



# JUDICIAL CONDUCT COMMISSIONER

## **2019-20 Annual Report**

### JUDICIAL CONDUCT COMMISSIONER

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Date presented to Attorney-General  
1 September 2020

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To:

Speaker of the House of Assembly

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 that reads "Bruce Lander". The signature is written in a cursive style with a large initial 'B' and 'L'.

The Honourable Bruce Lander QC  
Judicial Conduct Commissioner

1 September 2020

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

1 September 2020

## 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 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 none of these events occur the complaint will proceed and 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 55 complaints and had another 18 notifications brought to my attention by jurisdictional heads. I chose on my own initiative to treat three of those notifications as complaints under sub-section 12(8) of the JCC Act.

In addition, on my own initiative I commenced a further two matters that related to delay in the delivery of a judgment. That meant the total number of complaints received in the reporting period was 60. In examining the 60 complaints 163 issues were identified and considered.

Most of the complaints were made directly by members of the public. Two complaints were submitted by a legal practitioner on behalf of two clients.

I also dealt with and finalised 13 complaints from 2018-19. In total there were 73 complaints that needed to be addressed in this reporting period. As of 30 June 2020, 10 complaints remain open.

As with previous years the majority of the 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 the role of the Judicial Conduct Commissioner. A significant proportion of complaints received during the reporting period related to decisions of judicial officers. The JCC Act prohibits me from challenging or calling into question the legality or correctness of a judicial decision, order or judgment or other decision given by a judicial officer. The review of a judicial decision, order or judgment is a matter for appeal or judicial review. My role is concerned with the conduct of judicial officers.

A number of complaints received during the reporting period related to the conduct of judicial officers who are not judicial officers in South Australian State Courts. Those complaints lie outside of my jurisdiction. Where relevant complaints of that kind have been referred to the appropriate body which deals with those complaints.

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

During the reporting period my office undertook an analysis of publicly available information in order to assess the number of matters where the judgment in those matters were given more than six months after the completion of the hearing.

During the reporting period the Supreme Court and District Court both had a rule of court which provided that the Court was to aim to deliver judgment in routine cases within three months of the judgment being reserved: Rule 209 of the *Supreme Court Civil Supplementary Rules 2014* and Rule 209 of the *District Court Civil Supplementary Rules 2014*.

The Magistrates Court rules similarly stated that where the Court had reserved its decision, it must give final judgment within two months of the date it was reserved: Rule 103(3) of the *Magistrates Court (Civil) Rules 2013*.

My analysis established that a number of judgments had been delivered later than timeframes for delivery of judgment in the relevant court's rules. Particularly concerning was that some judgments were delivered well over a year after the hearing completed and after the judgment had been reserved.

I raised this issue with the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrates Court. I advised them that I was of the opinion that I had power under section 12(8) of the JCC Act to act on my own initiative and treat any matter concerning the conduct of a judicial officer as a complaint. I asked if they would be prepared to provide me with the number of judgments outstanding for more than three months, the judicial officer concerned and the matter in which the judgment remain undelivered.

I was invited to attend a Supreme Court Judges' meeting on 28 October 2019 to discuss those issues. However my request was denied on the basis that such an obligation would impact upon the constitutional independence of judicial officers. The Chief Justice and the Judges of the Supreme Court were of the opinion that section 12(8) of the JCC Act did not provide me with power to act on my own initiative and limited the exercise of my powers to matters referred to me by a jurisdictional head or the Attorney-General.

As a result of those discussions, positive steps have been taken by the courts to address delay in delivery of judgments. It was agreed that I would be informed by the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrates Court of any judgment which has not been delivered within six months from the reservation of the decision, the judicial officer concerned and the matter to which it relates.

On 18 May 2020, the Uniform Court Rules replaced the Supreme Court, District Court and Magistrates Court rules. The Uniform Court Rules do not set a timeframe for the delivery of judgments but Rule 181.1 provides a mechanism for a party to make an enquiry to the Court concerning the delivery of a reserved judgment.

My term as Judicial Conduct Commissioner ended on 1 September 2020.

I have reached the conclusion that it is not appropriate for a person holding the office of Independent Commissioner Against Corruption to concurrently hold the position of the Judicial Conduct Commissioner because there is a potential for actual or perceived conflict of interest to arise.

During the reporting period proceedings were brought against me in my capacity as Independent Commissioner Against Corruption seeking judicial review of decisions I had made in that capacity. The matter was heard by the Full Court of the Supreme Court and the proceedings were summarily dismissed.

There was a period of time when I was both a litigant and subject to the court processes and Judicial Conduct Commissioner with the function of overseeing the conduct of all judicial officers. There is an obvious conflict in those circumstances.

The Independent Commissioner Against Commissioner is also involved in criminal proceedings where challenges are made to administrative decisions made by the Independent Commissioner Against Corruption in relation to investigations. Those challenges have to be resolved by the courts.

I think that the Judicial Conduct Commissioner should not hold any other statutory office.

I raised this issue with the Crime and Public Integrity Policy Committee and separately with the Attorney-General for her consideration. The Attorney-General has advised me that she does not agree with my view and the conflict is capable of management.

I have also raised with the Attorney General a lacuna in the JCC Act. Section 18 of the JCC Act requires me to take certain action after completing the preliminary examination of a complaint. Part of that action is to refer the complaint to the relevant jurisdictional head except in circumstances mentioned in section 18(1).

The JCC Act was amended to require me to provide the information mentioned in section 18 to the Chief Justice where the complaint had been made about a jurisdictional head of another Court. However the amendment does not address circumstances where a complaint is about the Chief Justice of the Supreme Court and action needs to be taken under section 18 as a consequence of a recommendation made under section 18(2) of the JCC Act.

I have raised this issue with the Chief Justice and suggested to him that the JCC Act be amended to provide that where a recommendation is made under section 18(2) by me that impacts upon the Chief Justice, the matter should be referred to a former Chief Justice or if no former Chief Justice is available, or willing to serve, a former Judge of the Supreme Court.

The Chief Justice has advised me that he has no objection to my suggestion.

I am grateful to the support I have received from two lawyers in my office, Emma Fox and Natalie Ayoub, both of whom have worked very hard to support the office.

I have now completed my term as Judicial Conduct Commissioner.

The office is important because it is likely to provide public confidence in the judicial system and the judges and magistrates who serve in that system.

It has been a privilege to have held the office of Judicial Conduct Commissioner and I am grateful to have been given the opportunity.

A handwritten signature in black ink that reads "Bruce Lander". The signature is written in a cursive, flowing style.

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**

- 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 JCC Act.
- 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.

### **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.

- **Fairness**  
We ensure just and unbiased treatment of complaints and always act in accordance with principals of procedural fairness.
- **Independence**  
Our decisions are made in accordance with the law, free from influence and without fear or favour.
- **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 makes 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 2019-20 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 *Judicial Conduct Commissioner Act 2015* (SA).

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 Independent Reviewer.

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 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	Current year 2019-20	Past year 2018-19
Register all new complaints in our electronic system.	Within an average of three business days from the receipt of the complaint.	2.11	2.25
Determine whether there is a reasonable suspicion of corruption in public administration.	Within an average of 10 business days after registration of the complaint.	14.48	9.00
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.	40.72	27.86

### 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. The Judicial Conduct Commissioner has 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 2.11 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 14.48 business days of 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 40.72 business days of 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 met with the jurisdictional heads of the Supreme Court, District Court and Magistrates Court. The purpose of the meeting was to discuss the number of judgments delivered that exceeded the relevant court rules in relation to timeframes.

The office of the Judicial Conduct Commissioner performs an educational function by responding to enquiries. During the 2019-20 period, the office received and responded to 28 telephone enquiries and 2 written enquiries.

The Judicial Conduct Commissioner continues to make educational material available for the use of persons engaged in the justice system and the public.

The Judicial Conduct Commissioner has 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 1,487 times and the webpage has been viewed 3,461 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.

The office of the Judicial Conduct Commissioner provides assistance with literacy, interpreting and translating to any person lodging a complaint who requires this kind of help.

In the reporting period the office of the Independent Commissioner Against Corruption commenced drafting a Disability Access and Inclusion Plan (DAIP) for the office of the Judicial Conduct Commissioner in accordance with the *Disability Inclusion Act 2018* (SA) (DI Act) which requires all state authorities to create and implement a DAIP and to report annually to Chief Executive of the Department of Human Services.

The office of the Judicial Conduct Commissioner is a state authority for the purpose of the DI Act.

The DAIP includes activities aimed at improving access and inclusion in the community of people with disability.

During the reporting period the Independent Commissioner Against Corruption committed to a gender equality action plan with deliverables that commenced in the reporting period and will continue into 2020-21.

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

The Judicial Conduct Commissioner has 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 the Judicial Conduct Commissioner has 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**

The employees of the Independent Commissioner Against Corruption and Office for Public Integrity provide the Judicial Conduct Commissioner with professional services. The performance of these employees is managed by their respective 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 the Judicial Conduct Commissioner 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.

Data for previous years is available at: <https://data.sa.gov.au/data/dataset/jcc-annual-report-data-whs>



### **Executive employment in the agency**

The Judicial Conduct Commissioner does not receive any remuneration for the discharge of his 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. The information is unaudited. Full audited financial statements for 2019-20 will be published separately to this report.

<b>Statement of Comprehensive Income</b>	<b>2019-20 Budget \$000s</b>	<b>2019-20 Actual \$000s</b>	<b>Variation \$000s</b>	<b>2018-19 Actual \$000s</b>
Expenses	0	0	0	6
Revenues	0	0	0	6
<b>Net cost of providing services</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>
Net Revenue from SA Government	0	0	0	0
<b>Net result</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Comprehensive Result</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Statement of Financial Position</b>	<b>2019-20 Budget \$000s</b>	<b>2019-20 Actual \$000s</b>	<b>Variation \$000s</b>	<b>2018-19 Actual \$000s</b>
Current assets	0	0	0	0
Non-current assets	0	0	0	0
<b>Total assets</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Current liabilities	0	0	0	4
Non-current liabilities	0	0	0	0
<b>Total liabilities</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>
<b>Net assets</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(4)</b>
<b>Equity</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(4)</b>

### 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**

During 2019-20 a protective security maturity assessment was carried out, continuing a commitment to establishing and improving internal controls to manage the risks associated with security governance, cyber security, personnel security and physical security.

### **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**

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 has been reviewed and updated, identifying 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 the Judicial Conduct Commissioner. 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 introduce and/or tighten controls in order to adequately control the risks.

Data for previous years is available at: <https://data.sa.gov.au/data/dataset/jcc-annual-report-data-fraud>

## **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: <https://data.sa.gov.au/data/dataset/jcc-annual-report-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:

	<b>Current year 2019-20</b>	<b>Past year 2018-19</b>	<b>Change (+ / -)</b>
Conflict of interest	1	2	- 1
Failure or delay in delivering judgment or making decision	9	2	+ 7
Inappropriate conduct in court or in chambers	17	16	+ 1
Inappropriate conduct outside of court or chambers	1	2	- 1
Judicial decision / order	20	12	+ 8
Non-SA State Court judicial officer	11	6	+ 5
Failure to exercise power / carry out function	1	0	+ 1
<b>Total</b>	<b>60</b>	<b>40</b>	<b>+ 20</b>

### Section 16 – Discretionary dismissal of complaint<sup>1</sup>

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 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 being substantiated.
- The Judicial Conduct Commissioner has requested additional information from the complainant and the complainant has refused to provide the information.

<sup>1</sup> On 6 April 2020 amendments were made to the JCC Act. One of the amendments was renaming section 16 from "power to take no further action" to "discretionary dismissal of complaint".

	<b>Current year 2019-20</b>	<b>Past year 2018-19</b>	<b>Change (+ / -)</b>
Conflict of interest	1	1	0
Failure or delay in delivering judgment or making decision	5	0	+ 5
Inappropriate conduct in court or chambers	16 <sup>2</sup>	11	+ 5
Inappropriate conduct outside of court or chambers	1	1	0
Judicial decision / order	2	2	0
Non SA State Court judicial officer	0	0	0
Failure to exercise power / carry out function	0	0	0
<b>Total</b>	<b>25</b>	<b>15</b>	<b>+ 10</b>

### **Section 17 – Mandatory dismissal of complaint<sup>3</sup>**

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.

<sup>2</sup> Two complaints received in March 2020 and May 2020 respectively underwent preliminary examination and the Judicial Conduct Commissioner decided to take no further action in respect of the complaints in the reporting period but the matters remained open as at 30 June 2020 as correspondence detailing the outcome had not been sent to the parties.

<sup>3</sup> On 6 April 2020 amendments were made to the JCC Act. One of the amendments was renaming section 17 from “dismissal of complaint” to “mandatory dismissal of complaint”.

	<b>Current year 2019-20</b>	<b>Past year 2018-19</b>	<b>Change (+ / -)</b>
Conflict of interest	1	0	+ 1
Failure or delay in delivering judgment or making decision	1	0	+ 1
Inappropriate conduct in court or chambers	1	0	+ 1
Inappropriate conduct outside of court or chambers	0	0	0
Judicial decision / order	20 <sup>4</sup>	9	+ 11
Non SA State Court judicial officer	11	6	+ 5
Failure to exercise power / carry out function	1	0	+ 1
<b>Total</b>	<b>35</b>	<b>15</b>	<b>+ 20</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.

	<b>Current year 2019-20</b>	<b>Past year 2018-19</b>	<b>Change (+ / -)</b>
Complaints referred to jurisdictional heads	6	1	+ 5

<sup>4</sup> One complaint received in June 2020 underwent preliminary examination and was dismissed in the reporting period but the matter remained open as at 30 June 2020 as correspondence detailing the outcome had not been sent in the reporting period.

## 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.

	Current year 2019-20	Past year 2018-19	Change (+ / -)
Number of reports to Parliament	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 Commissioner's opinion the matter has not been or is not able to be satisfactorily dealt with by the relevant jurisdictional head.

	Current year 2019-20	Past year 2018-19	Change (+ / -)
Number of recommendations to 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 18 occasions during the reporting period.<sup>5</sup> The Judicial Conduct Commissioner considered it appropriate to consider three of those notifications as complaints which led the Judicial Conduct Commissioner to conduct a preliminary examination of those complaints. The Judicial Conduct Commissioner noted the remaining 15 notifications.

<sup>5</sup> An additional four notifications from jurisdictional heads were received. These have been categorised as complaints rather than notifications because the office of the Judicial Conduct Commissioner received the same matters directly from the relevant complainants soon after receipt of the 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.

	<b>Current year 2019-20</b>	<b>Past year 2018-19</b>	<b>Change (+ / -)</b>
About the conduct of Justices, Judges, and/or Masters	37	12	+ 25
About the conduct of Magistrates	38	29	+ 9
About the conduct of other persons who do not meet the definition of judicial officer <sup>6</sup>	14	7	+ 7

## 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 40.72.

There are a number of reasons why it has taken significantly longer to complete a preliminary examination during this reporting period.

The number of complaints received by the office of the Judicial Conduct Commissioner has increased significantly. In the reporting period 60 complaints were received in comparison to 40 complaints received in 2018-19 and 24 complaints in 2017-18.

The number of complaints received does not take into account the notices from the jurisdictional heads and any further contact received after matters have been closed, both of which require time to process and review.

In the reporting period six complaints were referred to the relevant jurisdictional heads. In 2018-19 there was one referral and in 2017-18 there were two referrals. In 2016-17 there were no referrals to jurisdictional heads.

The process of referring the conduct of a judicial officer to a jurisdictional head takes time. The Judicial Conduct Commissioner must afford the judicial officer procedural fairness by allowing the judicial officer an opportunity to provide a response to the complainant's allegations.

<sup>6</sup> 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.

Upon receiving a response from the judicial officer the Judicial Conduct Commissioner will provide the complainant an opportunity to comment on the judicial officer's response. The complainant's response must be considered before determining the appropriate course of action. The date of the decision is the date recorded for the completion of the preliminary examination.

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

The majority of complaints dealt with during this reporting period, including complaints that were carried over from 2018-19, were complex and involved a number of issues about various judicial officers. In most instances, further information was required before an informed decision about how to progress could be made. The time taken to request, receive and consider information contributed to making the average number of days for this key performance indicator significantly greater than expected.

As an example, two complaints were received in July 2019 that each raised seven issues. The preliminary examinations for those complaints were completed in February 2020.

The first complaint raised allegations against seven judicial officers from the Supreme Court, District Court and Magistrates Court. Relevant materials were obtained from the Courts Administration Authority to assist with the preliminary examination of the complaint. The Judicial Conduct Commissioner provided opportunities to two judicial officers to respond to the allegations and decided to refer the conduct of one judicial officer for counselling.

The second complaint raised allegations against a single judicial officer. Due to the complexity of the issues raised, further information was sought from the complainant and the relevant judicial officer on several occasions. The complainant continued to raise further issues which deferred the completion of the preliminary examination until February 2020.

Given that the key performance indicator is calculated as an average it does not reflect that most preliminary examinations were completed in shorter timeframes. Twenty-six complaints or 39 percent were completed in less than 15 business days.

If the average number of days were to exclude ten particularly complex matters that took between 80 and 161 business days to complete the preliminary examinations, the key performance indicator would be 28.40 days. The median number of business days taken to complete a preliminary examination for the reporting period is 33.98.

The Courts Administration Authority assists in providing materials in a timely manner.

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

There are 10 matters that remained open at 30 June 2020 and were received during the reporting period:

- Two complaints were received in August 2019
- One complaints were received in February 2020
- One complaint was received in March 2020
- Two complaints were received in April 2020
- One complaints were received in May 2020
- Three complaints were received in June 2020.

## **The role of the Judicial Conduct Commissioner**

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

## **Unrepresented litigants**

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

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.

## **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 have not understood the distinction between the conduct of a judicial officer and his or her judicial decisions and have mistakenly viewed the role of the Judicial Conduct Commissioner as that of an appeal court.

A significant proportion of complaints received during the reporting period related to judicial decisions. Judicial decisions include any order or direction given by a judicial officer in relation to legal proceedings, such as an order to adjourn proceedings, a decision to allow legal representation and a judgment that dismisses a case.

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.

The Judicial Conduct Commissioner is also required to dismiss any complaint that would require him 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.

This report identifies 20 complaints were received during 2019-20 where the primary issue identified by the Judicial Conduct Commissioner relates to a judicial decision.

A judicial decision is often one of a number of issues raised by a complainant even though it is not identified as the primary issue. Therefore the statistic reported (20 complaints) is not reflective of the widespread misunderstanding that the Judicial Conduct Commissioner is an appeal body.

Data for previous years is available at: <https://data.sa.gov.au/data/dataset/jcc-annual-report-data-reporting-required-under-legislation>

### **Reporting required under the *Carers' Recognition Act 2005***

Not applicable.

## Legislative amendments

On 6 June 2018 the Government introduced into the House of Assembly the *Judicial Conduct Commissioner (Miscellaneous) Amendment Bill 2018* which contained proposed amendments to the JCC Act. This Bill was assented to on 22 November 2018 and the *Judicial Conduct Commissioner (Miscellaneous) Amendment Act 2018* (Amendment Act) commenced on 6 April 2020.

The Amendment Act makes a number of amendments. In particular, it improves the efficiency of the complaints process by allowing complaints under section 17 of the JCC Act to be summarily dismissed without the need to conduct a preliminary examination or to give notice of the complaint to the relevant judicial officer and jurisdictional head.

The Amendment Act also provides a level of protection for complainants by clarifying that the identity of a complainant need not be provided to the judge concerned or to the relevant jurisdictional head, unless the complainant consents to the disclosure or the Judicial Conduct Commissioner is of the opinion that the disclosure of the complainant's identity is necessary in order to ensure a proper response to the complaint.

Before the complainant's identity is disclosed without his or her consent, the Judicial Conduct Commissioner must give the complainant written notification of the intention to disclose the complainant's identity and allow the complainant reasonable opportunity to make submissions in relation to the determination or to withdraw the complaint.

## Public Interest Disclosures

The Judicial Conduct Commissioner is a relevant authority under section 5(5)(h) of the *Public Interest Disclosure Act 2018*. During the reporting period, the Judicial Conduct Commissioner received one disclosure of public interest information relating to a judicial officer.

## 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.

<b>Additional Metrics</b>	<b>Total</b>
Number of positive feedback comments	0
Number of negative feedback comments	0
Total number of feedback comments	0
% complaints resolved within policy timeframes	0

Service improvements resulting from complaints or consumer suggestions over 2019-20.

Not applicable.

Data for previous years is available at: <https://data.sa.gov.au/data/dataset/jcc-annual-report-data-public-complaints>

## **Appendix: Audited financial statements 2019-20**

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

The JCC's audited Financial Statements are published in a separate document.