

LEGISLATIVE COUNCIL
Question Without Notice

Wednesday, 31 August 2022

C870. Hon Dr Brian Walker to the Parliamentary Secretary representing the Attorney General

I refer the Minister to the establishment of the Judicial Commission of New South Wales in 1986, the Judicial Conduct Commissioner for South Australia in 2015, and the Judicial Commission of Victoria in 2016, each of which has responsibility for the independent consideration of complaints about serving judicial officers within their own jurisdiction, and I ask:

- (1) Does the McGowan Government have any plans to legislate for a similar body or individual here in Western Australia; and,
- (2) If No to (1), what recourse does a citizen of Western Australia have if they wish to make a complaint in regards to the conduct of a judicial officer?

Answer

- (1) Yes. The establishment of a legislatively based judicial commission is a commitment of this Government.
- (2) If a person has any concerns about the behaviour of a judicial officer, they are able to raise those concerns with the relevant head of jurisdiction in accordance with the Protocols for Complaints against Judicial Officers. I table a copy of the Protocols.

John R. A.C.
31/8/22

Protocol for Complaints Against Judicial Officers
In Western Australian Courts

27 August 2007

This Protocol is an updated revision of the Protocol of 18 June 2003 modelled on the draft approved by the Council of Chief Justices of Australia and New Zealand for adoption by Courts as they think fit.

In this Protocol:

"Head of Jurisdiction" refers to the chief judicial officer of each Court and the State Administrative Tribunal.

"Judicial officer" includes:

- (i) a "holder of a judicial office" within the meaning of that phrase in section 121 of the Criminal Code; and
- (ii) a Registrar of the Supreme Court, Family Court of Western Australia or District Court when acting judicially.

Complaints Against Judges, Masters, Magistrates, Registrars and other Judicial Officers - Delivery of Reserved Decisions

1. Reserved judgments in all matters should be delivered as soon as practicable after the completion of the hearing.
2. No firm time limits can or should be established for the delivery of reserved judgments. The delay between the last day of hearing and delivery of reserved judgments may vary according to the urgency with which a decision is required, the complexity of the issues to be considered and the current workload of the judicial officer or officers responsible for the preparation of the judgment.
3. As a guide, section 76 of the *State Administrative Tribunal Act 2004* (WA) provides that a reserved decision of the Tribunal is to be delivered within 90 days, subject to extension of that period by the President. The following targets which have been adopted for the delivery of reserved judgments should not be taken as prescriptive statements:

In the Supreme and District Courts:

- (a) In criminal appeals, within two months of the last day of hearing.
- (b) In civil appeals, within four months of the last day of hearing.
- (c) In first instance civil matters before a Judge, within three months of the last day of hearing.
- (d) In matters before a Master, Registrar or other judicial officer, within one month of the last day of hearing.

In the Family Court of Western Australia:

Judgments of both Judges and Magistrates are expected to be published within 3 months of the decision being reserved or the date on which the last written submissions are received, whichever is the later.

- 4. If it is anticipated that there may be a longer delay in the delivery of a reserved judgment, a Judge, Master, Registrar or other judicial officer may give a "not before" date at the time that judgment is reserved.
- 5. Parties, or their legal representatives, are at liberty to make enquiries regarding the progress of a judgment which has not been delivered within those periods set out in paragraph 3, or by the "not before" date given when the judgment was reserved.
- 6. Enquiries concerning the progress of a reserved judgment should be made directly to the associate to the presiding Judge in the case of the Court of Appeal, or where the relevant judicial officer has an associate, to that associate.
- 7. In the event that a party or practitioner is reluctant to raise the matter directly with the presiding Judge or judicial officer, the enquiry may be made to the head of the relevant jurisdiction or, in the event that the head of the jurisdiction is the presiding Judge, to the Chief Justice. In such a case, the matter will be taken up with the judicial officer concerned without disclosure of the identity of the party making the enquiry.

8. In all cases, the enquiry should state clearly the name of the matter, the case number and the last hearing date.

Complaints Against Judges, Masters, Magistrates, Registrars and other Judicial Officers - Non-Criminal Misconduct

9. Any person affected is entitled to make a complaint of non-criminal misconduct regarding any member of the judiciary concerning the performance by that judicial officer of his or her judicial functions. It should be noted that the procedures below do not address complaints in respect of non-judicial members of the State Administrative Tribunal, which are to be dealt with in accordance with the *State Administrative Tribunal Act 2004* (WA).
10. In all cases, a complaint regarding a judicial officer should be made to the relevant head of jurisdiction. In the event that a complaint is made regarding a head of jurisdiction, the complaint should be made to the Chief Justice. Where a complaint is made concerning the Chief Justice, the complaint should be made to the next most senior Judge of the Supreme Court who should take the steps described below with reference to a Head of Jurisdiction.
11. All complaints should be acknowledged promptly by the Head of Jurisdiction, or his or her staff.
12. Where the complaint relates to, or involves, the merits of a judicial decision or any other matter which may be the subject of appeal or review, the complaint should be dismissed and the complainant informed:
 - (a) of any rights he or she may have to an appeal or review;
 - (b) of any relevant time limits which may apply to the exercise of those rights; and
 - (c) where he or she may be able to obtain free, pro bono or subsidised legal advice and/or assistance.
13. Upon initial consideration of the complaint by the Head of Jurisdiction, a decision may be made that:

- (a) the nature or substance of the complaint suggests that no further action is required with regard to the complaint; or
- (b) further enquiries should be made.

In the event that the Head of Jurisdiction decides that no further action is required, the judicial officer concerned should be informed of the nature of the complaint and the decision on it.

14. In all cases, the complainant should be informed of the decision of the Head of Jurisdiction.
15. In the event that further enquiries are made, the Head of Jurisdiction must refer the matter to the judicial officer who is the subject of the complaint and:
 - (a) a copy of the complainant's correspondence must be provided to the judicial officer;
 - (b) the judicial officer must be given a reasonable time within which to respond to those matters raised by the complainant.
16. On the receipt of the judicial officer's response, the Head of Jurisdiction may decide that:
 - (a) no further action is required and inform the complainant and the judicial officer that the complaint has been dismissed;
 - (b) further enquiries should be made of either the judicial officer or the complainant before a decision could be made;
 - (c) the complaint has substance but is not sufficiently serious to contemplate removal;

In such a case, consideration should be given to the most appropriate manner in which to resolve the issue including:

- (i) noting that the complaint has merit, both the judicial officer and complainant being notified accordingly;
- (ii) suggesting that the judicial officer concerned write to the complainant offering an apology;

- (iii) counselling (through the Judicial Assistance Committee), training or the provision of assistance to the judicial officer concerned.

- (d) the complaint has substance and is serious;

For example, the subject matter may be an indication of unfitness. Procedures relating to the resolution of serious complaints against judicial officers have been established by law.

- (e) in each case the complainant and the judicial officer shall be notified of the decision.

17. Where a complainant is aggrieved by the decision of a Head of Jurisdiction other than the Chief Justice, the complainant is at liberty to bring the complaint, and the nature of the Head of Jurisdiction's response, to the attention of the Chief Justice, in which case:

- (a) the Chief Justice is under the same obligations as set out in this Protocol as any other Head of Jurisdiction in dealing with such a complaint;

- (b) the Chief Justice may make any enquiries he or she considers appropriate in resolving any complaint brought to his or her attention pursuant to this paragraph.

Complaints Against Judges, Masters, Magistrates, Registrars and other Judicial Officers received by Police Officers

18. Three categories of complaint about a judicial officer may be made to a police officer, involving allegations of:

- (i) criminal misconduct;
- (ii) misconduct not involving suspected criminal behaviour (rudeness, professional negligence, unethical behaviour etc); and
- (iii) conduct that may attract the jurisdiction of the Corruption and Crime Commission.

The following procedures have been agreed with the Commissioner of Police for the handling of complaints received by police officers in relation to any of these three categories of alleged misconduct by judicial officers. Where such an allegation is received by a police officer, it should be reported by the officer to the Assistant Commissioner (Corruption Prevention and Investigation). The Assistant Commissioner (Corruption

Prevention and Investigation) will report the complaint to the Commissioner of Police and the relevant Head of Jurisdiction.

The relevant Head of Jurisdiction is as follows:

<i>Subject of the complaint</i>	<i>Head of Jurisdiction</i>
Judge, Master or Registrar of the Supreme Court	Chief Justice of Western Australia
Judge, Magistrate or Registrar of the Family Court of WA	Chief Judge of the Family Court of WA
Judge or Registrar of the District Court of WA	Chief Judge of the District Court of WA
Magistrate (other than of the Children's Court of WA)	Chief Magistrate
Magistrate of the Children's Court of WA	President of the Children's Court of WA
Member (whether judicial or non-judicial) of the State Administrative Tribunal	President of the State Administrative Tribunal

All documentation should be forwarded under 'Confidential' protection.

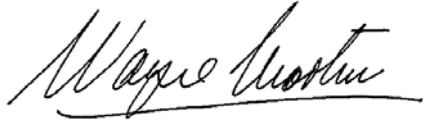
Where a complaint received involves conduct that may attract the jurisdiction of the Corruption and Crime Commission, it is noted that section 27(3) of the *Corruption and Crime Commission Act 2003* (WA) provides that an allegation about a person in his or her capacity as the holder of a judicial office must not be received or initiated by the Commission unless the allegation relates to —

- (a) the commission or attempted commission of;
- (b) the incitement of the commission of; or
- (c) a conspiracy to commit,

an offence under section 121 of The Criminal Code or is of a kind that, if established, would constitute grounds for removal from judicial office.

This Protocol is issued for information and guidance with the approval of the Chief Justice, the Chief Judge of the Family Court of Western Australia, the Chief Judge of the District Court of Western Australia, the

Chief Magistrate, the President of the Children's Court of Western Australia and the President of the State Administrative Tribunal.

A handwritten signature in black ink, reading "Wayne Martin". The signature is written in a cursive style with a horizontal line underneath the name.

The Hon Wayne Martin
Chief Justice of Western Australia