



Statement

27 September 2023

OUTCOME OF INVESTIGATIONS INTO COMPLAINTS ABOUT THE CONDUCT OF HIS HONOUR JUDGE GAMBLE

The Judicial Commission of Victoria (the **Commission**) received three complaints (the **Complaints**) about the conduct of His Honour Judge Gamble (the **Officer**) in *DPP v Leifer* (the **Proceeding**). The Complaints were from three individuals not connected to the Proceeding and concerned the Officer's conduct in a hearing on 9 March 2023.

During the hearing, the Officer asked a member of the public, who was sitting in the public gallery observing the trial, to leave the courtroom as she was breastfeeding. The Complaints contained two parts:

1. That the Officer allegedly discriminated against the woman by ruling that she was required to leave the courtroom.
2. That the Officer allegedly humiliated the woman by "singling her out" and commenting in open court that she would not be permitted to breastfeed a baby in court and asked her to leave.

In accordance with the *Judicial Commission of Victoria Act 2016* (the **Act**), the Commission was required to investigate the Complaints. As part of the investigation, the Commission reviewed transcripts, audio-visual recordings, and relevant parts of the court file.

The Officer was provided an opportunity to respond to the Complaints. The Officer provided a detailed response, which formed part of the information-gathering stage of the Commission's investigation.

At the conclusion of the investigation, the Commission determined that the Complaints be dismissed.

In finding the Complaints warranted dismissal,¹ the Commission found overall that:

- The Officer's request was informed by the related nature of some of the evidence given in the Proceeding, in closed court. In particular, evidence concerning the accused breastfeeding in front of one of the victims shortly before engaging in an act that was the subject of one of the indecent assault charges in the Proceeding.

¹ Part 1 of the Complaints was dismissed on the ground that s 16(3)(b) of the Act applied: a complaint must be dismissed if it relates solely to the merits or lawfulness of the decision or procedural ruling made by the officer concerned.

Part 2 of the Complaints was dismissed on the ground that s 16(4)(c) of the Act applied: a complaint may be dismissed if, having regard to all the circumstances of the case, further investigation is unnecessary or unjustified.

- The Officer's request was made to manage and minimise the high risk of the jury being distracted at a critical stage of the Proceeding. Similar requests were made to other attendees to minimise distraction, including asking journalists to type any notes quietly so counsel and the jury were not distracted, repeating these requests to the public and journalists to ensure compliance, and ensuring attendees remained quiet and were not permitted to leave and re-attend the courtroom while in session.
- The Officer's decision to request the woman to leave the courtroom was made to fulfil his responsibility to manage the trial and the jury. It is not the Commission's function to assess whether a judicial officer's decision or procedural ruling was lawful or amounted to discrimination.
- The Officer's voice was not raised, nor could his language or tone be described as aggressive. In the circumstances, the Officer's language and tone did not reach a level that infringed the standards of conduct generally expected of judicial officers.
- While the woman concerned may have been impacted by the request, the Officer did not intentionally 'single out' or 'humiliate' the woman such that he infringed the standards of conduct generally expected of judicial officers.

As part of his response to the Complaints, the Officer stated that his request was not related to the broader question of the appropriateness of breastfeeding, whether in public or in a courtroom.

To learn more about the Commission, visit www.judicialcommission.vic.gov.au.

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