



NORTHERN TERRITORY JUDICIAL COMMISSION

Agreed process between Judicial Commission and Independent Commissioner Against Corruption

It appears likely there will be significant interaction between the Judicial Commission and the Independent Commissioner Against Corruption (the ICAC) in relation to the handling of complaints about matters relating to the behaviour or the physical or mental capacity of a judicial officer or an ordinary member of the NTCAT.

Specifically, section 40(2) of the *Judicial Commission Act 2020* (the JC Act) provides:

A complaint may not be made or dealt with under this Act in relation to a matter that is within the jurisdiction of the ICAC, unless the ICAC consents or refers the matter to the Judicial Commission.

Further, the JC Act amends the *Independent Commissioner Against Corruption Act 2017* (the ICAC Act) to make the Judicial Commission an independent entity and inserts a new s25A in the ICAC Act to provide for referrals from the ICAC to the Judicial Commission following consultation with the Judicial Commission.

Therefore, there will be at least two mechanisms for dealing with complaints in which the jurisdiction of the Judicial Commission and the ICAC overlap: one involving ICAC consent and the other being a formal referral from ICAC.

Process for dealing with complaints received by the Judicial Commission where jurisdiction overlaps or may overlap

There will be matters where the subject of complaint to the Judicial Commission clearly falls within the jurisdiction of ICAC. There will also be complaints where there is no obvious connection with the jurisdiction of ICAC. Initially, at least, there will also be a range of matters where it is necessary to clarify whether the complaint falls within the jurisdiction of ICAC. The understanding of the precise scope of overlap is likely to be refined over time but the proposed initial approach is for the Judicial Commission to engage with ICAC when there is any potential for ICAC to have jurisdiction.

When a complaint is made to the Judicial Commission Office (the JCO) that does or may fall within ICAC jurisdiction, the JCO will advise the complainant that it cannot be made or dealt with by the Judicial Commission until consent is obtained from the ICAC.

The JCO will facilitate this process by offering (to the Complainant) to liaise with the ICAC on the issue of consent. This proposal will avoid unnecessary shuffling of the complainant from one office to the other. If the complainant accepts, the JCO will engage with ICAC as discussed below.

If the complainant does not accept:

- it may be necessary to report the complaint to the ICAC in any event, if that is necessary to comply with the mandatory reporting requirements;
- if that is not the case, the complainant will be advised that the complaint cannot be dealt with by the Judicial Commission because it does not have the power to deal with it without first obtaining consent;
- the Judicial Commission Office will remind the complainant that they can engage directly with ICAC.

With regard to the process for engagement between the Judicial Commission and ICAC, it is proposed that nominated officers from the two organisations have regular contact. For less serious or less complex allegations, it is proposed that engagement be by way of brief electronic correspondence (via email) and telephone calls between the officers. If consent is given for the Judicial Commission to accept and deal with the complaint, it will be given by the same means.

For more serious allegations, or on the request of ICAC, the JCO will provide all relevant information received by the JCO from the complainant (such as the complaint form, materials attached or a brief if one exists). If consent is given for the Judicial Commission to accept and deal with the complaint, it will be given by email.

If consent is given by the ICAC, the JCO will advise the complainant that a formal complaint can be accepted and confirm that they wish to make a complaint in the terms of their initial correspondence. If the ICAC does not consent to the Judicial Commission accepting the complaint, there will be further discussion between the ICAC and the Judicial Commission regarding the handling of the complaint and notification of the complainant.

Referral by ICAC of disclosures made to it

In relation to a formal referral from the ICAC to the Judicial Commission under section 25A of the ICAC Act, it is proposed that consultation occur via brief electronic correspondence (via email) between nominated officers, with follow-up discussions if necessary. It is anticipated that once a referral is made, all relevant material held by the ICAC will be provided to the JCO.

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