

Northern Territory Judicial Commission

ANNUAL REPORT

2022-23



**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

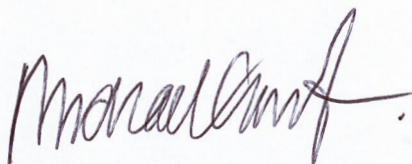
Dear Attorney

The Northern Territory Judicial Commission has pleasure in presenting to you the report of its activities for the year ended 30 June 2023.

The Judicial Commission commenced its operations on 10 November 2021, making this the first full year of reporting. As the community's knowledge and understanding of the Judicial Commission increases, we have seen an increase in the use and value of this important regulatory body. The Commission continues to undertake this crucial role to enhance the public's confidence in, and protect the integrity of, the Territory's 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



Mr Peter Shoyer
Principal Officer

Dated: 26 September 2023

Dated: 26 September 2023

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The Judicial Commission acknowledges the traditional custodians of the lands on which we work and gather, and their continuing connection to land and waters. We pay respects to Elders past, present and emerging.

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’s or NTCAT member’s ability to perform their official duties.

Membership of the Commission

As at 30 June 2023, the five members of the Northern Territory Judicial Commission were:

The Hon Chief Justice Grant AO Chief Judge Morris

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

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

Judge Mark O'Reilly, President of NTCAT

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

Mr Richard Henschke, President of the Law Society

Mr Richard Henschke is the President of the Law Society Northern Territory for 2023.

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 Adjunct 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 a 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.

Acting, ex officio, alternate members

Where a member of the Judicial Commission is unable or unavailable to perform functions or exercise powers, they may appoint a person to act in their place. For certain complaints, Justice Judith Kelly acted as Chair in place of the Chief Justice, and Ms Anna Gill acted in place of Mr Henschke.

Ex officio members change from time to time. During 2022, the President of the Law Society was Ms Peggy Cheong.

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 did not act during 2022-23.

The Judicial Commission is required to meet at least once every three months. During 2022-23, the Commission met on 14 occasions.

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, is 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.

The Department of the Attorney-General and Justice (“AGD”) supports the Judicial Commission to ensure compliance with procurement and procedural requirements such as engagement of legal assistance and selection of a pool of Community Members to draw from in the event that an investigation panel is established.

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

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

During 2022-23, the Judicial Commission Office also received the assistance of the Department of Corporate and Digital Development in optimising the Judicial Commission’s information sharing technology.

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 a 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; or
- an ordinary member 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; and
- 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; or
- 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 recording 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.

Options for taking action

The Judicial Commission may take one of the following actions:

(a) Dismiss 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 complaint to 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 the 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.

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.

Enquiries and complaints received in 2022-23

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 that 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 2022-23 financial year.

Enquiries & approaches not progressing to complaint

22

In 2022-23, the Judicial Commission Office fielded 22 enquiries and approaches from the public. Of these, some 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. Others resulted in complaints being submitted at a later stage.

Complaints received

20

In 2022-23, the Commission received 20 complaints¹. An additional six complaints were carried over from the previous period.

Complaints dismissed

14

Of the 26 complaints that were considered during this period, 14 were dismissed, while 11 remained open at the end of period. Complaints were most commonly dismissed on the basis that further consideration of the complaint was unnecessary or unjustified or the complaint was more properly the subject of an appeal.

Complaint referred to head of jurisdiction

1

Of the 15 complaints finalised during 2022-23, one was substantiated and referred to a head of jurisdiction.

¹ Complaints that fall within the jurisdiction of the ICAC cannot be made or dealt with unless the ICAC consents or refers the matter. The date of receipt of such complaints is therefore based on when ICAC consent is received.

Outcome of complaints

The Act provides that 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 15 complaints finalised in 2022-23, 14 were dismissed and one was referred to a head of jurisdiction.

The reasons for dismissal under section 44 of the Act were:²

- s 44(1)(a) – the complaint was frivolous, vexatious or not made in good faith – one complaint;
- s 44(1)(e) – the matter is the subject of legal proceedings and should more properly be the subject of an appeal – five complaints; and
- s 44(1)(j) – having regard to all the circumstances, further consideration of the complaint is unnecessary or unjustifiable – nine complaints.

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

Complaints by jurisdiction

8 Northern Territory Supreme Court

7 Northern Territory Local Court

5 Northern Territory Civil and Administrative Tribunal

² A complaint may involve more than one issue and there may be more than one basis for dismissal.

The Commission's annual report is available on the organisation's website at:
<https://judicialcommission.nt.gov.au/publications/resources>

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