

# AMENDED PROTOCOL FOR THE BAR ASSOCIATIONS OF AUSTRALIA TO RAISE ANY CONCERN ABOUT CONDUCT OF COMMONWEALTH JUDGES

August 2020

The Chief Justice of the Federal Court of Australia, the Chief Justice of the Family Court of Australia and the Chief Judge of the Federal Circuit Court of Australia have agreed with the President of the Australian Bar Association and, through him, the Presidents of the State and Territory Bar Associations the terms of a protocol for the President of the Australian Bar Association and the Presidents of State and Territory Bar Associations to raise any concerns from time to time with the heads of those jurisdictions about conduct of a Judge within their jurisdiction. This protocol amends the existing protocol dated 30 August 2019 which was restricted to conduct in court.

Commonwealth legislation prescribes procedures in relation to complaints about judicial officers.<sup>1</sup> Complaints about a judicial officer's conduct may be made in accordance with those procedures.

Depending on the nature of the judicial conduct, however, barristers may prefer to raise their concerns through a less formal 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 of which he or she is a member; or
- (b) the President of the Australian Bar Association,

('President'), who may then raise concerns with the relevant head of jurisdiction.

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<sup>1</sup> See *Federal Court of Australia Act 1976*, s15 (1AAA)–(1C); *Family Law Act 1975*, s21B(1B)–(5); *Federal Circuit Court of Australia Act 1999*, s12(3AA)–(3AB).

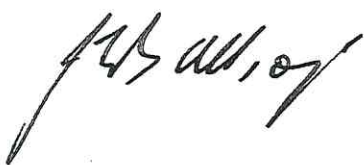
The steps in the procedure are:

1. A barrister may contact the President 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. 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 President will make an assessment of the conduct and, for this purpose, may ask for more information from the barrister or others about the nature of the conduct and its impact.
3. If the President is of the view that the conduct is of the type that warrants action, the President may:
  - (a) encourage the barrister to make a complaint in accordance with the applicable legislative procedure;
  - (b) consider whether the Bar Association should itself initiate a complaint in accordance with the applicable legislative procedure; or
  - (c) raise the matter with the relevant head of jurisdiction on a confidential basis.
4. In appropriate cases, the President may raise concerns with the relevant head of jurisdiction in accordance with this protocol of his or her own motion. Before doing so, the President will take into account, but not be bound by, the wishes of the aggrieved barrister/s.
5. After a matter has been raised with the relevant head of jurisdiction, the relevant head of jurisdiction may consider the matter, or cause the matter to be considered, and, amongst other things, may:
  - (a) have the matter brought to the attention of the relevant judicial officer (without, so far as is possible, identifying which barrister has raised the concern where the President has advised that the barrister would prefer not to be identified) either at the time it is raised or at a subsequent time if that is appropriate having regard to all the circumstances;

- (b) give the judicial officer the opportunity to express his or her views;
  - (c) examine or have examined any in-court recording relevant to the conduct;
  - (d) read or have read any transcript of hearing/s relevant to the conduct;
  - (e) discuss the conduct or have the conduct discussed with the judicial officer;
  - (f) discuss or have discussed with the judicial officer what is the appropriate course to take.
6. Thereafter the head of jurisdiction will respond to the President, as considered appropriate which may include:
- (a) informing, in general terms, the President of the outcome of discussions with the judicial officer;
  - (b) informing the President that in his or her view, the judicial officer's conduct does not warrant any action.
7. Communications between the head of jurisdiction and the President are confidential.
8. The President may inform heads of jurisdiction about any matters in relation to the operation of this protocol or judicial conduct more generally.
9. This protocol is not intended to create any legal rights or obligations. Nor does it affect any existing legal rights or obligations.

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The Honourable James Allsop AO  
Chief Justice, Federal Court of Australia



August 2020

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The Honourable William Alstergren  
Chief Justice, Family Court of Australia and  
Chief Judge, Federal Circuit Court of  
Australia



August 2020

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Matthew Howard SC  
President, Australian Bar Association

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