



# Policy: Complaint Against a Commissioner of the Land and Environment Court

---

## Commencement

1. This policy commences on 17 May 2024 and replaces the policy published 18 January 2010.

## Purpose of the policy

2. The purpose of the policy is to outline the process for making and the principles for examining complaints against a Commissioner of the Court.

## Application

3. The policy applies to complaints against any Commissioner of the Court.

## Definitions

4. In this policy:

**Chief Judge** means the Chief Judge of the Land and Environment Court of New South Wales.

**Commissioner** means a Commissioner or Acting Commissioner of the Court.

A **complaint** made under this policy is about the behaviour or performance of a Commissioner.

**Court** means the Land and Environment Court of New South Wales.



## Objectives of the policy

5. The objectives of the policy are:
  - 5.1 to examine complaints in a timely and effective manner;
  - 5.2 to provide a transparent process for examining complaints;
  - 5.3 to enhance public confidence in the Court;
  - 5.4 to promote good practices and high standards of performance by Commissioners;
  - 5.5 to receive information that can be used by the Court to deliver quality improvements in performance and training opportunities.

## Making a complaint about a Commissioner under the policy

6. Any person may make a complaint to the Court under this policy.
7. A complaint is not made under the *Judicial Officers Act 1996* and there are no other legislative provisions for dealing with the complaint.

## The process for making a complaint

8. The process for making a complaint about a Commissioner is as follows:
  - 8.1 A complaint shall be in writing and verified by a statutory declaration (<https://www.service.nsw.gov.au/transaction/nsw-statutory-declaration-forms>);
  - 8.2 The complaint should identify the person who is making the complaint and the Commissioner about whom the complaint is made;
  - 8.3 The complaint should clearly identify the conduct or behaviour about which complaint is made, such as what was said or done by the Commissioner at the hearing or conciliation conference or in the judgment;
  - 8.4 The complaint should state the contact details of the person making the complaint so that the Court is able to confirm receipt, respond or seek additional information if required.



- 8.5 A request with reasons can be made to the Chief Judge to keep the identity of the person making the complaint confidential from the Commissioner who is the subject of the complaint. The Chief Judge will determine if this information will be kept confidential or not.
- 8.6 The complaint is to be marked for the attention of the **Chief Judge of the Land and Environment Court** and sent by:
- |                                       |                              |   |
|---------------------------------------|------------------------------|---|
| Post: GPO Box 3565<br>Sydney NSW 2001 | Hand delivery<br>or courier: | Level 4 Registry<br>225 Macquarie Street<br>Sydney NSW 2000 |
|---------------------------------------|------------------------------|---|
- Email: [lecourt@justice.nsw.gov.au](mailto:lecourt@justice.nsw.gov.au)
- 8.7 Complaints will not be received by telephone.
- 8.8 The complaint and any communications with the Court and its staff, should be respectful and courteous. The Land and Environment Court is a workplace. The Court's staff, Judges and Commissioners should be able to work in an environment free from rudeness, harassment, discrimination and bullying.
- 8.9 A complaint may be withdrawn at anytime.

### Assistance with making a complaint

9. If a person cannot write, they may contact the Court which can provide advice of where the person can obtain assistance with completing the complaint.
10. If translation assistance is required, Multicultural NSW can be contacted to provide assistance: <https://multicultural.nsw.gov.au/language-service-providers-nsw/> (note fees may apply for translation services).

### Complaints that will not be examined

11. A complaint seeking to appeal or review a decision of a Commissioner for error, mistake or other legal grounds will not be examined under this policy. There are other appeal or review rights available. In particular, s56A of the *Land and Environment Court Act 1979* provides for an appeal against a decision of a Commissioner on a question of law.
12. A complaint about a Judge of the Court should be made to the Judicial Commission of New South Wales in accordance with its policies and procedures.



13. Allegations of corruption against a Commissioner should be made to the Independent Commission Against Corruption in accordance with its policies and procedures.

### **Acknowledgment of receipt of a complaint**

14. Within one week upon receipt of the complaint, the Office of the Chief Judge will acknowledge in writing, receipt of the complaint.

### **Examination of the complaint by the Chief Judge**

15. The Chief Judge will conduct an examination of the complaint. This may involve a review of any material relevant to the complaint, including the court file, evidence tendered, transcript of the hearing where available, and any reasons for judgment.
16. If necessary, the Chief Judge may request additional information from the person making the complaint.
17. Confidentiality during the examination process will be maintained, as far as practicable. Confidentiality protects both the person making the complaint and the Commissioner against whom the complaint is made from unjust criticism, protects anyone who provides information in relation to the complaint, and contributes to the integrity of the examination process.
18. The Chief Judge will act in accordance with the principles of natural justice in conducting an examination of the complaint. The Commissioner against whom a complaint is made will be given an opportunity to respond to the contents of the complaint, and present additional information that may assist the Chief Judge during the examination before any adverse decision is made.

### **Time for examining complaints**

19. The time to examine and process a complaint will vary depending on the complexity of the matter. However, the Court understands that a complaint can cause stress to all people involved and will endeavour to complete the process as quickly as possible.



## Dismissal of a complaint by the Chief Judge

20. The Chief Judge may summarily dismiss the complaint following the examination if the Chief Judge is of the opinion that, whether or not the complaint appears to be substantiated:
- 20.1 the complaint is one that the Chief Judge is required not to deal with;
  - 20.2 the complaint is frivolous, vexatious or not in good faith;
  - 20.3 the subject matter of the complaint is trivial;
  - 20.4 the matter complained about occurred too far in the past to justify further consideration;
  - 20.5 in relation to the matter complained about, there is or was available satisfactory means of redress or of dealing with the complaint or the subject matter of the complaint;
  - 20.6 without limiting paragraph 20.5, the complaint relates to the exercise of a judicial or other function that is or was the subject of adequate appeal or review rights;
  - 20.7 the person complained about is no longer a Commissioner; or
  - 20.8 having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.
21. 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.
22. Where a complaint is summarily dismissed by the Chief Judge following the examination, the person making the complaint and the Commissioner against whom the complaint was made will be informed in writing and provided with the reasons for dismissing the complaint.

## Complaint not dismissed and dealt with by the Chief Judge

23. Where a complaint has not been dismissed following the 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 making of other administrative arrangements designed to avoid a repetition of the problem.



24. The person making the complaint will be advised of the action taken by the Chief Judge.
25. The Chief Judge will discuss the relevant action to be taken with the Commissioner against whom the complaint was made.

### **Complaint referred by Chief Judge to a Complaint Committee**

26. Where a complaint has not been dismissed following the examination by the Chief Judge, and the Chief Judge considers the complaint requires further examination, the Chief Judge may refer the complaint to a Complaint Committee established by the Chief Judge for further examination.
27. The function of the Complaint Committee is to examine and deal with a particular complaint that has been referred to it by the Chief Judge.
28. The Complaint Committee will comprise a panel of three judges, being two Judges of the Court and a Judge or a retired Judge of any other Court.
29. The Chief Judge will determine at the same time as the decision is made to refer the complaint to the Complaint Committee:
  - 29.1 the persons to be appointed to the Complaint Committee; and
  - 29.2 the chairperson of the Complaint Committee.
30. Where a complaint is referred to the Complaint Committee the Chief Judge will notify:
  - 30.1 the person making the complaint;
  - 30.2 the Commissioner against whom the complaint is made; and
  - 30.3 the Attorney-General.

### **Examination of the complaint by the Complaint Committee**

31. The Complaint Committee shall conduct a further independent examination of the complaint referred to it by the Chief Judge.
32. The Complaint Committee's examination, as far as practicable, will take place in private and may include:



- 32.1 interviewing the person making the complaint;
  - 32.2 interviewing other persons relevant to the complaint;
  - 32.3 taking statements; or
  - 32.4 gathering documents and other material relevant to the complaint;
33. The Complaint Committee shall provide the Commissioner against whom the complaint is made an opportunity to be heard, including making a statement and providing relevant documents and statements of other people to the Complaint Committee.
34. 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:
- 34.1 has been wholly or in part substantiated; or
  - 34.2 the complaint has not been substantiated; or
  - 34.3 should be dismissed on any of the grounds the Chief Judge may summarily dismiss complaints.
35. If the Complaint Committee determines that the complaint is wholly or in part substantiated, the Committee shall state in its report whether, in the Committee's opinion:
- 35.1 the complaint could justify the Governor of NSW removing the Commissioner from office (see cl 6 of sch 1 of the *Land and Environment Court Act 1979*); or
  - 35.2 the complaint does not justify the consideration of the Governor of NSW removing the Commissioner from office; or
  - 35.3 the complaint should be referred back to the Chief Judge to take action and the Committee may make recommendations on what action should be taken.

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

36. If the Complaint Committee's report states that the complaint should be dismissed, or has not been substantiated, the Chief Judge shall dismiss the complaint and advise the person who made the complaint, the Commissioner against whom the complaint was made and the Attorney-General.



37. If the Complaint Committee's report states that the matter should be referred back to the Chief Judge for action, the Chief Judge shall:
- 37.1 take such action as the Chief Judge considers appropriate, taking into consideration any recommendations of the Complaint Committee as to what steps may 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
- 37.2 advise the person who made the complaint, the Commissioner against whom the complaint was made and the Attorney-General of the Complaint Committee's report and the action taken by the Chief Judge.
38. If the Complaint Committee's report states that the complaint is wholly or in part substantiated and that the matter could justify the Governor of NSW removing the Commissioner from office, the Chief Judge shall:
- 38.1 present the Complaint Committee's report to the Attorney-General; and
- 38.2 advise the person who made the complaint and the Commissioner against whom the complaint was made of the Complaint Committee's report, and the action taken by the Chief Judge.
39. 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 of NSW for the removal of the Commissioner from office.

## Record keeping

40. All records in relation to the complaint, the examination process and results will be held in confidence by the Office of the Chief Judge in accordance with the requirements of the *Privacy and Personal Information Protection Act 1998*. This includes ensuring the information is stored securely and protected from unauthorised access.

Issued by:

***The Honourable Justice Brian J Preston  
Chief Judge – Land and Environment Court of NSW  
Date: 17 May 2024***



**Land and Environment  
Court**  
of New South Wales

---

**Document Information**

**Title:** Policy: Complaint Against a Commissioner of the  
Land and Environment Court

**Document Number:** LEC-PPL14

**Document Owner:** Land & Environment Court of New South Wales

**Classification:** OFFICIAL

**Key Words:** Commissioner, Acting Commissioner, Complaint, Criticism,  
Feedback