



ETHICS COMMITTEE:

GRIEVANCE PROTOCOL

1. This protocol provides an informal mechanism to resolve grievances about the conduct of barristers in connection with their practice.
2. The protocol allows the Ethics Committee to investigate grievances, make recommendations and encourage resolution of grievances by agreement.
3. The Ethics Committee does not have the power to impose disciplinary sanctions or make findings of unsatisfactory professional conduct or professional misconduct.

Objectives of the Protocol

4. This protocol has the following objectives:
 - 4.1. To enable a grievance in relation to a barrister's conduct to be raised and responded to before any formal complaint is lodged.
 - 4.2. To enable persons with a grievance arising from the conduct of a barrister to raise the issue in a confidential way outside any formal complaint procedure.
 - 4.3. To facilitate the early resolution of grievances relating to barristers' conduct.
 - 4.4. To assist barristers whose conduct has caused a grievance to identify ways to improve their conduct in future.

Who may raise a grievance under this protocol?

5. Anyone who interacts with barristers in connection with their practice may raise a grievance under this protocol. This includes:
 - 5.1. barristers;
 - 5.2. readers;
 - 5.3. barristers' employees and contractors;

- 5.4. the Victorian Bar's employees;
- 5.5. Barristers Chambers Limited's employees;
- 5.6. clerks and their employees;
- 5.7. solicitors and their employees;
- 5.8. court staff;
- 5.9. students who work with barristers;
- 5.10. volunteers who work with barristers;
- 5.11. clients; and
- 5.12. visitors to premises connected with barristers' professional practice.

Guiding principles

6. The following principles underpin the protocol and should guide its application.
7. In this protocol:
 - 7.1. The person raising the grievance is referred to as the "aggrieved person".
 - 7.2. The barrister who is the subject of the grievance is referred to as "the barrister".
 - 7.3. The *Legal Profession Uniform Conduct (Barristers) Rules 2015* are referred to as "the Conduct Rules".

Confidentiality

- 7.4. Where possible, the identities of the aggrieved person and barrister should only be disclosed to those people directly involved in the grievance or in its attempted resolution. Information about the subject matter of the grievance should not be disclosed if doing so is likely to identify the people involved.

No prejudice to other rights and obligations

- 7.5. The procedures set out in this protocol are available in addition to the formal complaint avenues under the *Legal Profession Uniform Law* or any other law and do not replace or derogate from any available legal avenues available to an aggrieved person. A person is not required to raise a grievance under this protocol before pursuing other avenues of complaint.
- 7.6. This protocol does not derogate from the duty of the Bar Council, as delegate of the Legal Services Board, to report serious offences as required by s 465 of the *Legal Profession Uniform Law*. If the Bar Council suspects on reasonable grounds that a person has committed a serious

offence, it has a duty to report it to the police or other appropriate investigating authority.

Promptness

8. Grievances should be dealt with as quickly and informally as practicable.

Flexibility

9. In fulfilling its role under this protocol, the Ethics Committee should retain the flexibility to ensure that any action taken in response to a grievance is responsive to the nature and gravity of the conduct alleged.
10. The Ethics Committee may delegate any of its functions under this protocol to a sub-committee of its members.

Before raising a grievance

11. Before raising a grievance, the aggrieved person may consider, where appropriate:
 - 11.1. attempting to resolve their concern directly with the barrister;
 - 11.2. discussing their concern with:
 - (a) a colleague;
 - (b) a mentor or the barrister's mentor;
 - (c) their clerk or the barrister's clerk;
 - (d) if the matter relates to sexual harassment, discrimination or bullying, a Peer Support Barrister;
 - (e) the President or Vice-Presidents of the Bar; or
 - (f) the Executive Director of the Bar Office.
 - 11.3. The aggrieved person is not obliged to attempt to resolve their concern directly or discuss their concern with anybody before raising a grievance. In some cases, this may not be appropriate or desirable.

How to raise a grievance

12. To raise a grievance under this protocol, the aggrieved person may contact any member of the Ethics Committee and/or send an email to ethics@vicbar.com.au and describe the nature of the grievance.

How a grievance is investigated

13. The investigation will be undertaken on an informal basis. The Ethics Committee will determine the investigation process.
14. Without limiting the manner of the investigation, the Ethics Committee will

generally:

- 14.1. Obtain full details of the grievance from the aggrieved person;
- 14.2. Discuss with the aggrieved person the details of the grievance and the outcome they seek;
- 14.3. Inform the barrister of the details of the grievance, including the identity of the person who has raised it and seek their response;
- 14.4. Inform the aggrieved person of the response; and
- 14.5. Seek relevant information from any other person who may assist the investigation.

Resolution of the grievance

15. After conducting their investigation, the Ethics Committee may attempt to resolve the grievance by:
 - 15.1. considering:
 - (a) whether the conduct alleged by the aggrieved person occurred;
 - (b) whether the conduct alleged by the aggrieved person was appropriate or inappropriate in the circumstances; and
 - (c) whether the conduct alleged by the aggrieved person would, if proven, amount to a breach of the Conduct Rules.
 - 15.2. encouraging or facilitating the resolution of the grievance by agreement between the aggrieved person and the barrister;
 - 15.3. recommending that the barrister apologise for their conduct;
 - 15.4. explaining to the aggrieved person and/or the barrister why it considered the conduct alleged to be appropriate or inappropriate in the circumstances;
 - 15.5. recommending that the barrister make changes to their practices or behaviour in future;
 - 15.6. encouraging or facilitating referral of the aggrieved person and/or the barrister to the Victorian Bar's psychological support services or to any other appropriate counselling or dispute resolution service or process;
 - 15.7. recommending that the barrister complete training or education;
 - 15.8. providing information as required to the aggrieved person and/or the barrister about the complaint processes under the *Legal Profession Uniform Law*;
 - 15.9. in exceptional circumstances, requesting the Bar Council to engage an independent person or service undertake an investigation.

16. For the purposes of cl 15.9, exceptional circumstances means circumstances in which the seniority or identity of barrister the subject of the grievance, or the notoriety of the conduct alleged, means that investigation by other barristers is unlikely to elicit useful information and/or is unlikely to be seen as independent or impartial.

What happens if the grievance is resolved

17. Where the aggrieved person is satisfied that the grievance has been resolved, no further action will be taken.

What happens if the grievance is not resolved

Conduct that would not, in the Ethics Committee's opinion, amount to a breach of the Conduct Rules

18. If the aggrieved person is not satisfied that the grievance has been resolved, the Chair of the Ethics Committee will provide the aggrieved person with information about making a formal complaint under the Legal Profession Uniform Law.
19. If the Ethics Committee has formed the opinion that the conduct complained of would not amount to a breach of the Conduct Rules, it will take no further action

Conduct that would, in the Ethics Committee's opinion, amount to a breach of the Conduct Rules

20. If the Ethics Committee has formed the opinion that the alleged conduct, if proven, would amount to a breach of the Conduct Rules, unsatisfactory professional conduct or professional misconduct, then the Ethics Committee may:
 - 20.1. Inform the President of the Bar of any recommendations it has made in attempting to resolve the grievance; and
 - 20.2. ask the President of the Bar to write to the barrister requesting that the barrister implement the Ethics Committee's recommendations.
21. If the aggrieved person does not wish to make a formal complaint under the *Legal Profession Uniform Law* but the Ethics Committee considers the conduct to be sufficiently serious to require a formal complaint, it may prepare a confidential memorandum to the Bar Council setting out its investigations, opinion and recommendations.
22. If the Bar Council is satisfied that the conduct is sufficiently serious as to require a formal complaint, it may resolve that Victorian Bar make a formal complaint under the Legal Profession Uniform Law.
23. The Victorian Bar will not make a formal complaint against the wishes of the aggrieved person except in exceptional circumstances. Exceptional circumstances include where:

- 23.1. The Bar Council considers that failure to make a formal complaint gives rise to a serious risk that the barrister will engage in further conduct that amounts to or may amount professional misconduct or a breach of rule 8 of the Conduct Rules;
- 23.2. The Bar Council considers that the conduct is sufficiently serious that the advantages of a formal investigation outweigh the disadvantages of acting against the wishes of the aggrieved person; or
- 23.3. The Bar Council suspects on reasonable grounds that conduct may amount to a serious offence such that the Bar Council has a duty to report it to the police pursuant to s 465 of the Legal Profession Uniform Law.

Record of grievances

24. The Ethics Committee will maintain records of grievances and their disposition, and will report the nature and outcome of grievances to the Bar Council at regular intervals. The reports to Bar Council will not identify the barristers involved.

Other actions the Ethics Committee may take

25. After concluding its investigation of a grievance, the Ethics Committee may, if it considers it desirable:
 - 25.1. Issue an ethics bulletin to members of the Victorian Bar addressing conduct of the nature raised in the grievance.
 - 25.2. Make recommendations to the Bar Council about measures which may be taken to reduce or avoid future conduct of a similar nature by other barristers.

Approved by Bar Council on
5 May 2016

Last revised 19 August 2021