



Senior Counsel Consultation Panel Pilot

Joint Initiative

by the

Director of Public Prosecutions and the Criminal Bar Association
supported by the Office of Public Prosecutions and Victoria Legal Aid

Senior Counsel Criminal Law Panel (the Panel) – 9 month pilot

The Director of Public Prosecutions (DPP) and the Criminal Bar Association (CBA), supported by the Office of Public Prosecutions (OPP) and Victoria Legal Aid (VLA), will establish a panel of senior criminal barristers (including those who act for prosecution and defence). The Panel will be available to provide on the spot support to barristers who would appreciate a conversation with a senior member of the criminal bar or some other type of assistance. The Bar has always prided itself on its collegiate and supportive culture and the role of the Senior Bar has always included supporting other practitioners. However, with the increasing size of the Bar and after 3 years of restrictions reducing the ability of practitioners to be in chambers and Court together, it was considered that a level of formal support would be beneficial.

This need to call on the Panel may, for example, arise because the barrister feels that they have experienced judicial bullying or otherwise unreasonable or disrespectful behaviour by judicial officers while appearing in the Courts and would benefit from some support. It may also arise because the management of court processes or timetabling is having a significant impact on those involved in the court process.

As a first step, we intend to conduct a 9 month pilot.

During the pilot we will record de-identified data about:

- a. the number of contacts made to the Panel;

- b. the nature of the issues reported;
- c. the jurisdictions where those issues arose; and
- d. the response.

At the end of the pilot, we will consider whether to continue this initiative into the future. We will review the data above, and request feedback from:

- a. panel members;
- b. any practitioners who contacted the Panel and would like to share their experience;
- c. representatives from the OPP, VLA and CBA.

Why is this important?

We consider there is a need for on the spot support for practitioners in court. Court can be a highly charged environment and the interests of justice require that everyone in the courtroom be able to operate at their best.

This will be complementary to the existing Judicial Commission complaints process, the protocol for the Bar to raise concerns about judicial conduct and existing informal support that members of the profession provide to one another following difficult days in court. We encourage barristers to use those mechanisms to further systemic change.

We have been notified of some recent examples of judicial bullying and behaviour by judicial officers in court that is not respectful towards practitioners appearing in court. We are concerned about the impact this behaviour has on individual practitioners, and on the criminal legal profession more broadly.

Courtrooms are workplaces. They should be safe and respectful places for everyone. Criminal courtrooms can be high pressure environments. The delays arising from COVID backlogs, and our collective experience of lockdowns in Victoria over the past two years have added to that pressure.

The criminal legal profession has significant in-built hierarchy, deference and power imbalances.

Most judicial officers are aware of the power imbalance in the court room and promote respectful behaviour in the court room for all participants, including as between the bench and bar and the prosecution and defence.

The Chief Justice has spoken publicly about this issue and the heads of jurisdiction and most judicial officers are supportive of promoting a safe and respectful workplace. The Judicial College has run sessions on judicial bullying.

However, from time to time the power imbalance and the occupational health and safety issues are such that counsel need to be given the opportunity of seeking the assistance of senior counsel

in the manner contemplated by this initiative. Practitioners may feel that they should “just keep going” notwithstanding the stresses they are experiencing and it is hoped that this initiative will provide an appropriate “circuit breaker” where needed.

It must be emphasised that the success of this initiative depends upon practitioners making a sensible appraisal of whether to call on the Panel. If a barrister needs to have a matter stood down to speak to a member of the Panel, any request should be made carefully and dispassionately.

How will the Panel work?

1. It is hoped members of the Panel will be promptly available to provide “on the spot” advice or support. A member of counsel may contact the Panel in a break or outside court hours. If there is a need to contact the Panel in the running of a case, counsel may request a short break to contact the Panel, bearing in mind that a short break will sometimes, of itself, act as a circuit breaker. In such a case, it is anticipated that the best course would be merely to ask to have the matter stood down, without providing any further explanation with a view to deescalating the issue in the courtroom. Counsel may choose to request the break for the purpose of seeking some guidance from the Panel or provide that explanation if requested by the Court to provide a reason for having the matter stood down. It is not expected that a member of counsel will have to identify what has necessitated the need for a break – although they could do so if they choose. It is also hoped that where possible, barristers will support an opposing counsel’s application for a short break. In the event that counsel makes a request for a break to contact the Panel, and the judicial officer refuses this request, instructing solicitors are encouraged to contact the Panel to see what support they might be able to offer.
2. It will not be presumed that just because the Court has provided a short break to counsel that the Court (or anyone in it) has “done the wrong thing”. The purpose of the Panel is to support counsel who is feeling under stress or pressure. In the stressful environment of a criminal hearing, a short “time out” can be beneficial to the efficient course of justice.
3. The practitioner can contact the Panel by phone or email to request immediate support. The phone number and email inbox will be monitored by the two Associates to the DPP, who will provide administrative support for the pilot. The practitioner will be asked to provide their name and contact details, the name of the judicial officer, the names of the other practitioners in the case (prosecution and defence counsel and solicitors) and the hearing type. The practitioner can also indicate whether they would prefer to speak to a panel member from the independent Bar or from Crown Prosecutor Chambers.
4. The DPP Associate will organise for an available panel member to contact the practitioner.
5. The panel member will contact the practitioner and provide support, as appropriate.

6. The panel member will provide a short update about the response and outcome to the Associates to the DPP. The panel member will discuss this with the practitioner before providing the update.
7. If Counsel requests a short break and it is refused, counsel is encouraged to inform the Panel so that this information can be recorded.

What kind of support is available to the practitioner?

The panel member will provide immediate support to a practitioner who is experiencing judicial bullying or otherwise disrespectful behaviour by a judicial officer in court. This could involve:

- a. talking through what has happened on the phone or in person;
- b. reassuring the practitioner about whether the behaviour is within or beyond the realms of acceptable conduct by a judicial officer;
- c. talking with the practitioner about how they might approach the issue when they return to court;
- d. talking to the other party about not opposing an adjournment;
- e. sitting in court to observe the hearing;
- f. appearing in court to request the matter be adjourned or stood down (for example if a practitioner needs to attend to a sick child or an urgent medical issue);
- g. reminding the barrister of the free counselling services that the Bar provides if they require any further assistance.

It is important to note that panel members are not members of the Ethics Committee and should not be called on to provide ethics advice. The Ethics Committee can be contacted by contacting the VicBar office on 9225 7111 or ethics@vicbar.com.au.

Who are the members of the Panel?

During the pilot, we will have a fairly small pool of panel members. Each panel member will be senior counsel with criminal law experience and the Panel will include members of Crown Prosecutors Chambers and the independent Bar.

Panel members from the Prosecution

Director of Public Prosecutions Kerri Judd QC
Chief Crown Prosecutor Brendan Kissane QC
Senior Crown Prosecutor Mark Gibson QC
Senior Crown Prosecutor Diana Piekusis QC
Senior Crown Prosecutor Patrick Bourke QC
Senior Crown Prosecutor Liz Ruddle QC

Panel members from the independent Bar

Peter Chadwick QC
David Hallows S.C.
Sally Flynn QC
Colin Mandy S.C.
Georgina Coghlan QC
Chris Carr S.C.
Megan Tittensor S.C.
Patrick Doyle S.C.
Jim Shaw
Jarrod Williams
Jason Gullaci

What is the relationship between the Panel and the Judicial Complaints process?

The Panel's role is complementary to the Judicial Commission complaints process and the Bar's Protocols for raising concerns regarding Judicial Conduct via the President of the Bar. The primary focus of the Panel is support, rather than complaint.

A practitioner who has contacted the Panel may still make a complaint to the Judicial Commission or raise the matter with the President of the Bar.

If a practitioner has requested a short break to contact the Panel, and this has been refused by the judicial officer, the practitioner may choose to report this to the Panel, or this could form the basis of a complaint to the Judicial Commission or could be raised with the President of the Bar.

What impact do we expect this might have?

In addition to on the spot support for practitioners appearing in court, we expect that the establishment of the Panel might have other positive impacts:

- a. **A circuit breaker:** The request for a short break to contact the Panel may act as a circuit breaker, providing the judicial officer and the practitioner an opportunity to take a break, reflect and return to court.
- b. **Sending a message:** The existence of the Panel sends a message to all practitioners, and particularly junior practitioners, that support is available from senior members of the profession during the running of a case in court.
- c. **Data to identify gaps and inform future thinking:** Data from the pilot, and any subsequent initiatives, can be used to identify gaps and inform the nature and shape of future

initiatives. It may also be used to inform conversations with the Courts about standards of behaviour by judicial officers.

Questions practitioners might have about this initiative

1. If I contact the Panel by email or phone, will the DPP find out? Where is this information recorded and stored? What will it be used for?

The Associates to the DPP will provide administrative support only. They will monitor an inbox specifically set up for this purpose, and they will monitor the phone number.

If a practitioner requests support, one of the DPP's Associates will contact panel members to confirm who is available.

The DPP Associate will put the practitioner and panel member in contact.

Unless the DPP is the panel member who supports the practitioner, the DPP will not have access to the names of practitioners who contact the panel.

The Associates to the DPP will collate de-identified aggregate information at the end of the pilot covering date, type of conduct, practitioner role (prosecution/defence counsel or solicitor) judicial officer, jurisdiction, response and outcome.

This de-identified information may be shared with the OPP, VLA, CBA, the courts and the Judicial Commission to inform conversations about future steps.

2. Can I choose the panel member who will support me?

During the pilot, the list of panel members will be quite small and it won't be possible for practitioners to nominate who they would like to speak to from the available panel members. However, if a practitioner has a particular reason why they would prefer not to speak to a certain panel member, they can let the DPP Associate know.

3. Will my name be recorded as a person who has contacted the panel?

Yes. If a practitioner contacts the panel by email, their name will be recorded on the email. If a practitioner contacts the panel by phone, the DPP Associates will make a note of the call. The DPP Associates will only share this information with the panel member who the practitioner has chosen to speak to.

The Associates to the DPP will collate de-identified information at the end of the pilot which may be shared with the OPP, VLA, CBA, the courts and the Judicial Commission.

4. **Can I contact the Panel to document an issue? I don't want in court support, I just want to document that a certain judicial officer behaved in this way in case it's happening to other people. Can you guarantee this will be kept anonymous?**

The primary purpose of the Panel is to provide immediate in court support to counsel but the DPP Associates will accept reports regarding unacceptable behaviour and refusals to stand the matter down when requested. Information identifying practitioners will not be released without their consent.

5. **Can a solicitor be provided with support from the panel?**

No. Due to resourcing issues and a dependence on the panel members participating on a voluntary basis, it is necessary to limit the scope of assistance, at least in this trial period, to independent barristers at the Victorian Bar. As such, the benefit to solicitors and their clients will be indirect rather than direct.

How to contact the Panel

Email: scpanel@opp.vic.gov.au

Telephone: 0409 739 105