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**Government  
of South Australia**

# JUDICIAL CONDUCT COMMISSIONER

## **2022-23 Annual Report**

JUDICIAL CONDUCT COMMISSIONER

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2022-23 ANNUAL REPORT for the Judicial Conduct Commissioner

To:

The Honourable Dan Cregan MP  
Speaker of the House of Assembly

The Honourable Terry Stephens MLC  
President of the Legislative Council

This annual report will be presented to Parliament to meet the statutory reporting requirements of section 27(3) of the *Judicial Conduct Commissioner Act 2015 (SA)* and the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

A handwritten signature in black ink, appearing to read 'Michael Boylan', is positioned above the typed name.

Michael Boylan KC  
Judicial Conduct Commissioner  
25 September 2023

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2022-23 ANNUAL REPORT for the Judicial Conduct Commissioner

To:

The Honourable Kyam Maher MLC  
Attorney-General

This annual report will be presented to Parliament to meet the statutory reporting requirements of section 12(1) of the *Public Sector Act 2009* (SA) and the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

A handwritten signature in black ink, appearing to read 'Michael Boylan', written in a cursive style.

Michael Boylan KC  
Judicial Conduct Commissioner  
25 September 2023

## **From the Commissioner**

The Office of the Judicial Conduct Commissioner was established upon the commencement of the *Judicial Conduct Commissioner Act 2015* (SA) (JCC Act) on 5 December 2016.

I commenced as the Judicial Conduct Commissioner on 7 January 2022.



### **Complaints**

It is my function as the Judicial Conduct Commissioner to receive and deal with complaints about the conduct of judicial officers. I am not subject to the direction of any person in relation to the manner in which that function is exercised or the priority which is to be given to a particular matter.

Unless a complaint is to be dismissed under section 17 of the JCC Act, I am obliged to conduct a preliminary examination of it. The purpose of the preliminary examination is in the first instance, to determine whether:

1. the complaint raises a reasonable suspicion that it relates to conduct that involves corruption in public administration, such that it should be referred to the Office for Public Integrity; or
2. further consideration of the complaint would, in all the circumstances, be unjustified in terms of section 16 of the JCC Act, such that I should exercise the power to take no further action in respect of the complaint; or
3. at least one of the grounds in section 17 of the JCC Act is met and the complaint must be dismissed.

Assuming none of these is applicable and that the preliminary examination proceeds, I can deal with the complaint by:

1. recommending that the judicial officer's jurisdictional head take specific action; or
2. making a recommendation to the Attorney-General to appoint a judicial conduct panel; or
3. making an immediate report to Parliament.

## **Statistics**

During the reporting period, I received 56 complaints. Most of them were from members of the public and related to allegedly inappropriate conduct in court (8 complaints), or to a judicial decision or order (18 complaints). There were 6 complaints about non-South Australian judicial officers, in respect of whom I have no jurisdiction. There were also a number of complaints not made in accordance with the JCC Act (21 complaints).

I received one complaint of sexual harassment by a judge. I began a preliminary examination into this complaint, but it came to an end when the judge resigned, and I ceased to have jurisdiction.

One of the complaints I received about alleged bullying of a staff member by a judge led to my conducting a preliminary examination. This involved seeking a response from the judicial officer involved. Eventually I dismissed the complaint.

I have mentioned those two matters because they took some time to resolve. In the case of the complaint of sexual harassment, I allowed the judge as much time as he needed to obtain relevant reports. I was obliged to do so as I am required to accord procedural fairness to judicial officers who are the subject of complaints.

In the case of the alleged bullying, I gave the complainant time to make further submissions in support of their complaint. There was some delay before they replied, and, of course, I gave the judicial officer time to respond to the submissions.

Most of the complaints I received were dismissed. As in the case of previous years, many of the complaints related to judicial decisions, which are not within my jurisdiction. The Judicial Conduct Commissioner has no jurisdiction to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a judicial officer in relation to any legal proceedings<sup>1</sup>. A large number of complaints were also dismissed as they did not concern the conduct of a judicial officer within the meaning of the JCC Act.

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<sup>1</sup> See section 6(3) of the JCC Act.

### **Report of the judicial conduct panel**

On 17 November 2022, the report of the State’s first judicial conduct panel was tabled in Parliament. The panel was appointed in June 2021 by the Attorney-General on the recommendation of my predecessor, Ms Vanstone, to inquire into, and report on, complaints of sexual harassment by a magistrate.

The panel found the complaints proved and recommended that the Magistrate be removed from judicial office. The Governor acted on that recommendation and removed the Magistrate from office.

The report of the panel sends a clear message to the public, the legal profession, and the judiciary, that sexual harassment will not be tolerated and that there will be serious consequences for judicial officers who engage in such behaviour. All judicial officers are expected to maintain high standards of conduct, both in and out of court. The office of the Judicial Conduct Commissioner continues to play a key role in ensuring that inappropriate conduct is reported and examined.

### **Investigating complaints**

I have no trained investigators on my staff as did previous Judicial Conduct Commissioners, who were also appointed in the role of the Independent Commissioner Against Corruption. So far, the lack of investigators has not been a problem, however the government has made funds available for me to engage independent investigators to assist with my examination of complaints as the need arises.

I record my gratitude to my legal officers and administrative staff.



Michael Boylan KC

**Judicial Conduct Commissioner**

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## Overview: about the agency

### Our strategic focus

- To provide an independent, fair, and transparent way to deal with complaints about judicial officers.

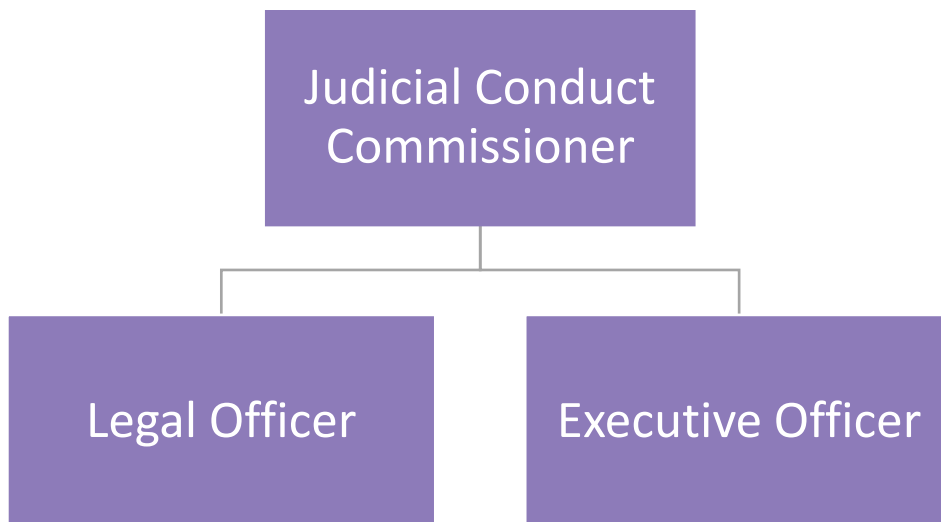
### Goals

- To be accessible, so that anyone who believes a judicial officer has acted inappropriately is able to make a complaint to the Judicial Conduct Commissioner.
- To deal with all complaints before the Judicial Conduct Commissioner in a fair and efficient manner.

### Objectives

- To establish and maintain business processes consistent with the *Judicial Conduct Commissioner Act 2015 (SA)*.
- To increase awareness of the existence and role of the Judicial Conduct Commissioner.
- To ensure the process for making complaints is readily accessible.
- To ensure that we have appropriately skilled people and the necessary resources to meet the demands of the office.

### Our organisational structure



The Judicial Conduct Commissioner receives significant support from the Attorney-General's Department in areas such as finance, human resources, and corporate governance. Please refer to the annual report of the Attorney-General's Department for information relating to those areas.

### **Our Minister**

The Hon Kyam Maher MLC is the Attorney-General, who is the Minister responsible for the *Judicial Conduct Commissioner Act 2015 (SA)*.

The Judicial Conduct Commissioner is appointed by the Governor and is not subject to the direction of any person in relation to any matter.

### **Our Executive team**

The office of the Judicial Conduct Commissioner is a unit of the Attorney-General's Department and makes use of the administrative structure of that Department.

### **Legislation administered by the agency**

The position of the Judicial Conduct Commissioner is established under section 7 of the *Judicial Conduct Commissioner Act 2015 (SA)*.

### **Other related agencies (within the Minister's area/s of responsibility)**

The Judicial Conduct Commissioner holds a number of key relationships with other agencies.

The Judicial Conduct Commissioner has a strong working relationship with the Courts Administration Authority who on request provide relevant information relating to complaints.

The Judicial Conduct Commissioner is supported by the Attorney-General's Department for some administrative services.

## The agency's performance

### Performance at a glance

| Key performance indicator   | Measure   | Current year 2022-23 | Past year 2021-22 |
|---|---|----------------------|-------------------|
| Register all new complaints in our electronic system.   | Within an average of three business days from the receipt of the complaint. | 2.96                 | 2.83              |
| Determine whether there is a reasonable suspicion of corruption in public administration.   | Within an average of 10 business days after registration of the complaint.  | 4.45                 | 7.38              |
| For all complaints which do not raise a reasonable suspicion of corruption in public administration, complete a preliminary examination of the complaint. | Within an average of 15 business days after registration of the complaint.  | 18.82*               | 7.98              |

\*This KPI was greatly affected by two complaints in which further information was required to complete the preliminary examination and there were delays in this information being provided to the Judicial Conduct Commissioner.

### Agency specific objectives and performance

Objective 1 of the office of the Judicial Conduct Commissioner is to establish and maintain business processes consistent with the *Judicial Conduct Commissioner Act 2015 (SA)*. The Judicial Conduct Commissioner has established three key performance indicators for this objective. All new complaints received during the reporting period were registered in the electronic system within an average of 2.96 business days from being received. The key performance indicator is three business days.

All complaints registered during the reporting period were determined as to whether there was a reasonable suspicion of corruption in public administration within 4.45 business days after the date of registration. The key performance indicator is ten business days. For those complaints not raising a reasonable suspicion of corruption in public administration, a preliminary examination was completed within 18.82

business days after the date of registration. The key performance indicator is fifteen business days.

Objective 2 of the office of the Judicial Conduct Commissioner is to increase awareness of the existence and role of the Judicial Conduct Commissioner. The Judicial Conduct Commissioner has established three key performance indicators for this objective. During the reporting period the Judicial Conduct Commissioner communicated with the jurisdictional heads of the Supreme Court and Magistrates Court. Communications included correspondence relating to the length of time over which judgments of certain judicial officers had been outstanding.

The office of the Judicial Conduct Commissioner performs an educational function by responding to enquiries. The Judicial Conduct Commissioner continues to make educational material available for the use of people engaged in the justice system and the public. During the reporting period (2022-2023) the Commissioner presented Continuing Professional Development sessions to various government departments including the Legal Services Commission, Office of the Director of Public Prosecutions, Crown Solicitor's Office, Office for Public Integrity, and the State Redress Response Unit and the Royal Commission Response Unit. Within the 2022-23 financial year, the Commissioner also chaired the Judicial Development Committee's Judicial Development Day panel event for all courts.

The Judicial Conduct Commissioner maintains a modern, user-friendly, accurate and informative website. The website has been visited 2,175 times and the webpages have been viewed 12,490 times in the reporting period.

Objective 3 of the office of the Judicial Conduct Commissioner is to ensure the process for making complaints is readily accessible. While all complaints must be provided in writing, those complaints can be channelled via an online form, via email, through a hard copy form or by writing a letter.

### **Corporate performance summary**

Please refer to the annual report of the Attorney-General's Department for a summary of this information.

### **Agency performance management and development systems**

Please refer to the annual report of the Attorney-General's Department for a summary of this information.

### **Work health, safety and return to work programs**

Please refer to the annual report of the Attorney-General's Department for a summary of this information.

## **Financial performance**

### **Financial performance**

Please refer to the Attorney-General's Department audited financial statements for 2022-23.

### **Consultants disclosure**

No consultants were engaged during the reporting period.

Data for previous years is available at: [JCC Annual Report Data - Consultants - Dataset - data.sa.gov.au](#)

See also the [Consolidated Financial Report of the Department of Treasury and Finance](#) for total value of consultancy contracts across the South Australian Public Sector.

### **Contractors disclosure**

No contractors were engaged during the reporting period.

Data for previous years is available at: [JCC Annual Report Data – Contractors - Dataset - data.sa.gov.au](#)

The details of South Australian Government-awarded contracts for goods, services, and works are displayed on the SA Tenders and Contracts website. [View the agency list of contracts](#).

The website also provides details of [across government contracts](#).

## Risk management

### Risk and audit

Please refer to the annual report of the Attorney-General's Department for a summary of this information.

### Fraud detected in the agency

Number of instances and nature of fraud detected in the agency: 0

*NB: Fraud reported includes actual and reasonably suspected incidents of fraud.*

### Strategies implemented to control and prevent fraud

Please refer to the annual report of the Attorney-General's Department for a summary of this information.

Data for previous years is available at: [JCC Annual Report Data – Fraud detected in the agency - Dataset - data.sa.gov.au](#)

### Public interest disclosure

Number of occasions on which public interest information has been disclosed to a responsible officer of the agency under the *Public Interest Disclosure Act 2018*: 0

Data for previous years is available at: [JCC Annual Report - Public Interest Disclosure and Whistle-blowers' Disclosure - Dataset - data.sa.gov.au](#)

Note: Disclosure of public interest information was previously reported under the *Whistleblowers Protection Act 1993* and repealed by the *Public Interest Disclosure Act 2018* on 1/7/2019.

## Reporting required under any other act or regulation

The following complies with the Judicial Conduct Commissioner’s reporting obligations under the *Judicial Conduct Commissioner Act 2015 (SA)*.

The number and general nature of complaints received by the Judicial Conduct Commissioner:

|   | Current year 2022-23 | Past year 2021-22 | Change (+ / -) |
|---|----------------------|-------------------|----------------|
| Conflict of interest  | 1                    | 3                 | -2             |
| Bias  | 0                    | 5                 | -5             |
| Failure or delay in delivering judgement or making decision | 0                    | 1                 | -1             |
| Inappropriate conduct in court or in chambers               | 8                    | 7                 | +1             |
| Inappropriate conduct outside of court or chambers          | 1                    | 2                 | -1             |
| Judicial decision/ order                                    | 18                   | 33                | -15            |
| Non-SA State Court judicial officer                         | 6                    | 16                | -10            |
| Failure to exercise power/ carry out function               | 0                    | 0                 | 0              |
| Workplace bullying/ harassment                              | 1                    | 0                 | +1             |
| Complaint not made in accordance with the Act               | 21                   | 12                | +9             |
| <b>Total</b>  | <b>56</b>            | <b>79</b>         | <b>-23</b>     |

### Section 16 – Discretionary dismissal of complaint

Section 16 provides that the Judicial Conduct Commissioner may determine to dismiss a complaint without taking any further action if satisfied that further consideration of the complaint would, in all the circumstances, be unjustified.

Reasons for a decision to take no further action may include:

- the complaint has been resolved to the complainant's satisfaction following an explanation from the judicial officer who is the subject of the complaint;
- the complaint is genuine and made in good faith, but is based on a misunderstanding;
- the Judicial Conduct Commissioner has concluded that there is no reasonable prospect of information being available to enable the complaint to be substantiated;
- the Judicial Conduct Commissioner has requested additional information from the complainant and the complainant has refused to provide the information or has failed to provide it within a reasonable timeframe.

The number and general nature of any complaints dismissed under section 16:

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|   | Current<br>year 2022-<br>23 | Past year<br>2021-22 | Change<br>(+ / -) |
|---|-----------------------------|----------------------|-------------------|
| Conflict of interest  | 0                           | 0                    | 0                 |
| Bias  | 0                           | 0                    | 0                 |
| Failure or delay in delivering judgement or making decision | 0                           | 0                    | 0                 |
| Inappropriate conduct in court or in chambers               | 2                           | 0                    | +2                |
| Inappropriate conduct outside of court or chambers          | 0                           | 0                    | 0                 |
| Judicial decision/ order                                    | 0                           | 0                    | 0                 |
| Non-SA State Court judicial officer                         | 0                           | 0                    | 0                 |
| Failure to exercise power/ carry out function               | 0                           | 0                    | 0                 |
| Workplace bullying/ harassment                              | 1                           | 0                    | +1                |
| Complaint not made in accordance with the Act               | 0                           | 0                    | 0                 |
| <b>Total</b>  | <b>3</b>                    | <b>0</b>             | <b>+3</b>         |

### Section 17 – Mandatory dismissal of complaint

Section 17 requires the Judicial Conduct Commissioner to dismiss a complaint for a number of reasons including:

- the complaint is not within the Judicial Conduct Commissioner’s jurisdiction;
- the complaint is about a judicial decision, or other judicial function that is or was subject to a right of appeal or right to apply for judicial review;
- the complaint is about a person who is no longer a judicial officer.

The number and general nature of any complaints dismissed under section 17:

|   | Current<br>year 2022-<br>23 | Past year<br>2021-22 | Change<br>(+ / -) |
|---|-----------------------------|----------------------|-------------------|
| Conflict of interest  | 1                           | 3                    | -2                |
| Bias  | 0                           | 5                    | -5                |
| Failure or delay in delivering judgement or making decision | 0                           | 1                    | -1                |
| Inappropriate conduct in court or in chambers               | 3                           | 7                    | -4                |
| Inappropriate conduct outside of court or chambers          | 1                           | 2                    | -1                |
| Judicial decision/ order                                    | 18                          | 33                   | -15               |
| Non-SA State Court judicial officer                         | 5                           | 16                   | -11               |
| Failure to exercise power/ carry out function               | 0                           | 0                    | 0                 |
| Workplace bullying/ harassment                              | 0                           | 0                    | 0                 |
| Complaint not made in accordance with the Act               | 18                          | 12                   | +6                |
| <b>Total</b>  | <b>46</b>                   | <b>79</b>            | <b>-33</b>        |



**Section 18 – Referral of complaint to relevant jurisdictional head**

Section 18 obliges the Judicial Conduct Commissioner to refer the complaint to the relevant jurisdictional head unless the complaint is dismissed, determined to have no further action or arises from a notification from the jurisdictional head.

The jurisdictional head is required to address the issues raised by the Judicial Conduct Commissioner in the referral and provide written notification of any action taken.

The number and general nature of any complaints referred to a jurisdictional head under section 18:

|   | <b>Current year 2022-23</b> | <b>Past year 2021-22</b> | <b>Change (+ / -)</b> |
|---|-----------------------------|--------------------------|-----------------------|
| Complaints referred to jurisdictional heads | 0                           | 0                        | 0                     |
| <b>Total</b>                                | <b>0</b>                    | <b>0</b>                 | <b>0</b>              |

**Section 19 – Immediate report to Parliament**

Section 19 provides the Judicial Conduct Commissioner with the power to make a report on a complaint to Parliament.

The Judicial Conduct Commissioner may consider making a report to Parliament if a complaint is not able to be satisfactorily dealt with by the taking of action by the relevant jurisdictional head or a judicial conduct panel.

The number and general nature of any complaints that resulted in a report to Parliament under section 19:

|                                 | <b>Current year 2022-23</b> | <b>Past year 2021-22</b> | <b>Change (+ / -)</b> |
|---------------------------------|-----------------------------|--------------------------|-----------------------|
| Number of reports to Parliament | 0                           | 0                        | 0                     |
| <b>Total</b>                    | <b>0</b>                    | <b>0</b>                 | <b>0</b>              |

**Section 20 – Recommendation to appoint judicial conduct panel**

The Judicial Conduct Commissioner may consider making a recommendation of this nature if the complaint consists of a referral by the relevant jurisdictional head or has been referred to the relevant jurisdictional head under section 18; and in the Judicial Conduct Commissioner’s opinion the matter has not been or is not able to be satisfactorily dealt with by the relevant jurisdictional head.

The number and general nature of any complaints that resulted in a recommendation under section 20:

|   | <b>Current year 2022-23</b> | <b>Past year 2021-22</b> | <b>Change (+ / -)</b> |
|---|-----------------------------|--------------------------|-----------------------|
| Number of recommendations to Attorney-General | 0                           | 0                        | 0                     |
| <b>Total</b>                                  | <b>0</b>                    | <b>0</b>                 | <b>0</b>              |

### Notice from jurisdictional heads

Under section 27C(4) of the *Courts Administration Act 1993* (SA), jurisdictional heads are required to provide the Judicial Conduct Commissioner with notice of any complaint made to them in relation to the conduct of a judicial officer. However, that referral does not constitute a ‘complaint’ under the *Judicial Conduct Commissioner Act 2015* (SA) unless the jurisdictional head categorises it as such, or the Judicial Conduct Commissioner determines to treat the notification as a complaint under section 12(8) of the *Judicial Conduct Commissioner Act 2015* (SA).

The office of the Judicial Conduct Commissioner received notice from jurisdictional heads on 12 occasions during the reporting period. The Judicial Conduct Commissioner considered it appropriate to consider 10 of those notifications as complaints which led the Judicial Conduct Commissioner to conduct a preliminary examination of those complaints. The Judicial Conduct Commissioner noted 2 notifications.

### Complaints about judicial officers

During the reporting period the office of the Judicial Conduct Commissioner received complaints about the conduct of judicial officers and other persons who do not meet the definition of a judicial officer. Some complaints were about the conduct of more than one judicial officer.

|  | Current year 2022-23 | Past year 2021-22 | Change (+ / -) |
|--|----------------------|-------------------|----------------|
| About the conduct of Justices, Judges, and/or Masters  | 22                   | 15                | +7             |
| About the conduct of Magistrates   | 21                   | 25                | -4             |
| About the conduct of other persons who do not meet the definition of judicial officer <sup>2</sup> | 18                   | 16                | +2             |

### Open matters at the close of the reporting period

Of the matters received during the reporting period 9 matters remained open as at 30 June 2023. The majority of these matters were received within the month prior to the end of the reporting period and were close to being finalised.

### The role of the Judicial Conduct Commissioner

The role of the Judicial Conduct Commissioner continues to be misunderstood. A large number of matters that were received were in the form of a request for a review of a judicial decision or related to the conduct of persons other than judicial officers.

Data for previous years is available at: [JCC Annual Report Data - Reporting required under legislation - Dataset - data.sa.gov.au](https://data.sa.gov.au/dataset/jcc-annual-report-data-reporting-required-under-legislation)

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<sup>2</sup> Some complaints were not about the conduct of any South Australian judicial officer but about the conduct of the Court’s administration, legal practitioners or Federal Court judicial officers.

**Unrepresented litigants**

Unrepresented litigants who have limited experience in the Courts and who may be unfamiliar with the Court’s procedures continued to submit matters to this office seeking a review of a judicial decision.

In most cases the Judicial Conduct Commissioner was unable to deal with those matters as they were decisions which may be subject to appeal or review.

**Judicial decisions**

The role of the Judicial Conduct Commissioner is to consider the conduct of judicial officers in relation to the carrying out of judicial duties and functions. Many complainants did not understand the distinction between the conduct of a judicial officer and his or her judicial decisions and had mistakenly viewed the role of the Judicial Conduct Commissioner as that of an appeal court.

The Judicial Conduct Commissioner is required to dismiss any complaint that is about a judicial decision where there is a right of appeal or right to apply for judicial review.

During the 2022-23 reporting period 18 complaints were received where the primary issue identified by the Judicial Conduct Commissioner related to a judicial decision.

**Media releases, communication and engagement**

Where the Judicial Conduct Commissioner feels it is in the public interest to do so they have the discretion to issue a media release.

The Judicial Conduct Commissioner issued 1 media release in the 2022-23 financial year.

Materials on the Judicial Conduct Commissioner website provide details on the role and functions of the office.

| <b>Website</b>   | <b>Total</b> |
|------------------|--------------|
| Website views    | 12,490       |
| Webpage visitors | 2,175        |

## Public complaints

### Number of public complaints reported

There have been no public complaints that express dissatisfaction with the service received, or the conduct of my employees during the reporting period.

Public complaints about service or conduct do not include complaints made by people who may be aggrieved with a decision or outcome in relation to a complaint made to the Judicial Conduct Commissioner about the conduct of a judicial officer.

| Additional Metrics                             | Total |
|--|-------|
| Number of positive feedback comments           | 0     |
| Number of negative feedback comments           | 0     |
| Total number of feedback comments              | 0     |
| % complaints resolved within policy timeframes | 0     |

Data for previous years is available at: [JCC Annual Report Data - Public Complaints - Dataset - data.sa.gov.au](https://data.sa.gov.au/dataset/jcc-annual-report-data-public-complaints)

### Service Improvements

Improvements were made during the 2022-23 year to the Judicial Conduct Commissioner’s website. Improvements included the ability to submit complaints through an online form, as well as functional changes. Accessibility has been improved as a result of these changes.

### Compliance Statement

|  |   |
|--|---|
| The Judicial Conduct Commissioner is compliant with Premier and Cabinet Circular <i>PC039 Complaint Management in the South Australian Public Sector</i> . | Y |
| The Judicial Conduct Commissioner has communicated the content of PC039 and the agency’s related complaints policies and procedures to employees.          | Y |