



Established under the *Judicial Commission of Victoria ACT 2016*, the Commission investigates complaints about the conduct or capacity of judicial officers and Victorian Civil and Administrative Tribunal (VCAT) members.

The independent complaints process aims to maintain public confidence in the Victorian courts and VCAT and ensure the high standard of conduct the public expects of its judiciary is maintained.

Complaints must relate to one of the following judicial officers or VCAT members:

- a judge of the Supreme Court of Victoria
- a judge of the County Court of Victoria
- a magistrate of the Magistrates' Court of Victoria or the Children's Court of Victoria
- a coroner of the Coroners Court of Victoria
- a VCAT member
- a judicial registrar of the Supreme Court, the County Court, the Magistrates' Court or the Children's Court

### ✓ The Commission does

- Investigate complaints about the conduct or capacity of judicial officers and VCAT members. For example, it can investigate:
  - excessive delay in handing down a judgement
  - inappropriate remarks made in a courtroom; or
  - health issues which may affect an officer's ability to perform their official functions.

### ✗ The Commission does not

- Investigate complaints about the correctness of a decision made by a judicial officer or VCAT member (The Commission must dismiss complaints of this nature without taking any further action.)
- Replace the appeals process.
- Investigate complaints about federal courts or tribunals, such as the Family Court and the Administrative Appeals Tribunal
- Investigate a person who is no longer a judicial officer or non-judicial VCAT member.
- Investigate complaints which don't relate to a judicial officer or a non-judicial VCAT member.
- 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.

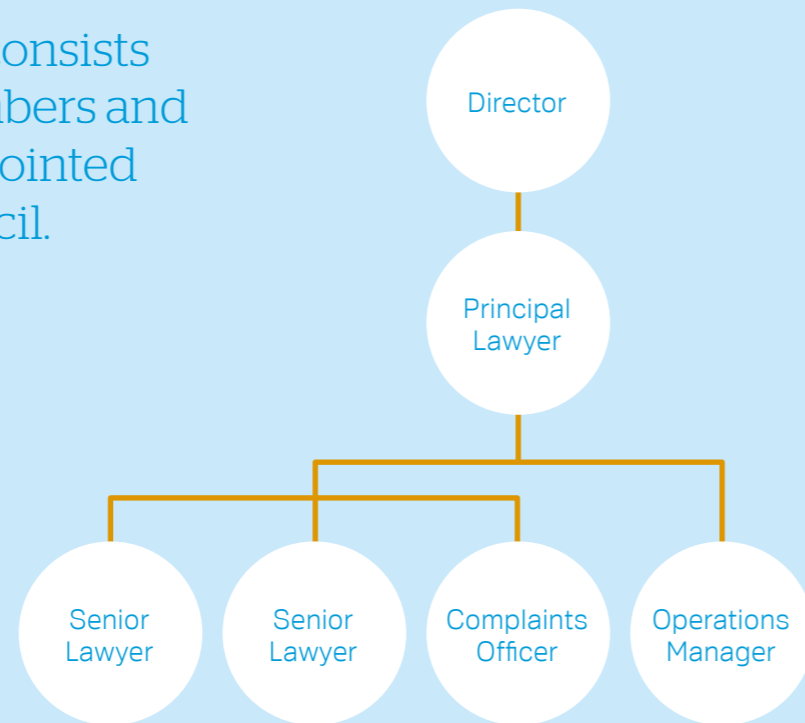
## Governance

The Board of the Judicial Commission of Victoria consists of six judicial Board members and four Board members appointed by the Governor in Council.

## Organisational structure

The governing body of the Commission is the Board of the Judicial Commission of Victoria.

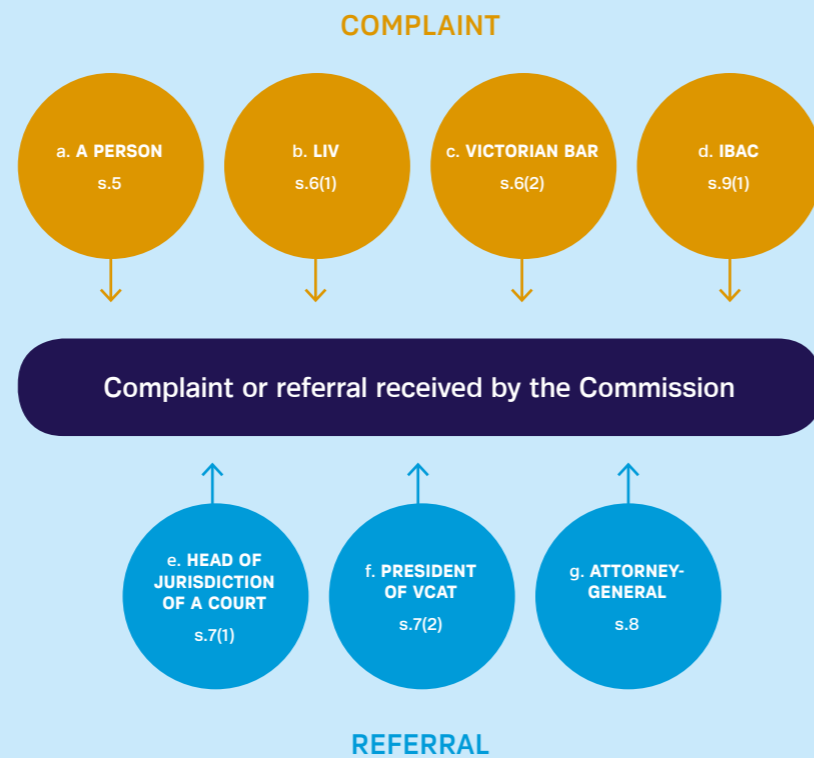
At the time of writing, there were six full-time and one part-time staff members working at the Commission's offices in Melbourne's CBD.



## Complaints & Referrals

Any member of the public or the legal profession can make a complaint to the Commission. When the Commission receives a complaint, it must either:

- **dismiss** the complaint (for example those that do not warrant further consideration or the judicial officer's removal from office, 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);
- refer it to an **investigating panel** if it is a very serious complaint, which if true, warrants removal from office on grounds of misbehaviour or incapacity; or
- refer it to the relevant **head of jurisdiction** with recommendations about the future conduct of the officer if it is a less serious complaint.



## 2017/18 Outcomes

262 complaints and 2 referrals from 226 complainants

Of the 264 complaints and referrals received 182 were dismissed.

Of the 264 complaints and referrals received in the Commission's first full year of operation (to June 30, 2018):

- 182 complaints were dismissed
- 2 complaints were referred to heads of jurisdiction
- 2 matters were referred to an Investigating Panel
- 6 complaints were withdrawn
- 72 were still under consideration

### Referral Outcomes:

- Of the two matters referred to a Head of Jurisdiction, both officers were counselled.

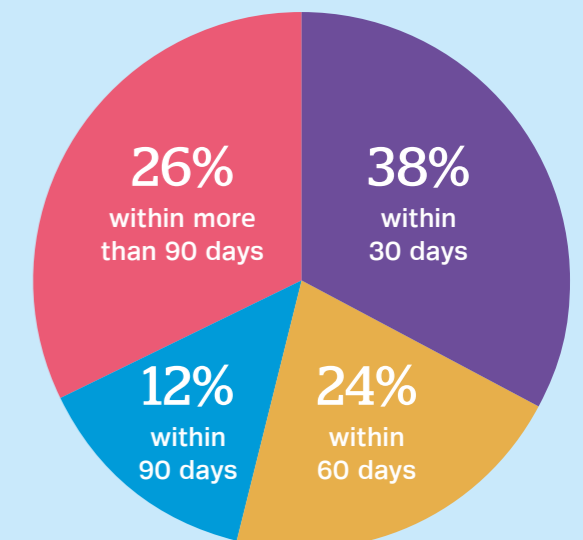
## Grounds for Dismissal

Outcome	Total complaints	% Total
s.16(3)(b) <b>Merits or lawfulness of decision</b>	125	31.57%
s.16(4)(a) <b>Complaint not substantiated</b>	122	30.81%
s.16(2)(b) <b>Not judicial officer or VCAT member</b>	52	13.13%
s.16(1)(b)(iii) <b>Does not infringe standard of conduct expected</b>	41	10.35%
s.16(4)(c) <b>Further investigation unnecessary or unjustified</b>	34	8.59%
s.16(4)(b) <b>Too remote a time</b>	10	2.53%
s.16(1)(b)(i) <b>Does not affect performance of function</b>	2	0.51%
s.16(3)(c)(i) <b>Relates to private life, doesn't affect performance</b>	1	0.25%
s.16(3)(c)(ii) <b>Relates to private life - doesn't affect suitability</b>	1	0.25%
s.16(3)(e) <b>Officer resigned, no longer in office</b>	1	0.25%

The most common reason for dismissal (125 cases) was because complaints were about the correctness of a decision. Another common reason for dismissal (122 cases) was that, upon investigation by the Commission, the complaint could not be substantiated, followed by dismissal because the complaint did not relate to a judicial officer (\*52 cases). (NB complaints may involve dismissal on multiple grounds).

## Time taken to deal with complaints

- 32% of complaints and referrals were finalised within 30 days of receipt
- 20% of complaints and referrals finalised within 60 days of receipt
- 12.5% of complaints and referrals finalised within 90 days of receipt
- 35.5% of complaints and referrals finalised within more than 90 days of receipt



## Judicial Commission of Victoria

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## Referral to an investigating panel

An investigating panel consists of three members appointed by the Commission. Two members are former or current judicial officers or VCAT members and one member is a community member of high standing selected from the pool of people appointed for this purpose.

Having investigated a complaint, the investigating panel must do one of the following:

- dismiss the complaint;
- refer it to the relevant head of jurisdiction with recommendations about the future conduct of the officer concerned; or
- draft a report recommending the officer be removed from office if there is proven misbehaviour or incapacity

An investigating panel has a wide range of powers to help investigate a complaint about a judicial officer or VCAT member. These include holding a hearing, issuing a witness summons, compelling witnesses to attend, producing documents and applying for a search warrant.

## Referral to a Head of Jurisdiction

If the Commission refers a complaint to a head of jurisdiction, it will make recommendations about the future conduct of the officer. Once a complaint is referred to a head of jurisdiction, they may:

- counsel the officer; or
- exercise any other powers that a head of jurisdiction has in relation to the officer concerned.

The head of jurisdiction must provide the Commission with a report stating the outcome of the referral and the reasons for that outcome. The complainant will be provided with a copy of that report.

It is important to note neither an investigating panel nor the head of jurisdiction has 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 from their position.

## Dismissals

Complaints can be dismissed on a number of grounds.

### Mandatory Dismissal

#### A complaint must be dismissed if:

it is not about a judicial officer or VCAT member

it is solely about merits or lawfulness of decision

it is made by a vexatious complainant

the matter occurred before person became a judicial officer or VCAT member and is not conduct which would warrant removal from office

it relates to Officer's private life and doesn't affect performance of Officer's functions or suitability

it is frivolous, vexatious or not made in good faith

the officer has resigned or retired and is no longer in office

#### A complaint must be dismissed, unless the Commission is satisfied:

it could, if substantiated, be considered misbehaviour or incapacity, warranting removal from office;

It warrants further consideration on the ground that it may affect or have affected the performance of the Officer's functions; or

the conduct of the officer may have infringed the standards of conduct generally expected of judicial officers or VCAT members s.16(1)

### Discretionary dismissal grounds

#### A complaint may be dismissed if:

it is not substantiated

it occurred too long ago

having regard to all the circumstances, investigation or further investigation is unnecessary or unjustified