

MEDIA RELEASE

**For immediate release
28 May 2021**

Outcome of complaint – Investigating Panel

In 2020, the Judicial Commission of Victoria (**the Commission**) received a complaint (**the Complaint**) from a third party (**the Complainant**) concerning the alleged conduct of an Officer. In accordance with section 4(c) of the *Judicial Commission of Victoria Act 2016* (**the Act**), namely the protection of the privacy and safety of an individual legal practitioner, the Commission has deidentified the parties in this matter.

The Complaint related to the Officer's (**Officer A**) personal and intimate relationship with a legal practitioner (**Person B**) and contained three matters. One matter related to an alleged conflict of interest whereby Officer A failed to excuse themselves or disclose the relationship when Person B appeared before them during one proceeding (**the conflict of interest matter**).

After conducting a preliminary investigation, the Board of the Commission referred the Complaint in whole to an independent Investigating Panel (**the Panel**) under s 13(3) of the Act on the grounds that it was of the opinion that the Complaint could, if substantiated, amount to proved misbehaviour such as to warrant the removal of Officer A.

The Panel was established and conducted an investigation. The Panel expanded the scope of its investigation regarding the conflict of interest matter to include a number of other proceedings where Officer A failed to excuse themselves or disclose the relationship with Person B. During the investigation, Person B was offered the opportunity to make a statement but declined to do so. At the conclusion of the investigation, as required by the Act, the Panel provided a report to the Commission on the outcome of the investigation (**the Report**).

The Panel concluded that two of the matters ought be dismissed.

The Panel concluded that the third matter - regarding the conflict of interest - was substantiated.

In its Report, the Panel found that, amongst other things:

- the Officer failed to use the multiple opportunities when the prospect of an appearance arose to identify and respond to the potential issue. Instead, the Officer promoted or condoned further appearances; and
- at times the Officer diminished or equivocated about the significance of the conduct in question, characterising it as “undesirable” or involving a “lack of prudence”.

Although the Panel substantiated the conflict of interest matter, it concluded that it did not rise to the level of judicial misconduct warranting removal from office. The Panel referred the matter to the relevant Head of Jurisdiction with a range of recommendations including:

- The Head of Jurisdiction and Officer A meet to discuss the Panel’s recommendations and future expectations;
- Counselling: Officer A must familiarise themselves with all counselling options and attend at least one counselling meeting in which they would explore the stressors that had contributed to their poor decision-making;
- Mentoring: Appointment of two judicial mentors, one from the same jurisdiction and one from a different jurisdiction. The Officer should have contact with each of the mentors at least twice a year for not less than two years.

In due course, the Head of Jurisdiction must report back to the Commission on the outcome of the referral, and reasons for the outcome. This report will be provided to the Complainant and the Attorney-General.

Background

The Commission is currently undertaking a review of its operations, budget and legislative landscape (**the Review**). Since its inception the Commission has now established three independent investigating panels and the processes used and outcomes thereof are currently being considered as part of the Review.

The Commission currently has the power to consider a range of complaints including excessive delays in giving judgments, inappropriate courtroom conduct and health issues affecting a judicial officer or VCAT member’s ability to perform their official duties. Any member of the public or the legal profession can make a complaint to the Commission. Once the Commission has considered the complaint or referral, it can take one of the following courses of action:

- i. dismiss the complaint or referral (for example those that are trivial, vexatious, relate to a person who is no longer a judicial officer or VCAT member, or relate solely to the correctness of a decision);
- ii. if it is a serious complaint about conduct, make a finding that the conduct infringed the standards of conduct expected of judicial officers and refer it to the relevant head of jurisdiction, with recommendations in relation to future conduct; and
- iii. if it is a serious complaint, which if true, warrants removal from office on grounds of misbehaviour or incapacity, refer it to an investigating panel for a full investigation.

The Commission does not have the power to remove a judicial officer from their position. A special majority of both Houses of Parliament must agree before a judicial officer can be removed. The governing body of the Commission is its Board. The Board consists of six judicial Board members and four Board members appointed by the Governor in Council.

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