

# Northern Territory Judicial Commission

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## ANNUAL REPORT

2021-2022



**NORTHERN TERRITORY  
JUDICIAL COMMISSION**



# Compliance letter to the Attorney-General

The Honourable Chanston Paech MLA  
Attorney-General and Minister for Justice  
Parliament House  
Darwin NT 0800

Dear Attorney

The Northern Territory Judicial Commission has pleasure in presenting to you the report of its activities for the year ended 30 June 2022.

The Judicial Commission commenced its operations on 10 November 2021, and this is the first Annual Report about the work and activities of the Commission. The Commission was established by government in response to a joint approach from the Northern Territory judiciary and the Law Society in September 2018 drawing attention to the absence of any statutory or other clearly defined authority for dealing with complaints against judicial officers. That approach recognised that most other Australian jurisdictions had established judicial commissions to formalise the complaint process. The subsequent establishment by government of a Judicial Commission in the Northern Territory is an important development to enhance confidence in, and to protect the impartiality and integrity of, the judicial system.

The report is submitted in accordance with section 76 of the *Judicial Commission Act 2020* (NT). It is required to be tabled in the Legislative Assembly.

Yours sincerely



**The Honourable MP Grant AO**  
**Chief Justice of the Northern Territory**  
**Chair**  
**Northern Territory Judicial Commission**

Dated: 30 September 2022



**Mr Peter Shoyer**  
**Principal Officer**  
**Northern Territory Judicial Commission**

Dated: 30 September 2022



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# Introduction to the Commission

## INTRODUCTION

### What is the Judicial Commission?

The Northern Territory Judicial Commission is an independent body established to receive and investigate complaints about judicial officers and members of the Northern Territory Civil and Administrative Tribunal (NTCAT).

### What does the Judicial Commission do?

The Commission considers complaints about the behaviour or capacity of judicial officers and NTCAT members. It does not investigate complaints about the lawfulness of decisions or other rulings. Any member of the public or the legal profession can make a complaint to the Commission.

### Roles, functions and duties

The Commission was established by the *Judicial Commission Act 2020 (NT)* (the Act), which commenced on 10 November 2021.

The Commission has the power to consider a range of complaints including, by way of example, complaints about excessive delays in delivering judgments, inappropriate courtroom conduct, and health issues affecting a judicial officer or NTCAT member's ability to perform their official duties.

# Membership of the Commission

As at 30 June 2022, the five members of the Northern Territory Judicial Commission were:

## The Hon Chief Justice Grant AO

Chief Justice Grant was appointed as Chief Justice of the Supreme Court in 2016.

## Chief Judge Morris

Chief Judge Morris was appointed to the Local Court in 2010 and appointed as Chief Judge in 2019.

## Mr Mark O'Reilly, President of NTCAT

Mr Mark O'Reilly was appointed as the President of the Northern Territory Civil and Administrative Tribunal in 2022.

## Ms Peggy Cheong, President of the Law Society

Ms Peggy Cheong is the President of the Law Society Northern Territory for 2022.

## Mr Sabaratnam Prathapan, Community Member

Mr Prathapan was appointed as the Community Member for a term of five years from 17 August 2021. Mr Prathapan is an Associate Professor of Engineering at Charles Darwin University and was previously the Deputy Vice Chancellor of Northern Territory University and CEO of NT Employment and Training Authority. He is an incoming District Governor of Rotary. He is an active member of a large number of committees and local groups which focus on community development. He has also served as President of the Multicultural Council.

## Ex officio and alternate members

Ex officio members change from time to time. For the period in 2021 during which the Commission was operational, the President of the Law Society was Ms Emma Farnell.

From time to time, an alternate member may act in the place of the Community Member. Ms Susan Korner has been appointed to act if the appointed Community Member is unavailable. Ms Korner was not required to act during 2021-22.

The Judicial Commission is required to meet at least once every three months. The Commission commenced operation in November 2021, and it met on five occasions during 2021-22.

# Support for the Commission

The staff of the Judicial Commission Office support the functions of the Commission.

Peter Shoyer, Northern Territory Ombudsman and Information Commissioner, has been appointed as Principal Officer of the Commission. The Judicial Commission Office is physically co-located with the Ombudsman and Information Commissioner Office in the Darwin CBD. The Judicial Commission Office is the first point of contact for members of the public and for all operational matters. The staff of the Office consists of the Principal Investigation Officer and a Complaints and Investigation Officer.

From mid-2021, work was undertaken by the Office to enable the establishment of the Commission, including:

- developing critical communication avenues for the public to contact the Commission's Office;
- developing a secure website and IT infrastructure in collaboration with the Ombudsman Office Business Services Unit;
- creating and publishing public information documents about the Commission;
- creating confidential internal systems to deal with complaint management; and
- providing a secure and effective interface between the Office and the Commission to facilitate information-sharing.

At the same time, work was being undertaken by the Department of the Attorney-General and Justice (AGD) to support the Attorney-General and Minister for Justice in decision-making around matters such as selection of a Community Member of the Commission.

Advice and assistance has also been provided by AGD's Court and Tribunal Support Services in relation to operational matters such as obtaining access to transcripts and audio of proceedings.

The Office receives technical and business support from the Business Services Unit of the Ombudsman Office.



# Functions of the Commission

## Who can make a complaint?

Any member of the public or the legal profession can make a complaint to the Commission. Complaints can be made by those directly aggrieved or by third parties who witnessed or are aware of the matter. There are no time limits for making a complaint.

However, section 40 of the Act does prescribe specific requirements for the form of the complaint, including the requirements that a complaint must be made in writing, include the name and contact details of the complainant, identify or provide information that can identify the name of the judicial officer or member of NTCAT, and include the grounds of the complaint and a summary of the facts relevant to the complaint.

The Minister or the Independent Commissioner Against Corruption (the ICAC) can also refer matters to the Judicial Commission.

## What type of complaints can the Commission investigate?

Complaints to the Commission must be about:

- a Judge, Additional Judge, Acting Judge or Associate Judge of the Supreme Court
- a Local Court Judge, including an Acting Local Court Judge or a Local Court Judge acting as a coroner
- the President of NTCAT or Deputy President of NTCAT
- a member (ordinary) of NTCAT.

The Commission can deal with complaints about the behaviour or capacity of Northern Territory Judges and members of NTCAT. Some examples include:

- unreasonable delay in handing down a judgment
- inappropriate or unjudicial behaviour in court
- health issues that may affect ability to perform official functions
- bullying or sexual harassment.

The Commission cannot deal with complaints about:

- the correctness of a decision made by a judicial officer or NTCAT member
- court or NTCAT staff, judges from other Australian jurisdictions, lawyers, or police
- a person who is no longer a judicial officer or NTCAT member
- general issues about the justice system.

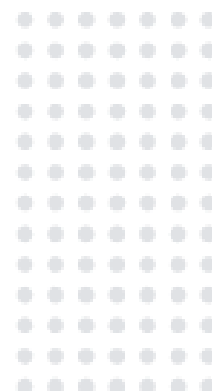
## The complaint process

If a matter complained about falls within the jurisdiction of the ICAC, a complaint may not be made or dealt with under the Act unless the ICAC consents or refers the matter. The Judicial Commission has an agreed consultation process with the ICAC for such matters.

Once a valid complaint is received by the Judicial Commission, a preliminary examination is undertaken with the assistance of the Judicial Commission Office. The preliminary examination process generally involves the receipt and review of material relating to the complaint. In most instances, the complaint relates to court proceedings, and the process will often require transcript or audio of the proceedings to be reviewed by the Commission. There may also be judgments which require detailed examination in order to determine whether a complaint should be dealt with by the Commission and, if so, whether the complaint has merit.

The Commission can undertake a range of preliminary steps as part of its investigation to inform its decision. The Commission may seek comment or information from third parties through the preliminary examination stage, and it may also seek comment or information from the judicial officer or member of NTCAT who is the subject of the complaint.

The Judicial Commission Office supports the Commission through the gathering, analysis and presentation of the type of material described above. This process is particularly important in matters which involve lengthy court proceedings or an extensive range of transactions over a period of time.



*The Commission has a range of powers under the Judicial Commission Act 2020 (NT), including requiring persons to give evidence on oath; issuing summonses for the production of documents or things; inspecting and retaining documents or other things relevant to a complaint; engaging a legal practitioner to assist the Commission; and, in rare instances, requesting a judicial officer or member of NTCAT to undergo a medical or psychological examination.*

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## Options for taking action

The Judicial Commission may take one of the following actions:

### **(a) Dismiss the complaint under section 44**

If the complaint is dismissed, the Judicial Commission must give written notice of the dismissal to the complainant and the judicial officer or member of NTCAT who is the subject of the complaint, together with a summary of the complaint and reasons for the dismissal.

### **(b) Refer the complaint to the head of jurisdiction under section 49**

The Judicial Commission may refer a complaint to the head of jurisdiction if the Commission is satisfied on reasonable grounds that the complaint is partly or wholly substantiated and is not sufficiently serious to justify establishment of an investigation panel under section 50. The Judicial Commission may include recommendations in its referral as to what action should be taken in relation to the complaint. Both the complainant and subject officer are notified of the referral.

Once the head of jurisdiction has dealt with the complaint, a report must be provided to the Judicial Commission. A version of this report must then be provided to the complainant.

### **(c) Establish an investigation panel under section 50**

The Judicial Commission must establish an investigation panel under section 21 to examine and investigate a complaint if satisfied on reasonable grounds that the complaint is sufficiently serious that, if substantiated, it could justify the removal from office or termination of appointment of the judicial officer or member.

# Enquiries and complaints received in the 2021-22 financial year

Enquiries can be made by any member of the public. An enquiry can be a request for information about the functions of the Commission or involve the Judicial Commission Office providing general information to the person making the enquiry. At other times, the nature of the enquiry is in relation to a possible complaint and information about the complaint process. Enquiries can include phone conversations with a complaints officer, or involve more complex discussions over an extended period of time.

A potential complaint is classified as an approach until the formal requirements for the making of a complaint (including, if required, consultation with ICAC) are satisfied. While the number of complaints received is important, the number of approaches which proceed to a formal complaint represents a very small proportion of the total number of cases dealt with by the Northern Territory courts and NTCAT in the 2021–22 financial year.

## 22 enquiries and approaches not progressing to complaint during 2021-22

In the 2021-22 period the Judicial Commission Office fielded 22 enquiries and approaches from the public. Of these, five enquiries involved issues raised about individuals who were not judicial officers or members of NTCAT and were determined to fall outside of the Commission's jurisdiction at the enquiry stage. Another three of these enquiries were awaiting consideration by ICAC at the close of the 2021-22 financial year. In respect of each of these complaints, ICAC subsequently consented and they were accepted as complaints to the Judicial Commission after 30 June 2022.

## 12 complaints received

In the 2021-22 financial year the Commission received 12 complaints, one of which was a referral from the ICAC.

## 5 complaints dismissed

Of the 12 complaints received, five complaints were dismissed.

## 1 complaint referred to head of jurisdiction

Of the 12 complaints received, one was substantiated and referred to a head of jurisdiction. The other six complaints remained under consideration by the Commission at the end of the reporting period.

## Outcome of complaints

*NB: The Judicial Commission cannot disclose information in relation to a complaint that would identify the parties or the precise nature of the complaint.*

Of the six complaints finalised in 2021-22, five were dismissed and one was referred to a head of jurisdiction.

The reasons for dismissal under section 44 of the Act were:

- s 44(1)(d) - there is or was available another satisfactory means of dealing with the matter – one complaint
- s 44(1)(e) - the matter is the subject of legal proceedings and should more properly be the subject of an appeal – one complaint
- s 44(1)(j) - having regard to all the circumstances, further consideration of the complaint is unnecessary or unjustifiable – three complaints.

The complaint substantiated and referred to a head of jurisdiction was a complaint about unreasonable delay in the delivery of a judgment.

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## Complaints by jurisdiction:

4 Northern Territory Supreme Court

6 Northern Territory Local Court

2 Northern Territory Civil and Administrative Tribunal (NTCAT)

The Commission's annual report is available on the organisation's website at

<https://judicialcommission.nt.gov.au/publications/resources>

## OFFICE CONTACT

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