



Land and Environment Court of New South Wales

Policy on Complaints Against Commissioners of the Land and Environment Court

1. Overview

- 1.1 The objective of the policy is to ensure that complaints made to the Court about the ability, behaviour and performance of Commissioners of the Court are examined in a timely and effective manner in order to:
 - a) enhance public confidence in the Court,
 - b) promote good practices and high standards of performance.
- 1.2 An important part of this process is to determine which complaints require further action.
- 1.3 These guidelines are designed to provide an outline of the principles and procedures adopted by the Court to examine complaints.

2. Application of policy

- 2.1 The policy applies to complaints against all Commissioners of the Court, including persons appointed as a full-time Commissioner, part-time Commissioner or Acting Commissioner.

3. Making a complaint against Commissioners

- 3.1 *Who can make a complaint?*
A complaint may be made to the Court by any person.
- 3.2 *Legislative requirements*
Complaints about Commissioners do not fall under the provisions of the *Judicial Officers Act 1986* and there are no other legislative provisions for dealing with these complaints.
- 3.3 *Other requirements*
The complaint shall be in writing and should identify the complainant and the Commissioner concerned. The particulars of the complaint must be verified by statutory declaration and be lodged with the Chief Judge.

3.4 *Assistance to complainants*
If a person cannot write, he or she may contact the Court and assistance will be provided to put the complaint in writing. If interpreting or translation assistance from another language to English is required, the Court will make appropriate arrangements.

3.5 *Acknowledge receipt of complaints*
All complaints submitted to the Court will be acknowledged in writing within one week of receipt.

4. Complaints that will not be examined

4.1 These procedures do not provide for the review of a case for judicial error, mistake, or other legal ground. Reviews of those matters are the function of appellate courts. In particular, s 56A of the *Land and Environment Court Act 1979* provides for appeals against decisions of Commissioners on a question of law.

4.2 Allegations of corruption against a Commissioner are required to be referred to the Independent Commission Against Corruption for investigation by that body.

5. Investigating a complaint

5.1 *Receipt of a complaint*
On receiving a complaint, the Chief Judge will conduct a preliminary examination into the matter. In every case, the Commissioner will be advised of the fact that a complaint has been made and provided with a copy of the complaint.

5.2 *Preliminary examination*
The preliminary examination will often involve a review of any material relevant to the complaint, including transcripts of evidence where available. If necessary, a response to the complaint will be sought from the Commissioner.

5.3 *Confidentiality*
The preliminary examination of a complaint will be conducted, as far as practicable, on a confidential basis. Confidentiality protects the person complained about from unjust criticism and protects persons who furnish information to the Court in the course of the examination of a complaint.

5.4 *Opportunity to respond*
The Chief Judge will act in accordance with the principles of natural justice in conducting an examination of a complaint. An opportunity to respond to the complaint and to present additional information that may assist the Chief Judge in the investigation of the complaint will be provided to a Commissioner before any adverse decision is taken.

6. Dismissal of a complaint

6.1 *Summary dismissal of a complaint*

The Chief Judge may summarily dismiss a complaint following the preliminary examination if the Chief Judge is of the opinion that, whether or not the complaint appears to be substantiated:

- (a) the complaint is one that the Chief Judge is required not to deal with;
- (b) the complaint is frivolous, vexatious or not in good faith;
- (c) the subject matter of the complaint is trivial;
- (d) the matter complained about occurred at too remote a time to justify further consideration;
- (e) in relation to the matter complained about, there is or was available a satisfactory means of redress or of dealing with the complaint or the subject matter of the complaint;
- (f) without limiting paragraph (e), the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights;
- (g) the person complained about is no longer a Commissioner; or
- (h) having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.

6.2 In deciding whether or not to summarily dismiss a complaint the Chief Judge may have regard to such matters as the Chief Judge thinks fit.

6.3 *Advising of dismissal of complaint*

Where a complaint is dismissed by the Chief Judge following the preliminary examination, the complainant will be informed in writing and provided with the reasons for dismissing the complaint. The Commissioner will also be advised in writing of the decision.

7. Complaint not dismissed and dealt with by Chief Judge

7.1 *Action to deal with the complaint*

Where a complaint has not been dismissed following the preliminary examination by the Chief Judge and where the Chief Judge considers the complaint does not justify reference to a Complaint Committee for further examination, the Chief Judge may take such action as the Chief Judge considers appropriate to deal with the complaint, such as counselling of the Commissioner or the making of other administrative arrangements designed to avoid a repetition of the problem.

7.2 *Advising of action taken*
The complainant will be advised of the action taken by the Chief Judge.

8. Complaint referred by Chief Judge to a Complaint Committee

8.1 *Referral of complaint for examination by a Complaint Committee*
Where a complaint has not been dismissed following the preliminary examination and the Chief Judge considers the complaint requires further examination the Chief Judge may refer the complaint to a Committee established by the Chief Judge for examination.

8.2 The function of a Committee is to examine and deal with a particular complaint that has been referred to it by the Chief Judge.

8.3 *Composition of the Complaint Committee*
The Committee will comprise a panel of three judges, being two judges of the Court and a judge or a retired judge of any court. The membership of the Committee will be determined by the Chief Judge at the same time as a decision is taken to refer the complaint. One member of the Committee will be appointed as Chairperson.

8.4 *Advising of referral*
Where a complaint is referred to the Complaint Committee, as soon as practicable after the decision is made, the Chief Judge will advise:

- (a) the Commissioner and the complainant of the action taken; and
- (b) the Attorney-General of the fact that a complaint has been referred to a Complaint Committee but will not identify the Commissioner complained about.

9. Examination of a complaint by the Complaint Committee

9.1 The Complaint Committee shall conduct an examination of the complaint referred to it by the Chief Judge.

9.2 In conducting the examination of a complaint referred to it by the Chief Judge, as far as practicable, this will take place in private and may include:

- interviewing the complainant and other persons;
- taking statements; and
- gathering documents and other material.

9.3 The Complaint Committee shall provide the Commissioner complained about an opportunity to be heard, including making a statement and providing documents, statements of other persons and other material to the Complaint Committee.

10. Report by the Complaint Committee

10.1 The Complaint Committee will prepare a report for the Chief Judge setting out its findings of fact and conclusions. The report shall state whether, in the Complaint Committee's opinion, the complaint:

- (a) has been wholly or partly substantiated; or
- (b) should be dismissed on any of the grounds the Chief Judge may summarily dismiss complaints or has not been substantiated.

10.2 If the Complaint Committee decides that the complaint is wholly or partly substantiated, the Complaint Committee shall state in its report whether, in the Complaint Committee's opinion:

- (a) the matter could justify the Governor's removal of the Commissioner complained about from office (see cl 6 of sch 1 of the *Land and Environment Court Act 1979*); or
- (b) the matter does not justify such consideration and should therefore be referred back to the Chief Judge to take action.

10.3 If the Complaint Committee's report states that the matter should be referred back to the Chief Judge, the report may include recommendations as to what steps might be taken to deal with the complaint.

10.4 The Chief Judge shall provide a copy of the Complaint Committee's report to the Commissioner.

11. Action by the Chief Judge in response to the Complaint Committee's report

11.1 Dismissal by Chief Judge

If the Complaint Committee's report states the complaint should be dismissed or has not been substantiated, the Chief Judge shall dismiss the complaint and advise the Commissioner, the complainant and the Attorney-General.

11.2 Action to deal with complaint

If the Complaint Committee's report states the matter should be referred back to the Chief Judge, the Chief Judge shall:

- (a) take such action as the Chief Judge considers appropriate, taking into consideration any recommendations of the Complaint Committee as to what steps might be taken to deal with the complaint, including counselling of the Commissioner or the

making of other administrative arrangements designed to avoid a repetition of the problem; and

- (b) advise the Commissioner, the complainant and the Attorney-General of the Complaint Committee's report and the action taken by the Chief Judge.

11.3 *Referral to Attorney-General*

If the Complaint Committee's report states that the Committee is of the opinion that the complaint is wholly or partly substantiated and that the matter could justify the Governor's removal of the Commissioner complained about from office, the Chief Judge shall:

- (a) present the Complaint Committee's report to the Attorney-General; and
- (b) advise the Commissioner and the complainant of the action taken.

11.4 If the Attorney-General forms the same opinion as the Complaint Committee in its report, the Attorney-General may make a recommendation to the Governor for the removal of the Commissioner complained about from office.

**The Hon Justice Brian J Preston
Chief Judge**

18 January 2010