



# District Court of NSW and NSW Bar Association

## Protocol for Dealing with Complaints of Judicial Conduct

### Introduction

The *Judicial Officers Act 1986* (NSW) provides a means for any person to complain about the ability or behaviour of judges and registrars (together **judicial officers**) but not their decisions. Complaints about a judicial officer's conduct may be made in accordance with those procedures.

Depending on the nature of the judicial conduct, barristers may however prefer to raise their concerns through a different mechanism. This Protocol is designed to support barristers in such circumstances. Its aim is to enable a barrister to raise concerns with either:

- (a) the President of the Bar Association (**President**); or
- (b) an independent contact person nominated by the Executive of Bar Council after consultation with the Chief Judge, being a Senior Counsel appointed for this purpose (**Judicial Conduct Liaison Officer**).

This Protocol is not intended to be exhaustive of the mechanisms that barristers may wish to invoke, but is intended to provide a means by which barristers can be supported and assisted in making both formal and informal complaints about the conduct of a judicial officer of the District Court of NSW.

Should barristers wish to take up this approach, subject of course to the facts and circumstances at hand, the steps will involve the following:

### Raising concern about conduct of a judicial officer of the District Court of NSW

1. A barrister or clerk on behalf of a barrister may contact the President or the Judicial Conduct Liaison Officer by telephone, email or in person to raise concerns about the conduct of a judicial officer. The raising of the concern will be treated confidentially, save to the extent that disclosure to others is necessary for the purposes of this Protocol. If the barrister or clerk raises the concern with the Judicial Conduct Liaison Officer and requests that the matter not be disclosed to the President, this request will be respected. The same will apply if the barrister or clerk raises the concern with the President. The barrister raising a concern need not be the person who has been the subject of the conduct but should have knowledge of the conduct sufficient to raise the concern.
2. The Bar Association will maintain a confidential register that will record in summary form the information provided by barristers or clerks under this Protocol; the advice provided by the President or the Judicial Conduct Liaison Officer; the steps taken by the President or the Judicial Conduct Liaison Officer; and the written communications between the Chief Judge and the President or Judicial Conduct Liaison Officer (where there have been such communications).

3. The President or Judicial Conduct Liaison Officer will make an assessment of the conduct and, for this purpose, may ask for more information from the barrister, clerk and/or others about the nature of the conduct and its impact. The Court will take all steps necessary to make available transcript and/or recordings to enable an expeditious assessment to occur.

#### **Formal complaint**

4. If the President or Judicial Conduct Liaison Officer is of the view the conduct is sufficiently serious to warrant a report to the Judicial Commission under the *Judicial Officers Act 1986* (NSW), the barrister or clerk is to be advised of that fact and asked if the barrister wishes to make the complaint themselves or have the President make the complaint in their capacity as President of the Bar Association. The Judicial Conduct Liaison Officer may request the President to make such a complaint.
5. If the barrister does not wish to pursue a formal complaint (themselves or via the President), the barrister or clerk may take up one of the informal processes below.

#### **Informal processes**

6. The barrister or clerk may request that no further steps be taken by the President or the Judicial Conduct Liaison Officer. In such circumstances, the President or the Judicial Conduct Liaison Officer may provide advice to the barrister and record the communications on the register but will not take any other steps, subject to any mandatory reporting obligations.
7. Otherwise, the following may occur if the barrister so wishes:
  - (a) the President or Judicial Conduct Liaison Officer will meet with the Chief Judge of the District Court of New South Wales on a confidential basis;
  - (b) at such a meeting the identities of barristers and other persons will not be disclosed without consent;
  - (c) the Chief Judge may:
    - (i) have the matter brought to the attention of the relevant judicial officer (without disclosing the identity of any person without consent) if that is considered appropriate having regard to all the circumstances;
    - (ii) give the judicial officer the opportunity to express their views;
    - (iii) examine or have examined any in-court recording relevant to the conduct;
    - (iv) read or have read any transcript of hearing/s relevant to the conduct;
    - (v) discuss or have discussed with the judicial officer the conduct;
    - (vi) discuss or have discussed with the judicial officer the appropriate course of action to take, including where appropriate, counselling the judicial officer;
  - (d) the Chief Judge will respond to the President or Judicial Conduct Liaison Officer as appropriate, the steps, if any, which are proposed to be taken as a result of his or her investigation of the complaint;
  - (e) the President or the Judicial Conduct Liaison Officer will inform the barrister or clerk on a confidential basis of the effect of discussions had with the Chief Judge that relate to the concern raised by the barrister or clerk;
  - (f) steps taken will be recorded in the register, as indicated at [2] above;

(g) insofar as the concern raised by the barrister or clerk is communicated with the Chief Judge, who may in turn bring the matter to the attention of the relevant judicial officer, the barrister who raises the concern and/or the barrister who was affected by the judicial officer's conduct ought not to be prejudiced.

8. This Protocol is not intended to create any legal rights or obligations, nor does it affect any existing legal rights or obligations.



The Hon. Justice S Huggett  
Chief Judge, District Court of NSW  
29 November 2024



Dr Ruth Higgins SC  
President, NSW Bar Association  
29 November 2024