

11 October 2024

DISMISSAL OF INVESTIGATION INTO COMPLAINT ABOUT MEMBER LUCAS *MODEL JUDICIAL CONDUCT*

The Judicial Commission of Victoria (the **Commission**) received a complaint about the conduct of Member Lucas (the **Officer**) in residential tenancies proceedings at the Victorian Civil and Administrative Tribunal (**VCAT**).

The Commission dismissed the Complaint on the basis that it was:

1. not satisfied that Parts A or C of the Complaint warranted further consideration on the ground that the Officer's conduct *may* have infringed the standards of conduct generally expected of judicial officers; and
2. satisfied that Part B of the Complaint had not been substantiated.

Investigation of the complaint

In accordance with the *Judicial Commission of Victoria Act 2016* (Vic) (the **Act**), the Commission investigated the complaint. As part of the investigation, the Commission listened to the audio-recordings of the Proceedings.

The Commission's findings and assessment

The complainant was the first-respondent renter (the **Complainant**) and alleged that the Officer:

- Part A – ignored the respondents' facts and statements, basing orders on fraudulent and fabricated documents supplied by the other party;
- Part B – did not allow the respondents to speak and was very dominating during the hearing; and
- Part C – was unprepared or unqualified to hear residential tenancy matters, which impacted the outcome of the case.

The Complainant asserted that each of these matters was evidence the Officer was unjust and biased.

Parts A and C

Findings and assessment

The Commission found that although Parts A and C were framed as allegations about conduct, fundamentally, these parts of the complaint were about the Officer exercising the core responsibilities of a tribunal member. Therefore, it did not disclose a basis to consider that the Officer *may* have infringed the standards of conduct generally expected.

The basis for that finding was:

1. It is part of the core responsibilities of a tribunal member to consider the evidence and submissions from parties and then decide which is more persuasive. This includes deciding what evidence is relevant to determine the proceedings and how much weight to give to the evidence. It was entirely a matter for the Officer to decide whether to accept the respondent's evidence.
2. While noting that the Officer had specifically indicated that he had read the correspondence, submissions, and respondent's statement, viewed all the video evidence, and was aware of previous orders made, it was a matter for the Officer, and part of a tribunal members role, to determine the necessary preparation required to preside over the proceedings.
3. The Officer was entitled to bring an independent mind to bear on the issues, irrespective of orders made previously in these or related proceedings. Making a decision against the Complainant's interests (or that the Complainant disagreed with) was not evidence the Officer was unqualified to hear the proceedings. In any event, tribunal members are not bound to follow the order or decision of other tribunal members¹ nor does the Commission have the function of reviewing the merits or lawfulness of a tribunal member's decision.

Part B

Findings and assessment

In proceedings that lasted just over 3 hours, the respondents addressed the tribunal for approximately the first 50 minutes and at a later stage for approximately 40 minutes. The Officer only restricted the respondent's submissions after repeated indications that the matters the respondents were focused on were irrelevant to the issues in the proceedings or the respondents continued reiterating points they had made earlier. On numerous occasions the Officer had to request the respondents refrain from interrupting.

In particular, towards the end of the proceedings, the respondents continually spoke over the Officer and interrupted the proceedings, often in an elevated and emotive tone and with disrespectful speech.

In response, the Officer used a calm and polite tone, reminded the respondents not to be 'abusive' when speaking and to remain respectful when addressing the tribunal and others. The Officer indicated that if the respondents continued to interrupt, he would mute them. The Officer provided the respondents with an opportunity to demonstrate muting was not necessary. The

¹ Council of Australian Tribunals, *Practice Manual for Tribunals* (5th ed, 2020), 35-36 and 41-42; see also *Rittau v Commissioner of Police, New South Wales Police Service* [2000] NSWADT 186, [60]-[63]

respondents continued to speak, and the Officer muted all parties (except the interpreter) as he announced his decision.

The Commission found:

- There was no evidence to support Part B of the Complaint and no basis for a reasonable member of the community to consider that the Officer's intervention was unjust, biased, or otherwise infringed the standards of conduct generally expected of tribunal members.
- The Officer provided the respondents with ample opportunity to speak and make submissions throughout the proceedings, and there was nothing inappropriate about the Officer interrupting the respondents to move them on from irrelevant submissions² or confine their responses to the relevant issues. Rather, this was appropriate as part of the Officer's case management role to ensure the efficient and effective use of tribunal time and resources.³
- The Officer managed the proceedings in a continuously calm, measured, and professional manner in the context of continued interruptions by the respondents and the limitations of online hearings.

Outcome of the complaint

The Commission dismissed Parts A and C of the complaint because it was not satisfied the matters warranted further consideration on the ground that the Officer's conduct *may* have infringed the standards of conduct generally expected of judicial officers.⁴

The Commission dismissed Part B of the complaint because it was satisfied that the complaint had not been substantiated.⁵

To learn more about the Commission, visit <http://www.judicialcommission.vic.gov.au>.

For all media enquiries, the Commission can be contacted on (03) 9084 9600 or through email at enquiries@judicialcommission.vic.gov.au.

² *Gambaro v Mobycom Mobile Pty Ltd* [2019] FCAFC 144 at [32] (Greenwood, Reeves JJ).

³ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 98(1)(d).

⁴ These parts of the complaint were dismissed under section 13(2)(a) of the Act on the basis that section 16(1) of the Act applied.

⁵ This part of the complaint was dismissed under section 13(2)(c) of the Act on the ground that section 16(4)(a) of the Act applied.