint has been made against them (section 12 of the Act).

7. Process for making a complaint

- 7.1 All complaints must meet the definition of 'complaint' under section 5 of the Act. A matter will be considered a potential complaint until it is assessed as falling within the definition of a complaint.
- 7.2 Potential complaints must be submitted via the online portal, accessible via the Commission's website:
<https://www.judicialcommission.vic.gov.au/>
- 7.3 If assessed as a complaint, it will be allocated for investigation. If not assessed as a complaint, the person who submitted the potential complaint will be notified.
- 7.4 If a potential complaint does not adhere to this Guideline, it may not be accepted or there may be a delay in investigating a complaint.
- 7.5 If a person is unable to use or access the portal, they can contact the Commission's voicemail service to request alternate options. Requests for an alternate option will be considered on a case-by-case basis.

8. Information to be provided

- 8.1 All fields on the online portal must be completed. Complaints about more than one judicial officer must be submitted separately for each judicial officer.
- 8.2 A summary of the conduct or capacity issue being complained about must be provided. The description should be specific and include examples where relevant. Consider for example:
- What did the judicial officer say or do and to whom?
 - When in the proceeding did this occur?
 - In what context did the conduct occur?
- 8.3 General comments such as 'the officer was biased' can be difficult to investigate as they are not specific enough. A more detailed description is required, such as:
- the judicial officer demonstrated bias when they [did X]; or
 - the judicial officer was rude and disrespectful when they [did or said X].
- 8.4 It is an offence under the Act for a person to deliberately make a false or misleading statement to the Commission. To do so is punishable by imprisonment, a fine or both (section 141 of the Act).

9. Supporting documents

- 9.1 No documents can be uploaded via the online portal. Audio recordings, transcripts, or copies of orders or decisions do not need to be provided as they can be obtained by the Commission if required.
- 9.2 A person may indicate if there are supporting documents, and what they are. If a potential complaint is assessed as a complaint, the Commission will contact the person if further documents are required and give instructions on how to provide them.
- 9.3 A timeframe will be provided when further documents are requested. If the documents are not received within the timeframe, they cannot be lodged and will not be considered by the Commission. Only documents requested by the Commission will be accepted and considered.

10. Outcomes

- 10.1 There are three complaint outcomes available to the Commission. The complaint can be:
- a) dismissed;
 - b) referred to the relevant head of jurisdiction; or
 - c) referred to an independent investigating panel for investigation.
- 10.2 In most cases, the Commission will complete its investigation within six months.
- 10.3 For more information about the complaints process and outcomes, please refer to the 'Complaints' tab on the Commission's website:
<https://www.judicialcommission.vic.gov.au/>.
- 10.4 A potential complaint that is assessed as being identical or materially similar to a previous complaint will not be investigated.
- 10.5 The Commission is unable to reconsider a complaint once it has been investigated and a decision made about the outcome. There is no mechanism under the Act for internal review of decisions about complaint outcomes.

11. Further information about the Commission

- 11.1 The Commission was established to investigate complaints about the conduct and capacity of judicial officers.
- 11.2 Investigations into the conduct or capacity of a judicial officer can be initiated by:
- a) a complaint from:
 - i. a person (which includes an individual or body corporate);
 - ii. the Law Institute on behalf of a member; or
 - iii. the Victorian Bar on behalf of a member.
 - b) a referral from:
 - i. the head of jurisdiction about a judicial officer within their court;
 - ii. the Attorney-General; or
 - iii. the Independent Broad-based Anti-corruption Commission.
- 11.3 The Commission is a statutory body, which forms part of the regulatory and integrity framework in Victoria. The Commission must ensure that its publicly funded resources are responsibly and effectively used to discharge the functions of the Commission. Having a streamlined and clear process for making a complaint is one way to ensure these resources are used most efficiently.
- 11.4 The Commission can make guidelines under section 134(d) of the Act about the making of a complaint or referral. This Guideline is issued under that provision and replaces the previous Guidelines for Making a Complaint (April 2019).

