



JUDICIAL CONDUCT COMMISSIONER

2018-19 Annual Report

JUDICIAL CONDUCT COMMISSIONER

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To:

The Honourable Vincent Tarzia MP
Speaker of the House of Assembly

The Honourable Andrew McLachlan CSC 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 'Bruce Lander', written in a cursive style.

The Honourable Bruce Lander QC
Judicial Conduct Commissioner

27 September 2019

To:

The Honourable Vickie Chapman MP
Deputy Premier
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 that reads "Bruce Lander". The signature is written in a cursive style with a large, looped initial 'B'.

The Honourable Bruce Lander QC
Judicial Conduct Commissioner

27 September 2019

From the Commissioner

The office of the Judicial Conduct Commissioner opened with the commencement of the *Judicial Conduct Commissioner Act 2015 (SA) (JCC Act)* on 5 December 2016. The office of the Judicial Conduct Commissioner has since played an important role in maintaining public confidence in the judicial system.

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 to the priority which is to be given to a particular matter.



I am obliged to conduct a preliminary examination of each complaint to determine those complaints that will proceed and those that will not. In conducting the preliminary examination I must 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, 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 such that the complaint must be dismissed.

If the complaint is to proceed further I can deal with it by:

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

During the reporting period my office received 40 complaints which was an increase on previous years. In examining the 40 complaints 120 issues were identified and considered.

The office received 10 notifications from jurisdictional heads of which two matters were treated as own initiative examinations. Most of the other complaints were made directly by members of the public. I also dealt with two matters from 2017-18 and one matter from 2016-17. In total there were 43 complaints to deal with in the reporting period. As of 30 June 2019, 13 matters remain open.

As with previous years the majority of these complaints were either dismissed or a determination was made that the complaint did not require any further action to be taken.

Complainants continue to misunderstand my role as Judicial Conduct Commissioner. A significant proportion of complaints received during the reporting period related to judicial decisions. The JCC Act prohibits me from challenging or calling into question the legality or correctness of a judicial decision, order or judgment. The power to review a judicial decision, order or judgment is vested within the appropriate appellate court. My role is concerned with the *conduct* of judicial officers in relation to the carrying out of judicial duties and functions.

A number of complaints received during the reporting period related to the conduct of officers who are not South Australian State Court judicial officers. Those complaints lie outside of my jurisdiction. Where possible complainants have been referred to the appropriate forum.

I expected that the office would receive a high number of complaints about judicial officers delaying in providing their decisions but in the reporting period the office received only two complaints of that kind.

However I continue to be advised by legal practitioners that decisions are often significantly delayed and well beyond the courts' protocol for the delivery of decisions and judgments.

During the reporting period the office did not receive a complaint from a practising legal practitioner. The office received one complaint from a retired legal practitioner and one complaint from a judicial officer who was not the relevant jurisdictional head.

In view of the anecdotal evidence of delay to which I have referred I am surprised that legal practitioners have not complained to my office.

A handwritten signature in black ink, appearing to read 'Bruce Lander', with a large, stylized initial 'B' and 'L'.

The Honourable Bruce Lander QC
Judicial Conduct Commissioner

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Overview: about the agency

Our strategic focus

The Judicial Conduct Commissioner's Strategic Plan 2017-20 continues to guide the goals and objectives of the office.

Goals

1. To be accessible, so that anyone who believes a judicial office has acted inappropriately is able to make a complaint to me.
2. To deal with all complaints before me in a fair and efficient manner.

Objectives

4. To establish and maintain business processes consistent with the JCC Act.
5. To increase awareness of the existence and role of the Judicial Conduct Commissioner.
6. To ensure the process for making complaints is readily accessible.
7. To ensure that we have appropriately skilled people and the necessary resources to meet the demands of the office.

Organisational values

It is critical that employees assisting the Judicial Conduct Commissioner act in accordance with the highest levels of integrity and hold values commensurate with the important work undertaken.

The core values underpin the governance framework of the Judicial Conduct Commissioner's office and guide the processes carried out in dealing with complaints.

1. Fairness
We ensure just and unbiased treatment of complaints and always act in accordance with principles of procedure fairness.
2. Independence
Our decisions are made in accordance with the law, free from influence and without fear or favour.
3. Excellence
We act professionally, efficiently and effectively and we continuously strive to improve.

Our organisational structure

Currently, the Judicial Conduct Commissioner has no employees and relies on the services of employees employed under the *Independent Commissioner Against Corruption Act 2012* (SA).

The Judicial Conduct Commissioner also make use of the services and employees assigned to the Office for Public Integrity under an agreement established by the Independent Commissioner Against Corruption.

In particular, the Judicial Conduct Commissioner has received executive assistance and support in relation to legal services, complaints management and corporate services.

Changes to the agency

During 2018-19 there were no changes to the agency's structure and objectives as a result of internal reviews or machinery of government changes.

Our Minister

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 Judicial Conduct Commissioner concurrently fulfils the role of Independent Commissioner Against Corruption and makes use of the administrative structure of that office.

Legislation administered by the agency

The position of the Judicial Conduct Commissioner is established under section 7 of the JCC Act.

It is the role of the Judicial Conduct Commissioner to administer the JCC Act.

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 is subject to oversight by the Judicial Conduct Commissioner's Independent Reviewer in accordance with section 29A of the JCC Act.

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

The Judicial Conduct Commissioner is supported by the office of the Independent Commissioner Against Corruption and the Office for Public Integrity. These agencies are, in turn, supported by the Attorney-General's Department for some administrative services.

The agency's performance

Performance at a glance

Agency objectives	Indicators	2018-19	2017-18	2016-17 ¹
Register all new complaints in our electronic system	Within an average of three business days from the receipt of the complaint	2.25	1.96	1.26
Determine whether there is a reasonable suspicion of corruption in public administration	Within an average of 10 business days after registration of the complaint	9.00	10.13	6.15
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	27.86	39.59	6.41

Agency contribution to whole of Government objectives

Not applicable.

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 JCC Act. I have established three key performance indicators for this objective.

All new complaints received during the reporting period have been registered in the electronic system within an average of 2.25 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 nine business days of the date of registration. The key performance indicator is 10 business days.

For those complaints not raising a reasonable suspicion of corruption in public administration, a preliminary examination was completed within 27.86 business days of the date of registration. The key performance indicator is 15 business days.

¹ Key performance results for 2016-17 cover the period 5 December 2016 to 30 June 2017.

Objective 2 of the office of the Judicial Conduct Commissioner is to increase awareness of the existence and role of the Judicial Conduct Commissioner.

Delivering education sessions to judicial officers, legal practitioners and members of the public was a strong focus during the Judicial Conduct Commissioner's first year of operation. No education sessions were delivered during the reporting period.

An education session that was to be delivered to judicial officers and legal practitioners was cancelled at the request of the judiciary. I plan to hold such an education session during the next reporting period.

I continue to make educational material available to all South Australian State Courts for the use of persons engaged in the justice system.

I have maintained a modern, user-friendly, accurate and informative website. The website strives to conform to the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines version 2.0 and is audited to continue to try to achieve that standard.

The site has been visited 1,496 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 on the website, via email, through a hard copy form or by writing a letter.

My office provides assistance with literacy, interpreting and translating to any person lodging a complaint who requires this kind of help.

Objective 4 of the office of the Judicial Conduct Commissioner is to ensure that we have appropriately skilled people and the necessary resources to meet the demands of the office.

I have been ably supported by qualified, skilled and experienced people from the Independent Commissioner Against Corruption and Office for Public Integrity during the reporting period.

In particular I have been supported by legally trained and qualified employees who undertake continuous professional development.

Corporate performance summary

Not applicable.

Employment opportunity programs

Not applicable.

Agency performance management and development systems

I continue to be supported by employees of the Independent Commissioner Against Corruption and Office for Public Integrity whose performance is managed by those agencies.

Work health, safety and return to work programs

Employees of the Independent Commissioner Against Corruption and the Office for Public Integrity undertake work health and safety programs as described in the ICAC / OPI Annual Report.

Employees who assist me have access to an Employee Assistance Program.

There were no workplace injury claims during the reporting period.

There were no notifiable incidents during the reporting period.

There were no return to work costs attributable to work performed for the Judicial Conduct Commissioner during the reporting period.

Executive employment in the agency

I do not receive any remuneration for the discharge of my function under the JCC Act.

Financial performance

Financial performance at a glance

The following is a brief summary of the overall financial position of the agency. This information is unaudited. Full audited financial statements are published in a separate document.

Statement of Comprehensive Income	2018-19 Budget \$000s	2018-19 Actual \$000s	Variation \$000s	2017-18 Actual \$000s
Expenses	7	7	0	30
Revenues	6	6	0	61
Net cost of providing services	1	1	0	(31)
Net Revenue from SA Government	0	0	0	0
Net result	(1)	(1)	0	31
Total Comprehensive Result	(1)	(1)	0	31

Statement of Financial Position	2018-19 Budget \$000s	2018-19 Actual \$000s	Variation \$000s	2017-18 Actual \$000s
Current assets	0	0	0	0
Non-current assets	0	0	0	0
Total assets	0	0	0	0
Current liabilities	5	5	0	4
Non-current liabilities	0	0	0	0
Total liabilities	5	5	0	4
Net assets	(5)	(5)	0	(4)
Equity	(5)	(5)	0	(4)

Consultants disclosure

No consultants were engaged during the reporting period.

Contractors disclosure

No contractors were engaged during the reporting period.

Other financial information

Not applicable.

Other information

Not applicable.

Risk management

Risk and audit at a glance

Not applicable.

Fraud detected in the agency

There were no actual, suspected or alleged incidents of fraud in the reporting period.

Strategies implemented to control and prevent fraud

The Judicial Conduct Commissioner endorses and adopts the South Australian Public Sector Fraud and Corruption Control Policy.

The Judicial Conduct Commissioner's corporate risk register identifies a risk owner for each risk. The register assesses controls and their effectiveness, identifying the level of risk acceptance. Where the level of acceptance is undesirable the decision for risk acceptance is to be made by me. The Judicial Conduct Commissioner ensures no decision is made to accept risk that is considered unacceptable after control.

The Judicial Conduct Commissioner proactively responds to emerging risks by fully examining likely circumstances and introducing and/or strengthening controls in order to adequately control the risks.

Whistle-blowers disclosure

There have been no public interest information disclosures during the reporting period.

Data for previous years is available at:

<https://data.sa.gov.au/data/organization/about/judicial-conduct-commissioner>

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.

	2018-19	2017-18	2016-17 ²
Conflict of interest	2	0	0
Failure or delay in delivering judgment or making decision	2	0	1
Inappropriate conduct in court or in chambers	16	7	15
Inappropriate conduct outside of court or chambers	2	0	0
Judicial decision / order	12	10	3
Non-South Australian State Court judicial officer	6	7	2
Failure to exercise power / carry out function	0	0	2
	40	24	23

Section 16 – Power to take no further action

The number and general nature of any complaints dealt with under section 16.

Section 16 provides the Judicial Conduct Commissioner with the power to take no further action in respect of a complaint if satisfied that further action of the complaint would, in all the circumstances, be unjustified.

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

- 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.

² Key performance results for 2016-17 cover the period 5 December 2016 to 30 June 2017.

	2018-19	2017-18	2016-17
Conflict of interest	1	0	0
Failure or delay in delivering judgment or making decision	0	0	1
Inappropriate conduct in court or chambers	11	3	8
Inappropriate conduct outside of court or chambers	1	0	0
Judicial decision / order	2	1	0
Non-South Australian State Court judicial officer	0	0	0
Failure to exercise power / carry out function	0	0	1
	15	4	10

Section 17 – Power to dismiss

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

Section 17 provides the Judicial Conduct Commissioner with the power to dismiss a complaint for 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.

	2018-19	2017-18	2016-17
Conflict of interest	0	0	0
Failure or delay in delivering judgment or making decision	0	0	0
Inappropriate conduct in court or chambers	0	5	2
Inappropriate conduct outside of court or chambers	0	0	0
Judicial decision / order	9 ³	9	2
Non-South Australian State Court judicial officer	6	7	2
Failure to exercise power / carry out function	0	0	1
	15	21	7

Section 18 – Referral of complaint to relevant jurisdictional head

The number of complaints referred to jurisdictional heads under section 18.

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.

	2018-19	2017-18	2016-17
Complaints referred to jurisdictional heads	1 ⁴	2	0

Section 19 – Immediate report to Parliament

The number of reports to Parliament under section 19.

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.

³ One complaint received in May 2019 underwent preliminary examination and was dismissed in the reporting period but the matter remained open as at 30 June 2019 as correspondence detailing the outcome had not been sent to the parties.

⁴ One complaint received in 2016-17 was determined at the end of 2017-18 but omitted in error from the 2017-18 Annual Report and has been included in this reporting period.

	2018-19	2017-18	2016-17
Number of reports to Parliament	0	0	0

Section 20 – Recommendation to appoint judicial conduct panel

The number of recommendations to the Attorney-General to appoint a judicial conduct panel under section 20.

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 Commissioner’s opinion the matter has not been or is not able to be satisfactorily dealt with by the relevant jurisdictional head.

	2018-19	2017-18	2016-17
Number of recommendations to the Attorney-General	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 JCC Act 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 JCC Act.

The office of the Judicial Conduct Commissioner received notice from jurisdictional heads on ten occasions during the reporting period. I considered it appropriate to consider two of those notifications as complaints which led me to conduct a preliminary examination of those complaints. I noted the remaining eight notifications and wrote to each person to inform him or her of the role of Judicial Conduct Commissioner and invited him or her to make a complaint under the JCC Act. No person took up the invitation to lodge a complaint.

Complaints about judicial officers

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

	2018-19	2017-18	2016-17
About the conduct of Justices, Judges, and/or Masters	12	4	5
About the conduct of Magistrates	29	12	15
About the conduct of other persons who do not meet the definition of judicial officer ⁵	7	11	3

During the reporting period I received one complaint where I reasonably suspected that it related to conduct that involved corruption in public administration within the meaning of the *Independent Commissioner Against Corruption Act 2012 (SA)*. It was ultimately determined to take no further action in relation to the matter.

Key performance indicators

The key performance indicator for completing a preliminary examination of a matter that does not raise a reasonable suspicion of corruption in public administration is 15 business days after registration.

For the reporting period the average number of business days to complete a preliminary examination is 27.86.

For the reasons set out below, the ability to meet this key performance indicator depends in part on the nature and quality of the complaints received.

The time within which the preliminary examination can be completed depends upon whether further information is needed to determine whether allegations can be substantiated and whether the judicial officer needs to be given an opportunity to be heard.

A number of matters this year required information to be gathered before I could make an informed decision about how to progress the complaint. Those matters contributed to making the average number of days for this key performance indicator greater than expected. Given that it is an average it does not reflect that the majority of preliminary examinations were completed in much shorter timeframes.

As an example, one complaint received in December 2018 is a complex matter raising nine issues against three judicial officers in relation to a court proceeding where a suppression order was in place. To address the complaint I sought the consent of the complainant to make a request to the relevant judicial officer to vary the suppression order. The complainant's consent was required as the complainant's identity would become known to the judicial officer and the Courts Administration

⁵ Some complaints were not about the conduct of any judicial officer but about the conduct of the Court's administration, legal practitioners or Federal Court judicial officers.

Authority. Once the suppression order was varied I requested relevant materials from the Courts Administration Authority and I was then able to consider the materials. Having considered the materials I provided the judicial officer with an opportunity to be heard. The matter remains open as at 30 June 2019. Once a response is received I will be in a position to finalise the preliminary examination.

I am grateful for the assistance of the Courts Administration Authority in providing materials in a timely manner.

Open matters at the close of the reporting period

There are 13 matters that remained open at 30 June 2019 and were received during the reporting period:

- One complaint was received in December 2018.
- One complaint was received in March 2019.
- Four complaints were received in April 2019.
- Three complaints were received in May 2019.
- Four complaints were received in June 2019.

Unrepresented litigants

Most of the complaints have been made by persons who were unrepresented and who had appeared in the Magistrates Court. Some of those complainants had appeared in the Small Claims Division of that Court.

Most persons who are unrepresented have limited experience in the Courts and are unfamiliar with the Court's procedures.

Many unrepresented litigants do not understand that the judicial officer has an obligation to dispose of the proceedings expeditiously and in a manner that does not expose the parties to unnecessary cost. To achieve that result the judicial officer must, where necessary, assume control over and manage the proceedings which will often mean requiring a party to confine himself or herself to matters relevant to the proceedings.

The judicial officer and the unrepresented party will often have different views of relevance.

Proceedings in the Small Claims Division of the Magistrates Court usually have two unrepresented parties which adds a further layer of difficulty for the judicial officer.

In those cases the judicial officer has an obligation to bring about a settlement of the proceedings if that can be done by conciliation.

In doing so the judicial officer is likely to make known his or her preliminary views. Some persons mistake comments of that kind as pre-judgment or bias. The system requires the active intervention of the judicial officer and he or she cannot be criticised for making statements that are designed to assist the parties to resolve the matter without the need for a trial.

It would appear the existence and purpose of the Judicial Conduct Commissioner may not be widely known and understood.

Public complaints

Number of public complaints reported

There have been no public complaints that express dissatisfaction with the service received, or the conduct of employees assisting me 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.

Data for previous years is available at:

<https://data.sa.gov.au/data/organization/judicial-conduct-commissioner>

Appendix: Audited financial statements 2018-19

At the time of printing this Annual Report the Judicial Conduct Commissioner's audited Financial Statements were not available.

The Judicial Conduct Commissioner's audited Financial Statements are published in a separate document on the Judicial Conduct Commissioner's website.