



## Judicial Commission of New South Wales

# Complaints against judicial officers

## The complaints function

One of the functions of the Commission under the *Judicial Officers Act 1986* (the Act) is to deal with complaints about matters that concern the ability or behaviour of current judicial officers. The Commission's function is to investigate a complaint in a timely and efficient manner, not to discipline a judicial officer.

## Who is a judicial officer?

A "judicial officer" under the Act means:

- a judge or associate judge of the Supreme Court
- a member of the Industrial Relations Commission
- a judge of the District Court
- a judge of the Land and Environment Court
- the President of the Children's Court
- a magistrate
- the President of the Civil and Administrative 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, legal representatives or court staff.

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?

Anyone may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer. This is not restricted to ability or behaviour in court. A complaint may also be referred to the Commission by the NSW Attorney General.

### Legislative requirements

The Act requires that a complaint be in writing and that it identifies the complainant and the judicial officer concerned. The *Judicial Officers Regulation 2022* requires that particulars of a complaint are verified by statutory declaration and that the complaint is lodged with the Chief Executive of the Commission.

### Assistance to complainants

If interpreting or translation assistance from another language to English is required, the Commission will make arrangements.



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### 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 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 examination into the matter. In every case, the judicial officer is advised of the fact that a complaint has been made and provided with a copy of the complaint documentation.

The preliminary examination of a complaint will often involve the Commission's consideration of transcripts, sound recordings, judgments, court files and other relevant material. If necessary, a response to the complaint is sought from the judicial officer.

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. 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 programs 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



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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 forms 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 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.

### Timeframes for the investigation of complaints

The Commission aims to deal with all complaints as expeditiously as possible. The time taken to investigate a complaint will vary, and will depend upon the seriousness and complexity of the allegations. The Commission aims to finalise all its complaint investigations within 12 months from the date of receipt of the complaint.



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### Further information

Please contact the Commission by telephone on (02) 9299 4421 or by email at [complaints@judcom.nsw.gov.au](mailto:complaints@judcom.nsw.gov.au) for any further information about the complaints process.

More information is available on the Commission's website:

[www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)

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