

The Complaint Process

Our Role

We can only investigate complaints about the *behaviour* or *ability* of people (together referred to as Officers) who hold the following positions:

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

We have no power to:

- investigate complaints about the correctness of a decision or overturn an Officer's decision for error, mistake, or other legal grounds. This is the role of appeal courts. If you are unhappy about the merits or lawfulness of a decision or procedural ruling made by an Officer, consider getting legal advice about your rights;
- 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 or Territory;
- investigate a complaint against other staff working in courts or VCAT (for example, registry staff, a court clerk, or an associate) or court process or procedure. If you are unhappy about the conduct of court staff or court process, consider making a complaint directly to the relevant court or tribunal;
- remove an Officer from hearing a case;
- influence when a court or tribunal lists a case for hearing;
- remove an Officer from their position; or
- impose punishments or penalties on an Officer.

Investigative Process

Once we have determined your complaint meets the definition of ‘complaint’ under the *Judicial Commission of Victoria Act 2016* (the **Act**), we will commence an investigation. The investigation will consider the relevant information you provided.

We will also decide whether further information is needed from you or the relevant court or tribunal. For example, we may request the court or tribunal produce the court file, audio recordings, or other material, to assist our investigation. In some limited circumstances, we must also offer the Officer an opportunity to respond to your complaint.

You can make a complaint at any time. However, we will **adjourn** the investigation in some circumstances. This usually occurs where the complaint relates to a proceeding *currently* being heard by the Officer, where a judgment or decision has not yet been delivered, or the matter is the subject of another legal proceeding, like an appeal. An Officer is not required to excuse themselves from hearing your case just because 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 reasons matters are dismissed.

Mandatory Dismissal

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 if we are satisfied of the above, your complaint *must* still be dismissed if:

- 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.

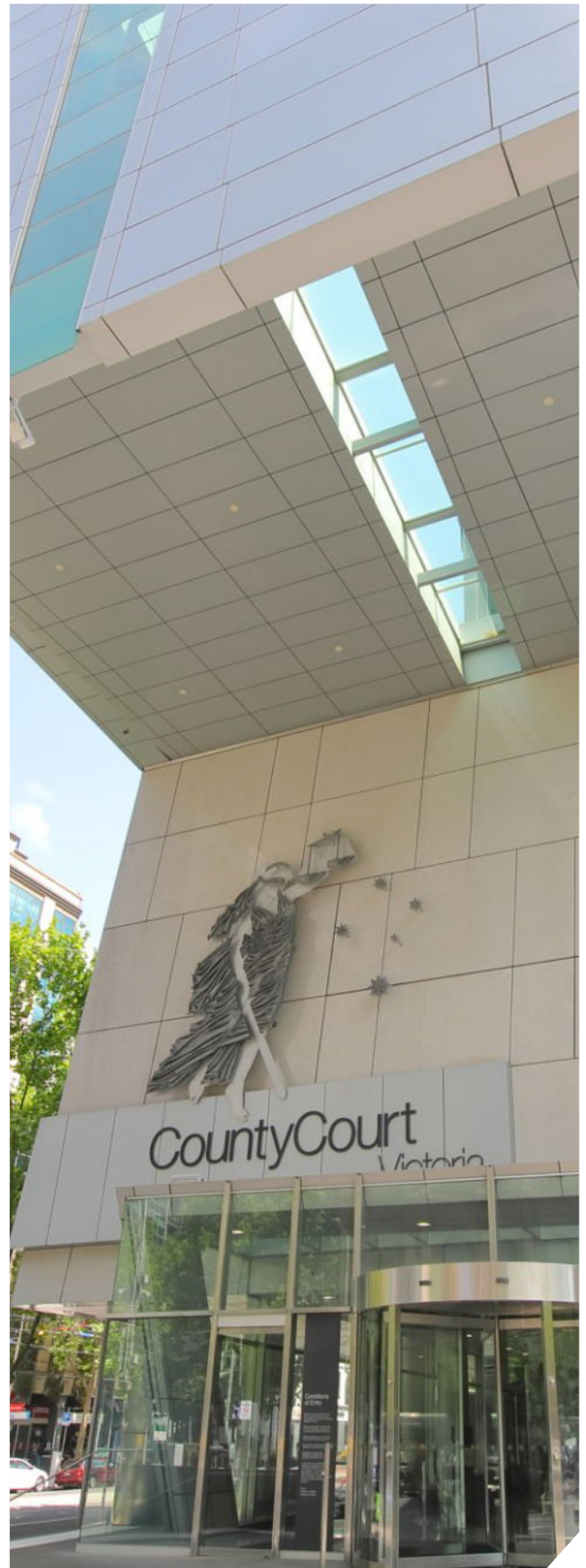
Discretionary Dismissal

Your complaint may still be dismissed 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, we will let you know in writing and provide the reasons as soon as practicable after the decision is made¹. This will include reference to the law that has been applied. The Officer and relevant HOJ will also be notified in writing about your complaint, the decision, and the reasons.

There is no provision under the Act for internal review of the decision about a complaint outcome.



¹ In accordance with section 23(2) of the Act and noting section 111 of the Act

Referral of a complaint to a HOJ

If your complaint is not dismissed or referred to an IIP, we must refer the matter to the relevant HOJ. Before a complaint can be referred to a HOJ, the Officer must be notified of it and given the opportunity to respond.

A referral to a HOJ only occurs in a small number of complaints, where the Officer's conduct was found to infringe the standards of conduct generally expected. In rarer cases, this may occur where the matter is found to have affected the performance of the Officer's functions.

When referring a matter to the relevant HOJ, we provide the HOJ with a report that sets out findings of fact, an assessment of the relevant conduct, and recommendations to address the conduct and avoid it happening again. For example, this may include recommendations to undergo counselling, coaching, mentoring, peer supervision, or relevant education programs.

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

A HOJ may then take any one or more of the following actions:

- counsel the officer;
- make recommendations to the Officer as to future conduct; or
- exercise any other power the HOJ has in relation to the Officer concerned.

However, a HOJ does not have the power to remove an Officer from their position. The HOJ must, in due course, provide us with a report stating the outcome of the referral and the reasons for that outcome. We will provide you with a copy of that report.

Referral of a complaint to an IIP

If your complaint is not dismissed and it is found to be of such seriousness that, if substantiated, it would warrant the removal of the Officer from their position, we must refer your complaint to an IIP. Before a complaint can be referred to an IIP, the Officer must be notified of it and given the opportunity to respond to it.

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

An IIP is made up of three 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 investigate, including holding hearings, issuing a witness summons, compelling witnesses to attend, and applying for a search warrant. However, an IIP does not have the 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
- prepare a report for the Governor or Attorney General where the IIP finds that facts exist that could amount to proved misbehaviour or incapacity.

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

Contact the Commission

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