

Australian Capital Territory

# Judicial Commissions (Complaints – ACAT Presidential Members) Approved Protocol 2017 (No 1)\*

Notifiable instrument NI2017–416

made under the

Judicial Commissions Act 1994, s 16A (Protocol – complaints in relation to ACAT)

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## 1 Name of instrument

This instrument is the *Judicial Commissions (Complaints – ACAT Presidential Members) Approved Protocol 2017 (No 1)*.

## 2 Commencement

This instrument commences on the day after its notification day.

## 3 Approval of protocol

I approve the protocol at Schedule 1 about dealing with complaints made in relation to a presidential member of the ACAT.

Gordon Ramsay  
Attorney-General  
1 August 2017

\*Name amended under Legislation Act, s 60

## Schedule 1

### 1 Complaint process in relation to ACAT presidential members

- 1) A person may complain to the Attorney-General about a matter that relates or may relate to the behaviour or physical or mental capacity of a presidential member of the ACAT.

*Note* **Presidential member** is defined in the *ACT Civil and Administrative Tribunal Act 2008* as the president or another presidential member appointed under section 94 (1) (b) or a temporary presidential member appointed under section 94 (2) (b).

- 2) A complaint must—
  - a) be in writing; and
  - b) state the name and address of the complainant; and
  - c) identify the presidential member concerned; and
  - d) contain full particulars of the matter the subject of the complaint.

*Note 1* For a member of the Legislative Assembly raising in the Assembly an allegation in relation to a presidential member, see section 14 of the Act.

*Note 2* For a complaint about a non-presidential member or an ACAT staff member, see the complaints and feedback policy on the ACAT website.

### 2 Referral of complaint to suitably qualified person

- 1) The Attorney-General must, as soon as practicable after receiving a complaint about a presidential member—
  - a) appoint a suitably qualified person to consider the complaint; and
  - b) tell the complainant that the complaint has been referred to the suitably qualified person.
- 2) Suitably qualified person means—
  - a) for a complaint about a presidential member other than the president—the president; and
  - b) for a complaint about the president—a retired judge of the:
    - (i) ACT Supreme Court; or
    - (ii) Federal Court or Family Court of Australia; or
    - (iii) Supreme Court of a State or the Northern Territory.

*Note 1* **President** is defined in the *ACT Civil and Administrative Tribunal Act 2008* as the president appointed under section 94 (1) (a) or a temporary president appointed under section 94 (2) (a).

### **3 Preliminary examination by suitably qualified person**

- 1) The suitably qualified person must, as soon as practicable after being appointed to examine a complaint—
  - a) conduct a preliminary examination of the complaint in accordance with this section; and
  - b) tell the presidential member the subject of the complaint about the complaint.
- 2) In conducting a preliminary examination, the suitably qualified person—
  - a) is not bound by the rules of evidence but may inform themselves of any matter in such manner as the person considers appropriate; and
  - b) may do whatever the person considers necessary or convenient for the fair and expeditious conduct of the examination of the complaint.
- 3) The preliminary examination must, as far as practicable, be carried out in private.

### **4 Inspection and retention of documents**

- 1) In conducting a preliminary examination, a suitably qualified person may—
  - a) inspect a document or other thing produced before, or delivered to, the suitably qualified person; and
  - b) retain possession of the document or thing for the period necessary for the purposes of the preliminary examination to which the document or thing relates; and
  - c) in the case of a document produced before, or delivered to, the suitably qualified person—make copies of, or take extracts from, the parts of the document that are relevant to a matter the subject of the preliminary examination.
- 2) Where a document is retained under subsection (1)—
  - a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the suitably qualified person to be a true copy and the certified copy must be received in all courts as evidence as if it were the original; and
  - b) until the certified copy is supplied, the suitably qualified person must, at such times and places as the person thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- 3) If the retention of a document or other thing by the suitably qualified person ceases to be necessary for the purposes of a preliminary examination and a person who reasonably appears to the suitably qualified person to be entitled to the document or thing requests it, the suitably qualified person must return the document or thing to the person.

## **5 Medical examination of presidential member**

- 1) If, in conducting a preliminary examination, a suitably qualified person forms the opinion on reasonable grounds that the presidential member concerned may be physically or mentally unfit to exercise efficiently the functions of his or her office, the suitably qualified person may request the presidential member to undergo a specified medical examination.
- 2) If the presidential member fails to comply with the request at all or within a reasonable period nominated by the suitably qualified person, a statement to that effect must be included in the report given in relation to the presidential member under section 8.

## **6 Disclosure of information to Attorney-General etc**

If, in conducting a preliminary examination, a suitably qualified person obtains information that relates or may relate to the commission of an offence, or evidence of the commission of an offence, against a law of the territory, the Commonwealth, a State or another Territory, the suitably qualified person may, if in the person's opinion it is appropriate to do so, communicate the information or give the evidence to—

- a) the Attorney-General or the appropriate Minister of State for the Commonwealth, a State or that other Territory; or
- b) the chief police officer.

*Note* Any person who has or has had access to information by virtue of that person's office under the Act may be liable to a penalty under section 28 of the Act if they disclose that information, except in the exercise of a function under or for the Act.

## **7 Extension of complaint**

- 1) In conducting a preliminary examination, a suitably qualified person is not limited to the matters raised initially in the complaint, and the suitably qualified person may treat the original complaint as extending to other matters arising in the course of its being dealt with.
- 2) If, in conducting a preliminary examination, a matter which might constitute grounds for a complaint about another presidential member comes to the attention of the suitably qualified person, the person may treat the original complaint as extending to the new matter.
- 3) If the suitably qualified person decides to extend the preliminary examination to include a new matter under this section, the suitably qualified person must tell the presidential member the subject of the matter that the suitably qualified person is considering the matter.

## **8 Preliminary examination—recommendations and report**

- 1) After completing a preliminary examination, the suitably qualified person must—
  - a) form a view about whether or not the complaint appears to be wholly or partly substantiated; and
  - b) prepare a report of the person’s preliminary examination and recommendation to the Executive; and
  - c) give the report to the Attorney-General.
- 2) The person may recommend that—
  - a) the Executive should appoint a judicial commission to further examine the complaint (see section 11), or
  - b) the complaint does not require the attention of the Executive (see section 12); or
  - c) should be dismissed (see section 13).
- 3) The report must—
  - a) set out the reasons for the suitably qualified person’s recommendation, including any findings of material questions of fact; and
  - b) refer to the evidence or other material on which the recommendation was based.

## **9 Summary of report**

- 1) If the suitably qualified person is of the opinion that any of the report’s findings or evidence should not be provided to a person listed in section 10, the suitably qualified person must prepare a summary of the report that does not include those findings or that evidence, and give to the Attorney-General—
  - a) the summary of the report; and
  - b) a recommendation that the Attorney-General provide the summary of the report to a person listed in section 10 instead of the complete report.
- 2) A decision in subsection (1) to prepare a summary of the report may be made if the suitably qualified person is of the opinion that, if the complete report were to be given to a person listed in section 10—
  - a) a person who has been or may be charged with an offence may not receive a fair trial for the offence; or
  - b) the conduct of an investigation of a breach or possible breach of the law may be prejudiced; or
  - c) the existence or identity of a confidential source of information in relation to the enforcement or administration of the law may be

disclosed or a person enabled to ascertain the existence or identity of that source; or

d) there may be prejudice to the safety or reputation of a person.

## **10 Distribution of report**

The Attorney-General must give a copy of the report given under section 8, or a summary of the report given under section 9, to:

- a) the presidential member concerned; and
- b) the complainant; and,
- c) in the case of notice by a member of the Legislative Assembly, to the member.

*Note* For how documents may be given, see the *Legislation Act 2001*, pt 19.5.

## **11 Recommendation to refer complaint to a judicial commission**

- 1) The suitably qualified person must recommend that the Executive appoint a judicial commission to examine the complaint if the suitably qualified person is satisfied on reasonable grounds that the complaint:
  - a) appears to be wholly or partly substantiated, and
  - b) could, if substantiated, justify parliamentary consideration of the removal of the presidential member.
- 2) If the Executive receives a recommendation from the suitably qualified person under this section, the Executive may appoint a judicial commission to examine and report on the complaint.

*Note* The operation of judicial commission proceedings is outlined in Part 5 of the Act. A judicial officer must not be removed from office except in accordance with the Act

## **12 Complaint substantiated but does not require attention of Executive**

If the suitably qualified person is satisfied on reasonable grounds that a complaint about a presidential member appears to be wholly or partly substantiated, but does not justify the attention of the Executive, the suitably qualified person must:

- a) If the complaint relates to a presidential member other than the president—determine what administrative steps might be taken to resolve or respond to the complaint.
- b) If the complaint relates to the president—make a recommendation to the president as to what steps the president might take to resolve or respond to the complaint.

### **13 Dismissal of complaint**

- 1) If the suitably qualified person considers that the complaint appears to be wholly unsubstantiated, the person must recommend that the complaint be dismissed.
- 2) If the suitably qualified person is satisfied on reasonable grounds that a complaint about a presidential member appears to be wholly or partly substantiated, the person may recommend that a complaint be dismissed on any of the following grounds:
  - a) the complaint is one that the suitably qualified person is not required to deal with;
  - b) the complaint is frivolous, vexatious or not in good faith;
  - c) the subject matter of the complaint is trivial;
  - d) the matter complained about happened at too remote a time to justify further consideration;
  - e) in relation to the matter complained about, there is or was available a satisfactory means of redress or of dealing with the complaint or the subject matter of the complaint;
  - f) without limiting paragraph (e), the complaint relates to the exercise of a function that is or was subject to adequate appeal or review rights;
  - g) the person complained about is no longer a presidential member;
  - h) having regard to all the circumstances, further consideration of the complaint is unnecessary or unjustifiable.
- 3) In deciding whether or not to dismiss a complaint, the suitably qualified person may have regard to any matter the suitably qualified person considers relevant.