It has come to light that the office delegated with the duty to investigate and act on complaints of judicial misconduct has been sandbagging complaints for as long as three years, waiting for the judges complained about to retire.

Once the judge retires, Judicial Conduct Commissioner David Gascoigne (pictured) dismisses the complaint under s16(1)(g) of the Judicial Conduct Commissioner and Judicial Panel Act 2004, which states if “the person who is the subject of the complaint is no longer a Judge” the Commissioner “must” dismiss the complaint.

The approach is not without controversy, and not simply because of the unseemliness of the practice. The conventional thinking of many in the legal community is judges are appointed for life and, indeed, it is common for judges to be brought out of retirement to hear cases.

The Commission’s annual report through 31 July 2012 reveals “unfinalised complaints” have increased 50% over last year, from 319 to 474.

Attorney General Chris Finlayson reported last month that 15 judges will retire this year. Statistically, this will allow Commissioner Gascoigne to dismiss 34 complaints under section 16(1)(g) alone – merely by delaying processing of the complaint.

Last year, in an affidavit provided to the High Court, Commissioner Gascoigne claimed his inability to address complaints in a timely fashion is due to a lack of government funding for his office. The Commissioner claimed the budget constraints are so severe he is compelled to conduct his official duties from the Wellington law offices of Minter Ellison where he is a senior partner.