

The Complaints function

One of the responsibilities of the Commission under its legislative charter is to deal with complaints made against judicial officers. The Commission's function is to investigate a complaint, not to discipline a judicial officer.

Who is a judicial officer?

A "judicial officer" under the *Judicial Officers Act* means a:

- judge or associate judge of the Supreme Court
- member (including a judicial member) of the Industrial Relations Commission
- judge of the Land and Environment Court
- judge of the District Court
- the President of the Children's Court
- magistrate
- the President of the Administrative Decisions Tribunal.

The definition of "judicial officer" includes acting appointments to a judicial office but does not include arbitrators, registrars, chamber registrars, assessors, members of tribunals or legal representatives.

The Commission has no power to examine complaints against federal judicial officers or a person who is no longer a judicial officer.

Making a Complaint

Who can make a complaint?

A complaint may be made to the Commission by any person or may be referred to the Commission by the Attorney General.

Legislative requirements

The *Judicial Officers Act* requires that a complaint be in writing and that it identifies the complainant and the judicial officer concerned. The *Judicial Officers Regulation* requires that particulars of a complaint are verified by statutory declaration and that the complaint is lodged with the Chief Executive to the Commission.

Assistance to complainants

If a person cannot write, he or she may contact the Commission and assistance will be provided to put the complaint in writing. If interpreting or translation assistance from another language to English is required, the Commission will make arrangements.

Complaints not within the Commission's jurisdiction

The Commission does not review a case for judicial error, mistake, or other legal ground. Reviews of those matters are the function of appellate courts.

Allegations of corruption against a judicial officer are required to be referred by the Judicial Commission to the Independent Commission Against Corruption for investigation by that body.

Investigating a complaint

On receiving a complaint in the appropriate form, the Commission will conduct a preliminary investigation into the matter. In every case, the judicial officer is advised of the fact that a complaint has been made to the Commission and is provided with a copy of the complaint documentation.

An investigation is made of each complaint received, which often involves an examination of transcripts, sound recordings and other material relevant to the complaint.

Following the preliminary examination the Commission is required to take one of the following actions:

- summarily dismiss the complaint
- refer the complaint to the relevant head of jurisdiction
- refer the complaint to the Conduct Division.

Summary dismissal

A complaint may be dismissed summarily on one or more of a number of grounds under section 20 of the Act. This includes complaints that are frivolous,

vexatious or trivial. It also includes complaints about matters that occurred at too remote a time to justify further consideration or where the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights.

Where a complaint is summarily dismissed, the Commission will, as soon as practicable after its determination is made, inform the complainant in writing and provide the reasons for dismissing the complaint. This will include a reference to the relevant provisions of the legislation that have been applied in the handling and determination of the complaint. The judicial officer will also be advised in writing of the Commission's determination.

Many of the complaints that are dismissed by the Commission, because they disclose no misconduct, nonetheless help to improve the judicial system. The feedback from the examination of complaints has provided valuable information for the further development of judicial education programmes conducted by the Commission.

Reference to Head of Jurisdiction

Where a complaint has not been dismissed following the preliminary examination by the Commission, but in its opinion it does not justify reference to the Conduct Division, the Commission may refer the matter to the relevant head of jurisdiction.

The Commission will notify the head of jurisdiction in writing of its decision and will formally refer the matter, including all relevant material, for attention.

Reference to the Conduct Division

Where a complaint has not been dismissed following the preliminary examination by the Commission, and has not been referred to the head of jurisdiction, it must be referred to the Conduct Division.



The function of a Conduct Division is to examine and deal with a particular complaint that has been referred to it by the Commission.

Examination of a complaint by the Conduct Division

The Conduct Division may hold hearings in relation to a complaint. Hearings may be held in public or in private, as the Conduct Division may determine.

Reports of the Conduct Division

Report to Governor and others

If the Division has formed an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer complained about from office, it must present to the Governor a report setting out its findings of fact and that opinion. A copy of the report must also be furnished to the Commission, the Attorney General and to the complainant. The copy to the complainant is provided only after it has been laid before each House of Parliament.

Report to the Head of Jurisdiction

If the Division forms an opinion that the matter is wholly or partly substantiated but does not justify parliamentary consideration of the removal of the judicial officer complained about from office, it must send a report to the relevant head of jurisdiction setting out its conclusions. The report may also include recommendations as to what steps might be taken to deal with the complaint. A copy of this report is also provided to the judicial officer and the Commission.

Annual Report

The *Judicial Officers Act* 1986 requires that certain information, including statistics about complaints, be reported to Parliament. This information appears in the Annual Report of the Commission and is available on the website.

Address

Level 5, 301 George Street
Sydney NSW 2000

GPO Box 3634
Sydney NSW 2001

DX 886 Sydney

Web

www.judcom.nsw.gov.au

E-mail

judcom@judcom.nsw.gov.au

Telephone

(02) 9299 4421

Facsimile

(02) 9290 3194

Office Hours

9.00 am – 5.00 pm

Complaints Against Judicial Officers

