

Statement

1 May 2024

OUTCOME OF INVESTIGATION INTO COMPLAINT ABOUT A CHILDREN'S COURT PROCEEDING

The Judicial Commission of Victoria (the **Commission**) received a complaint about the conduct of an Officer in a child protection proceeding at the Children's Court of Victoria.

The Commission found that some parts of the Officer's conduct were inconsistent with the professionalism, respect, and patience judicial officers are expected to show towards court users, particularly in the child protection jurisdiction.

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 reviewed transcripts and listened to the audio-recordings of the Proceeding and gave the Officer an opportunity to respond to the complaint.

The Officer provided a detailed response, which formed part of the information-gathering stage of the Commission's investigation.

The Commission assessed the Officer's actions, language, tone, impact of the conduct, and the Officer's response to the complaint.

The Commission's findings and assessment

The person making the complaint (the **Complainant**) was a Child Protection Practitioner at the Department of Fairness, Families and Housing (the **Department**). The Complainant alleged that the Officer conducted herself inappropriately in the courtroom. The Complaint set out three parts to support this overall allegation:

1. The Officer's tone was aggressive and intimidating towards the Complainant and Department staff (**Part A**).
2. The Officer conducted herself in a manner which showed a strong dislike for the Department (**Part B**).
3. The Officer interrupted the Complainant's evidence (**Part C**).

Parts A and C

Officer's response

In response, the Officer acknowledged that her tone of voice was at times, frustrated, brusque and abrupt. The Officer accepted that she interrupted the Complainant's evidence – in a 'somewhat frustrated' tone – to obtain some clarity about the evidence.

The Officer noted that having been given the opportunity to respond to the complaint and appraise her conduct during the proceeding, there were times her 'performance could have been better'.

The Officer said, as a general conclusion:

The experience of reviewing my performance as dispassionately as possible had been an invaluable experience for me in being able to identify where and why I may be perceived to have become frustrated so I can avoid any suggestion in the future of unfairness to any party.

Findings and assessment

The Commission found that the Officer's conduct infringed the standards of conduct generally expected of judicial officers because:

- The Officer's tone of voice was often, but not always, frustrated, brusque, and abrupt.
- The Officer's tone of questioning the Complainant and a Department witness was often, but not always, intimidating and more akin to what one might expect in cross-examination from an opposing party.
- The Officer's interruptions of the Complainant's evidence, together with her tone of voice and manner of questioning, had a cumulative effect on the Complainant and could have been experienced as combative.

Part B

Officer's response

The Officer responded that she did not, in effect, conduct herself in a manner that showed a strong dislike for the Department.

The Officer said that her main consideration throughout the proceeding was the impact on the children and noted the difficult balance required of a judicial officer in a pivotal case concerning the lives of children and their families.

Findings and assessment

The Commission was not satisfied that a reasonable member of the community was likely to perceive the Officer as having conducted herself in a manner that showed a strong dislike for the Department.

The Commission assessed the Officer as having engaged with all parties at various times to conduct the proceeding fairly and ensure issues in dispute were addressed.

The Commission found that, amongst other matters, the Officer managed a difficult proceeding that involved children and language barriers with a self-represented litigant.

Outcome of the complaint

The Commission referred Parts A and C of the complaint to the Chief Magistrate and President of the Children's Court of Victoria (as heads of jurisdiction) with the following recommendations as to the Officer's future conduct:

- a) The heads of jurisdiction counsel the Officer as to appropriate judicial conduct, including the need to exercise patience, courtesy and respect in the courtroom to all court users.
- b) The Officer attend a course conducted by the Judicial College of Victoria.

The Commission dismissed Part B of the complaint.¹

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.

¹ This part was dismissed on the ground that section 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.