

## 1. Purpose and description

- 1.1.** The Supreme Court of Victoria values and promotes a healthy, safe and respectful workplace. In that context, the purpose of this protocol is to set out a process for determining requests for access to recordings from professional court users relating to judicial conduct.

## 2. Introduction

- 2.1.** This protocol responds to recommendation 8 of the Judicial Commission of Victoria's Judicial Bullying Recommendations.<sup>1</sup> Recommendation 8 states:<sup>2</sup>

*Insofar as one may not already exist in each jurisdiction, the Victorian courts and VCAT investigate implementation of a separate but common practice for determining requests for access to recordings from professional court users relating to judicial conduct.*

*Where a request will inform the making of a complaint about judicial conduct, the Victorian courts and VCAT investigate adopting a practice that includes:*

- (a) a person other than the presiding judicial officer reviewing the request;*
- (b) the request being reviewed as expeditiously as practicable;*
- (c) no notification of the presiding judicial officer (other than where there may be a concern about the confidentiality of matters recorded); and*
- (d) a fee waiver.*

- 2.2.** This protocol is designed to provide a discrete means of access to recordings without the presiding judicial officer being notified (except in limited circumstances), to enable professional court users to assess whether they wish to make a complaint or raise a concern in relation to in court conduct by a judicial officer.

## 3. Protocol for requests for access to recordings

- 3.1.** This protocol only relates to access by *professional court users*, defined as barristers and solicitors practising in the Court noting their particular situation and professional obligations.

The steps in the protocol are:

- a) A request is made in writing to the chambers of the Chief Justice for transcript and/or a copy of the video recording of the proceeding if available.<sup>3</sup> A request may be made by a professional court user who appeared or attended the hearing,

<sup>1</sup> Judicial Commission of Victoria, *Judicial Bullying Summary Paper: Consultation and Recommendations* (May 2023).

<sup>2</sup> *Ibid* p10.

<sup>3</sup> Correspondence may be sent to the Chief Justice's chambers by letter, addressed to the Supreme Court of Victoria attention to the Chief Justice's associates, or by email to [chambers.chiefjustice@supcourt.vic.gov.au](mailto:chambers.chiefjustice@supcourt.vic.gov.au). Correspondence by email is preferred.

or on their behalf by another professional court user, for example, by an employer of a solicitor, or by the Victorian Bar leadership.

- b) The written request must be accompanied by an undertaking by the requester that:
- i. access is sought solely for the purpose of considering whether to make a complaint; and
  - ii. the recording and/or transcript will not be shown to, copied or shared with any other person except:
    - a colleague or legal representative for the sole purpose of seeking their counsel on the basis that the colleague or legal representative views and/or receives the recording and/or transcript on the same basis as the requester and provides the same undertaking not to show to, copy or share it with any other person;
    - the Judicial Commission, in the event that the requester decides to make a complaint to that body.
- c) If the requester intends to send or show a copy of the recording and/or transcript to another person, then the requester must inform the chambers of the Chief Justice in writing at the first possible opportunity. The onus remains on the requester to ensure that any such persons provide an undertaking to the Court before the recording and/or transcript is viewed by and/or sent to those persons.<sup>4</sup>
- d) Requests are to be made on a confidential basis sent only to the chambers of the Chief Justice. Professional court users who make a request must not address or copy their correspondence to the chambers of other judicial officers or other persons or organisations. The correspondence should identify the proceeding but not contain any discussion of matters in the proceeding that would constitute an inappropriate *ex parte* communication with the Court.
- e) These requests are managed by the chambers of the Chief Justice. The judicial officer is not notified of the request. In circumstances where the requester was not present during court proceedings and there may be a concern about the confidentiality of matters recorded and/or any suppression orders that apply, the Chief Justice's chambers may need to make further inquiries within the Court. If it is necessary to make inquiries with the presiding judicial officer or their chambers in order to determine whether the Court is able to release the material, the requester will be contacted first to determine if they are content for this to occur. Every effort will be made not to identify the requester should it be necessary to contact the presiding judicial officer, their chambers or someone else within the Court.
- f) The chambers of the Chief Justice will consider the request and respond to the requester as expeditiously as practicable.

**3.2.** No fee will be charged for access to recordings or transcript as part of this process.

**3.3.** The current practice of the Judicial Commission requesting and being provided with access to recordings after a complaint about judicial conduct is made is unchanged.

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<sup>4</sup> In the case where a request is made by a professional court user on behalf of the affected user, both persons must provide an undertaking in accordance with paragraph 3b) .

- 3.4.** This protocol does not create any legal rights or obligations. Nor does it affect any existing legal rights or obligations.

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