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**Government
of South Australia**

JUDICIAL CONDUCT COMMISSIONER
2023-24 Annual Report

JUDICIAL CONDUCT COMMISSIONER

GPO BOX 464

ADELAIDE SA 5001

jcc.sa.gov.au

Contact email: admin@jcc.sa.gov.au

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2023-24 ANNUAL REPORT for the Judicial Conduct Commissioner

To:

The Honourable Leon Bignell MP
Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

The Honourable Terry Stephens MLC
President
Legislative Council
Parliament House
ADELAIDE SA 5000

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.



Michael Boylan KC
Judicial Conduct Commissioner
20 September 2024

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2023-24 ANNUAL REPORT for the Judicial Conduct Commissioner

To:

The Honourable Kyam Maher MLC
Attorney-General
GPO Box 464
ADELAIDE SA 5001

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.

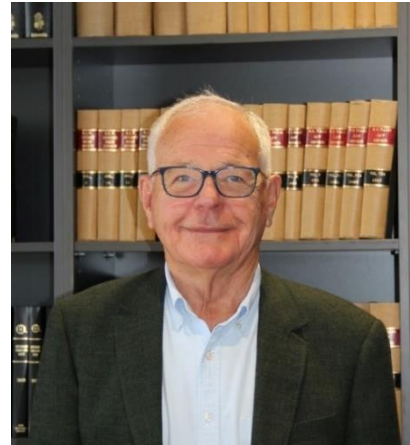
A handwritten signature in black ink, appearing to read 'Michael Boylan', is positioned above the printed name and title.

Michael Boylan KC
Judicial Conduct Commissioner
20 September 2024

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 63 complaints. Most of them were from members of the public and related to allegedly inappropriate conduct in court (17 complaints), or to a judicial decision or order (15 complaints). There were 23 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 (4 complaints).

I received one complaint about inappropriate conduct outside of court or chambers. However, as the complainant did not identify the judicial officer the subject of the complaint, I was unable to consider the complaint and was required to dismiss it.

I received one complaint alleging a number of instances of workplace bullying by a judicial officer. I conducted a preliminary examination into that complaint. That examination included obtaining statements from members of staff of the jurisdiction concerned. I instructed an independent investigator to take those statements. I then invited the judicial officer concerned to provide a response to those statements. Having considered the statements and the judicial officer's response, I dismissed the complaint.

Another complaint that I received related to a judicial officer allegedly bullying a prosecutor in court. The complaint was resolved by way of apology from the judicial officer to the person concerned.

I received one complaint that a judicial officer did not accommodate a person's position about pronouns in the reasons for judgment. I asked the judicial officer for a response to the complaint. The judicial officer undertook a review of the written reasons for judgment and drafted an amended judgment with the pronouns revised. In those circumstances, I was satisfied that further consideration of the complaint would be unjustified.

I received no complaints of sexual harassment during the reporting period.

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. Under section 6(3) of the JCC Act, 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. Many complainants continue to misunderstand the role of the Judicial Conduct Commissioner, with them largely perceiving my role as being analogous to an avenue of appeal. 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.

Again, 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.

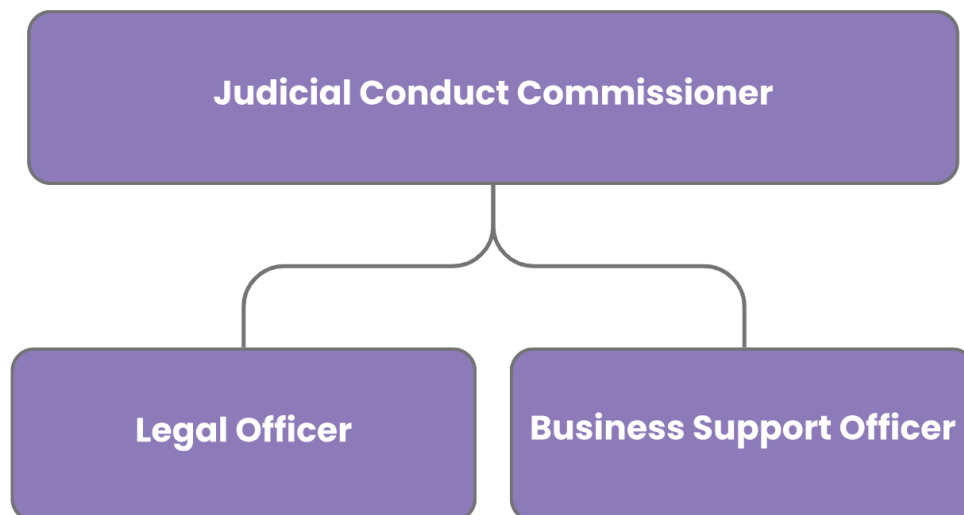
Goals

- 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.

Changes to the agency

During 2023-24 there was the following changes to the agency's structure and objectives as a result of internal reviews or machinery of government changes.

- Decommission of Executive Officer
- Introduction of Business Support Officer

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 2023-24	Past year 2022-23
Register all new complaints in our electronic system.	Within an average of three business days from the receipt of the complaint.	2.46	2.96
Determine whether there is a reasonable suspicion of corruption in public administration.	Within an average of 10 business days after registration of the complaint.	4.19	4.45
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.	19.6*	18.82

*This KPI was greatly affected by two complaints. Further information was required to complete the preliminary examination for one of the complaints and the complainant was significantly delayed in providing the information to the Judicial Conduct Commissioner. The other complaint required the assistance of an investigator to retrieve statements which took some time.

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 2.46 business days from being received. This is below the key performance indicator of 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 4.19 business days after the date of registration. This is well below the key performance indicator of ten business days. For those complaints not raising a reasonable suspicion of corruption in public administration, a preliminary examination was

completed within 19.6 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, District Court and Magistrates Court. Communications included correspondence relating to the length of time over which judgments of certain judicial officers had been outstanding, and jurisdictional heads providing notice of a complaint.

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. The Judicial Conduct Commissioner intends to present at the upcoming Magistrates Judicial Development Conference as he has done in previous years to raise awareness about the role of the Judicial Conduct Commissioner and reporting inappropriate conduct.

The Judicial Conduct Commissioner maintains a modern, user-friendly, accurate and informative website. The website has been visited by 2,324 visitors and the webpages have been viewed 5,151 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. The mailing process was improved during the reporting period to allow for mail to be received and delivered more expeditiously.

Corporate performance summary

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

Employment opportunity programs

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.

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Workplace injury claims	Current year 2023-24	Past year 2022-23	% Change (+ / -)
Total new workplace injury claims	nil	nil	nil
Fatalities	nil	nil	nil
Seriously injured workers*	nil	nil	nil
Significant injuries (where lost time exceeds a working week, expressed as frequency rate per 1000 FTE)	nil	nil	nil

*number of claimants assessed during the reporting period as having a whole person impairment of 30% or more under the Return to Work Act 2014 (Part 2 Division 5)

Work health and safety regulations	Current year 2023-24	Past year 2022-23	% Change (+ / -)
Number of notifiable incidents (<i>Work Health and Safety Act 2012, Part 3</i>)	nil	nil	nil
Number of provisional improvement, improvement and prohibition notices (<i>Work Health and Safety Act 2012 Sections 90, 191 and 195</i>)	nil	nil	nil

Return to work costs**	Current year 2023-24	Past year 2022-23	% Change (+ / -)
Total gross workers compensation expenditure (\$)	nil	nil	nil
Income support payments – gross (\$)	nil	nil	nil

**before third party recovery

Financial performance

Financial performance at a glance

Please refer to the Attorney-General’s Department audited financial statements for 2023-24.

Consultants disclosure

The following is a summary of external consultants that have been engaged by the agency, the nature of work undertaken, and the actual payments made for the work undertaken during the financial year.

Consultancies with a contract value below \$10,000 each

Consultancies	Purpose	\$ Actual payment
All consultancies below \$10,000 each - combined	nil	nil

Consultancies with a contract value above \$10,000 each

Consultancies	Purpose	\$ Actual payment
nil	nil	nil

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

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

The following is a summary of external contractors that have been engaged by the agency, the nature of work undertaken, and the actual payments made for work undertaken during the financial year.

Contractors with a contract value below \$10,000

Contractors	Purpose	\$ Actual payment
All contractors below \$10,000 each - combined	nil	nil

Contractors with a contract value above \$10,000 each

Contractors	Purpose	\$ Actual payment
Andrew Hill Investigations	Collecting statements as part of preliminary examination	\$14,038.35
	Total	\$14,038.35

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

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 at a glance

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](https://data.sa.gov.au/dataset/jcc-annual-report-data-fraud-detected-in-the-agency)

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](https://data.sa.gov.au/dataset/jcc-annual-report-public-interest-disclosure-and-whistle-blowers-disclosure)

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 2023-24	Past year 2022-23	Change (+ / -)
Conflict of interest	0	1	-1
Bias	2	0	+2
Failure or delay in delivering judgement or making decision	0	0	0
Inappropriate conduct in court or in chambers	17	8	+9
Inappropriate conduct outside of court or chambers	1	1	0
Judicial decision/ order	15	18	-3
Non-SA State Court judicial officer	23	6	+17
Failure to exercise power/ carry out function	0	0	0
Workplace bullying/ harassment	1	1	0
Complaint not made in accordance with the Act	4	21	-17
Total	63	56	+7

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 year 2023- 24	Past year 2022-23	Change (+ / -)
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	4	2	+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	1	0
Complaint not made in accordance with the Act	0	0	0
Total	5	3	+2

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 year 2023- 24	Past year 2022-23	Change (+ / -)
Conflict of interest	0	1	-1
Bias	2	0	+2
Failure or delay in delivering judgement or making decision	0	0	0
Inappropriate conduct in court or in chambers	11	3	+8
Inappropriate conduct outside of court or chambers	1	1	0
Judicial decision/ order	15	18	-3
Non-SA State Court judicial officer	22	5	+17
Failure to exercise power/ carry out function	0	0	0
Workplace bullying/ harassment	0	0	0
Complaint not made in accordance with the Act	4	18	-14
Total	55	46	+9

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:

	Current year 2023-24	Past year 2022-23	Change (+ / -)
Complaints referred to jurisdictional heads	0	0	0
Total	0	0	0

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:

	Current year 2023-24	Past year 2022-23	Change (+ / -)
Number of reports to Parliament	0	0	0
Total	0	0	0

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:

	Current year 2023-24	Past year 2022-23	Change (+ / -)
Number of recommendations to Attorney-General	0	0	0
Total	0	0	0

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 6 occasions during the reporting period. The Judicial Conduct Commissioner considered it appropriate to note all 6 of those notifications rather than considering them as complaints which would lead the Judicial Conduct Commissioner to conduct a preliminary examination of those complaints. Two complainants contacted the Judicial Conduct Commissioner directly about the same matters raised by jurisdictional heads and as such, their direct contact was treated as a complaint and a preliminary examination was conducted.

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 2023-24	Past year 2022-23	Change (+ / -)
About the conduct of Justices, Judges, and/or Masters	17	22	-5
About the conduct of Magistrates	23	21	+2
About the conduct of other persons who do not meet the definition of judicial officer ¹	23	18	+5

Open matters at the close of the reporting period

Of the matters received during the reporting period 3 matters remained open as at 30 June 2024. These matters were all received within the month prior to the end of the reporting period, and all 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.

¹ 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.

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)

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, or where consideration of the complaint would require the Judicial Conduct Commissioner to call into question the legality or correctness of the decision.

During the 2023-24 reporting period 15 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 did not issue a media release in the 2023-24 financial year.

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

Website	Total
Website views	5,151
Webpage visitors	2,324

Public complaints

Number of public complaints reported

There was only one comment that expressed dissatisfaction with the service received, or the conduct of my employees during the reporting period. This related to the functionality of the Judicial Conduct Commissioner online form process. The complainant stated that the website would time out before they were able to submit the form. The comment was responded to within 24 hours and the complainant was provided with alternative ways to make their complaint. The office conducted a review of the forms functionality and was able to successfully submit a complaint after more than two hours of webpage inactivity. The office decided two hours is largely sufficient to complete the form and as such no further action was taken.

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	1
Total number of feedback comments	0
% complaints resolved within policy timeframes	100%

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 2023-24 year to the Judicial Conduct Commissioner’s receiving of mail. This included the updating of the GPO Box, allowing the Commissioner to receive mail complaints more expediently. Accessibility and timeliness have improved as a result of these changes.

Compliance Statement

The Judicial Conduct Commissioner is compliant with Premier and Cabinet Circular 039 – <i>Complaint Management in the South Australian Public Sector</i> .	Y
The Judicial Conduct Commissioner has communicated the content of PC 039 and the agency’s related complaints policies and procedures to employees.	Y