



PROTOCOL FOR THE BAR TO RAISE CONCERNS ABOUT JUDICIAL CONDUCT

The Supreme Court of Victoria values and promotes a healthy, safe and respectful workplace. In that context, this protocol sets out a procedure for the President of the Victorian Bar to raise with the Chief Justice concerns about judicial conduct in the Supreme Court.

The procedure is an alternative to the process provided under the *Judicial Commission of Victoria Act 2016* for making complaints about the conduct or capacity of a judicial officer. Serious complaints about a judicial officer's conduct should be made in accordance with the Act. Nevertheless, depending on the nature of the judicial conduct, members of the Bar may prefer to raise their concerns through a less formal mechanism. This protocol is designed to encourage and support members of the Bar in such cases. Its aim is to enable such members to raise concerns with the President of the Bar who may then raise them with the Chief Justice.

The steps in the procedure are:

1. Members of the Bar may contact the President of the Bar by telephone, email or in person to raise concerns about the conduct of a judicial officer. The raising of the concern will be treated confidentially, save to the extent that disclosure to others is necessary for the purposes of this protocol. The member of the Bar raising a concern need not be the person who has been the subject of the conduct, but must have firsthand knowledge of the conduct sufficient to raise the concern.
2. The President will make an assessment of the conduct and, for this purpose, may ask for more information from the member about the nature of the conduct and its impact.
3. If the President is of the view that conduct is of the type that warrants action, the President may:
 - a. encourage the member to make a formal complaint under the *Judicial Commission of Victoria Act*;
 - b. consider whether the Bar should itself initiate a formal complaint under the *Judicial Commission of Victoria Act*;
 - c. raise the matter with the Chief Justice on a confidential basis.
4. In appropriate cases, the President may raise concerns with the Chief Justice in accordance with this protocol of his or her own motion. Before doing so, the President will take into account, but not be bound by, the wishes of aggrieved members.
5. After a matter has been raised with the Chief Justice she may:
 - a. bring the matter to the attention of the relevant judicial officer (without, so far as is possible, identifying which barrister has raised the concern where the President has advised that the barrister would prefer not to be identified);

- b. give the judicial officer the opportunity to express his or her views;
 - c. watch or listen to any in-court recording relevant to the conduct;
 - d. read any transcript of hearing(s) relevant to the conduct;
 - e. discuss her views about the conduct with the judicial officer;
 - f. discuss with the judicial officer whether any remedial action is appropriate.
6. The Chief Justice may also:
- a. in general terms, inform the President of the outcome of her discussions with the judicial officer;
 - b. encourage the President to make a formal complaint on behalf of the Bar under the *Judicial Commission of Victoria Act*;
 - c. encourage the President to recommend to the member that a formal complaint be made under the *Judicial Commission of Victoria Act*;
 - d. inform the President that in her view, the judicial officer's conduct does not warrant further action.
7. The President may inform the Chief Justice about any matters in relation to the operation of this protocol or judicial conduct more generally.
8. This protocol does not create any legal rights or obligations. Nor does it affect any existing legal rights or obligations.

Anne Ferguson
Chief Justice
Supreme Court of Victoria

18 October 2018