

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Courts Legislation Amendment (Judicial
Complaints) Bill 2012**

No. , 2012

(Attorney-General)

**A Bill for an Act to amend the law relating to
complaints about Judges and Federal Magistrates,
and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **complaints about Judges and Federal Magistrates,**
3 **and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Courts Legislation Amendment*
7 *(Judicial Complaints) Act 2012*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Amendments**
2

3 *Family Law Act 1975*

4 **1 Subsection 4(1)**

5 Insert:

6 *complaint* means a complaint mentioned in paragraph 21B(1A)(c).

7 **2 Subsection 4(1)**

8 Insert:

9 *complaint handler* means:

- 10 (a) the Chief Judge; or
11 (b) a person who is authorised by the Chief Judge under
12 subsection 21B(3A); or
13 (c) a person who is a member of a body that is authorised by the
14 Chief Judge under subsection 21B(3A).

15 **3 Subsection 4(1)**

16 Insert:

17 *handle* a complaint means do one or more of the following acts
18 relating to the complaint:

- 19 (a) consider the complaint;
20 (b) investigate the complaint;
21 (c) report on an investigation of the complaint;
22 (d) deal with a report of an investigation of the complaint;
23 (e) dispose of the complaint;
24 (f) refer the complaint to a person or body.

25 **4 Subsection 4(1)**

26 Insert:

27 *relevant belief*: a person has a *relevant belief* in relation to a
28 complaint about a Judge if:

- 29 (a) the person believes that one or more of the circumstances that
30 gave rise to the complaint may, if substantiated, justify

- 1 consideration of the removal of the Judge in accordance with
2 paragraph 72(ii) of the Constitution; or
3 (b) the person believes that one or more of the circumstances that
4 gave rise to the complaint may, if substantiated:
5 (i) adversely affect, or have adversely affected, the
6 performance of judicial or official duties by the Judge;
7 or
8 (ii) have the capacity to adversely affect, or have adversely
9 affected, the reputation of the Court.

10 **5 At the end of subsection 21B(1A)**

- 11 Add:
12 ; and (c) may deal, as set out in subsection (1B), with a complaint
13 about the performance by another Judge of his or her judicial
14 or official duties; and
15 (d) may take any measures that the Chief Judge believes are
16 reasonably necessary to maintain public confidence in the
17 Court, including, but not limited to, temporarily restricting
18 another Judge to non-sitting duties.

19 **6 After subsection 21B(1A)**

- 20 Insert:
21 (1B) The Chief Judge may, if a complaint is made about another Judge,
22 deal with the complaint by doing either or both of the following in
23 respect of the complaint:
24 (a) deciding whether or not to handle the complaint and then
25 doing one of the following:
26 (i) dismissing the complaint;
27 (ii) handling the complaint if the Chief Judge has a relevant
28 belief in relation to the complaint about the other Judge;
29 (iii) arranging for any other complaint handlers to assist the
30 Chief Judge to handle the complaint if the Chief Judge
31 has a relevant belief in relation to the complaint about
32 the other Judge;
33 (b) arranging for any other complaint handlers to decide whether
34 or not to handle the complaint and then to do one of the
35 following:
36 (i) dismiss the complaint;

- 1 (ii) handle the complaint if each of the complaint handlers
 2 has a relevant belief in relation to the complaint about
 3 the other Judge.

4 Note: A complaint handler (other than the Chief Judge) may handle a
 5 complaint by referring it to the Chief Judge. The Chief Judge may
 6 then do either or both of the things referred to in paragraph (a) or (b)
 7 in respect of the complaint.

8 **7 At the end of subsection 21B(2)**

9 Add “(other than paragraph (1A)(c) or (d))”.

10 **8 Subsection 21B(3)**

11 After “section”, insert “(other than paragraph (1A)(c) or (d))”.

12 **9 After subsection 21B(3)**

13 Insert:

14 (3A) The Chief Judge may authorise, in writing, a person or a body to
 15 do one or more of the following:

- 16 (a) assist the Chief Judge to handle complaints or a specified
 17 complaint;
 18 (b) decide whether or not to handle complaints or a specified
 19 complaint;
 20 (c) dismiss complaints or a specified complaint;
 21 (d) handle complaints or a specified complaint.

22 (3B) To avoid doubt, the Chief Judge may authorise under
 23 subsection (3A):

- 24 (a) the Deputy Chief Judge or a Judge Administrator; or
 25 (b) a body that includes the Deputy Chief Judge or a Judge
 26 Administrator.

27 **10 At the end of subsection 21B(4)**

28 Add:

29 Note: See also section 38Y.

30 **11 At the end of subsection 21B(5)**

31 Add “, (1B) or (3A)”.

32 **12 At the end of Division 4 of Part IVA**

1

Add:

2

38Y Protection of persons involved in handling etc. complaints

3

(1) In exercising powers or performing functions under paragraph 21B(1A)(c) and subsection 21B(1B), or assisting in exercising those powers or performing those functions, a complaint handler has the same protection and immunity as a Justice of the High Court.

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(2) In authorising a person or body under subsection 21B(3A), the Chief Judge has the same protection and immunity as a Justice of the High Court.

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(3) A witness requested to attend, or appearing, before a complaint handler handling a complaint has the same protection, and is subject to the same liabilities in a proceeding, as a witness in a case tried by the High Court.

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(4) A lawyer assisting, or appearing on behalf of a person before, a complaint handler handling a complaint has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

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13 Application of items 1 to 12

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The amendments made by items 1 to 12 of this Schedule apply on or after the commencement of this item in relation to a complaint, regardless of whether:

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(a) the complaint was made before, on or after that commencement; or

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(b) the circumstances that gave rise to the complaint occurred before, on or after that commencement.

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Federal Court of Australia Act 1976

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14 Section 4

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Insert:

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complaint means a complaint mentioned in paragraph 15(1AA)(c).

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15 Section 4

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Insert:

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complaint handler means:

- (a) the Chief Justice; or
- (b) a person who is authorised by the Chief Justice under subsection 15(1AAB); or
- (c) a person who is a member of a body that is authorised by the Chief Justice under subsection 15(1AAB).

16 Section 4

Insert:

handle a complaint means do one or more of the following acts relating to the complaint:

- (a) consider the complaint;
- (b) investigate the complaint;
- (c) report on an investigation of the complaint;
- (d) deal with a report of an investigation of the complaint;
- (e) dispose of the complaint;
- (f) refer the complaint to a person or body.

17 Section 4

Insert:

relevant belief: a person has a **relevant belief** in relation to a complaint about a Judge if:

- (a) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated, justify consideration of the removal of the Judge in accordance with paragraph 72(ii) of the Constitution; or
- (b) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated:
 - (i) adversely affect, or have adversely affected, the performance of judicial or official duties by the Judge;
or
 - (ii) have the capacity to adversely affect, or have adversely affected, the reputation of the Court.

18 At the end of subsection 15(1AA)

Add:

- 1 ; and (c) may deal, as set out in subsection (1AAA), with a complaint
2 about the performance by another Judge of his or her judicial
3 or official duties; and
4 (d) may take any measures that the Chief Justice believes are
5 reasonably necessary to maintain public confidence in the
6 Court, including, but not limited to, temporarily restricting
7 another Judge to non-sitting duties.

8 **19 After subsection 15(1AA)**

9 Insert:

10 (1AAA) The Chief Justice may, if a complaint is made about another Judge,
11 deal with the complaint by doing either or both of the following in
12 respect of the complaint:

- 13 (a) deciding whether or not to handle the complaint and then
14 doing one of the following:
15 (i) dismissing the complaint;
16 (ii) handling the complaint if the Chief Justice has a
17 relevant belief in relation to the complaint about the
18 other Judge;
19 (iii) arranging for any other complaint handlers to assist the
20 Chief Justice to handle the complaint if the Chief Justice
21 has a relevant belief in relation to the complaint about
22 the other Judge;
23 (b) arranging for any other complaint handlers to decide whether
24 or not to handle the complaint and then to do one of the
25 following:
26 (i) dismiss the complaint;
27 (ii) handle the complaint if each of the complaint handlers
28 has a relevant belief in relation to the complaint about
29 the other Judge.

30 Note: A complaint handler (other than the Chief Justice) may handle a
31 complaint by referring it to the Chief Justice. The Chief Justice may
32 then do either or both of the things referred to in paragraph (a) or (b)
33 in respect of the complaint.

34 (1AAB) The Chief Justice may authorise, in writing, a person or a body to
35 do one or more of the following:

- 36 (a) assist the Chief Justice to handle complaints or a specified
37 complaint;

-
- 1 (b) decide whether or not to handle complaints or a specified
2 complaint;
3 (c) dismiss complaints or a specified complaint;
4 (d) handle complaints or a specified complaint.

5 **20 At the end of subsection 15(1AB)**

6 Add:

7 Note: See also section 18XA.

8 **21 At the end of subsection 15(1AC)**

9 Add “, (1AAA) or (1AAB)”.

10 **22 After section 18X**

11 Insert:

12 **18XA Protection of persons involved in handling etc. complaints**

- 13 (1) In exercising powers or performing functions under paragraph
14 15(1AA)(c) and subsection 15(1AAA), or assisting in exercising
15 those powers or performing those functions, a complaint handler
16 has the same protection and immunity as a Justice of the High
17 Court.
- 18 (2) In authorising a person or body under subsection 15(1AAB), the
19 Chief Justice has the same protection and immunity as a Justice of
20 the High Court.
- 21 (3) A witness requested to attend, or appearing, before a complaint
22 handler handling a complaint has the same protection, and is
23 subject to the same liabilities in a proceeding, as a witness in a case
24 tried by the High Court.
- 25 (4) A lawyer assisting, or appearing on behalf of a person before, a
26 complaint handler handling a complaint has the same protection
27 and immunity as a barrister has in appearing for a party in
28 proceedings in the High Court.

29 **23 Application of items 14 to 22**

30 The amendments made by items 14 to 22 of this Schedule apply on or
31 after the commencement of this item in relation to a complaint,
32 regardless of whether:

- 1 (a) the complaint was made before, on or after that
2 commencement; or
3 (b) the circumstances that gave rise to the complaint occurred
4 before, on or after that commencement.

5 ***Federal Magistrates Act 1999***

6 **24 Section 5**

7 Insert:

8 ***complaint*** means a complaint mentioned in paragraph 12(3)(c).

9 **25 Section 5**

10 Insert:

11 ***complaint handler*** means:

- 12 (a) the Chief Federal Magistrate; or
13 (b) a person who is authorised by the Chief Federal Magistrate
14 under subsection 12(3AB); or
15 (c) a person who is a member of a body that is authorised by the
16 Chief Federal Magistrate under subsection 12(3AB).

17 **26 Section 5**

18 Insert:

19 ***handle*** a complaint means do one or more of the following acts
20 relating to the complaint:

- 21 (a) consider the complaint;
22 (b) investigate the complaint;
23 (c) report on an investigation of the complaint;
24 (d) deal with a report of an investigation of the complaint;
25 (e) dispose of the complaint;
26 (f) refer the complaint to a person or body.

27 **27 Section 5**

28 Insert:

29 ***relevant belief***: a person has a ***relevant belief*** in relation to a
30 complaint about a Federal Magistrate if:

- 1 (a) the person believes that one or more of the circumstances that
- 2 gave rise to the complaint may, if substantiated, justify
- 3 consideration of the removal of the Federal Magistrate in
- 4 accordance with paragraph 72(ii) of the Constitution; or
- 5 (b) the person believes that one or more of the circumstances that
- 6 gave rise to the complaint may, if substantiated:
 - 7 (i) adversely affect, or have adversely affected, the
 - 8 performance of judicial or official duties by the Federal
 - 9 Magistrate; or
 - 10 (ii) have the capacity to adversely affect, or have adversely
 - 11 affected, the reputation of the Federal Magistrates
 - 12 Court.

13 **28 At the end of subsection 12(3)**

14 Add:

- 15 ; and (c) may deal, as set out in subsection (3AA), with a complaint
- 16 about the performance by another Federal Magistrate of his
- 17 or her judicial or official duties; and
- 18 (d) may take any measures that the Chief Federal Magistrate
- 19 believes are reasonably necessary to maintain public
- 20 confidence in the Federal Magistrates Court, including, but
- 21 not limited to, temporarily restricting another Federal
- 22 Magistrate to non-sitting duties.

23 **29 After subsection 12(3)**

24 Insert:

- 25 (3AA) The Chief Federal Magistrate may, if a complaint is made about
- 26 another Federal Magistrate, deal with the complaint by doing either
- 27 or both of the following in respect of the complaint:
 - 28 (a) deciding whether or not to handle the complaint and then
 - 29 doing one of the following:
 - 30 (i) dismissing the complaint;
 - 31 (ii) handling the complaint if the Chief Federal Magistrate
 - 32 has a relevant belief in relation to the complaint about
 - 33 the other Federal Magistrate;
 - 34 (iii) arranging for any other complaint handlers to assist the
 - 35 Chief Federal Magistrate to handle the complaint if the
 - 36 Chief Federal Magistrate has a relevant belief in relation
 - 37 to the complaint about the other Federal Magistrate;

- 1 (b) arranging for any other complaint handlers to decide whether
2 or not to handle the complaint and then to do one of the
3 following:
4 (i) dismiss the complaint;
5 (ii) handle the complaint if each of the complaint handlers
6 has a relevant belief in relation to the complaint about
7 the other Federal Magistrate.

8 Note: A complaint handler (other than the Chief Federal Magistrate) may
9 handle a complaint by referring it to the Chief Federal Magistrate. The
10 Chief Federal Magistrate may then do either or both of the things
11 referred to in paragraph (a) or (b) in respect of the complaint.

- 12 (3AB) The Chief Federal Magistrate may authorise, in writing, a person or
13 a body to do one or more of the following:
14 (a) assist the Chief Federal Magistrate to handle complaints or a
15 specified complaint;
16 (b) decide whether or not to handle complaints or a specified
17 complaint;
18 (c) dismiss complaints or a specified complaint;
19 (d) handle complaints or a specified complaint.

20 **30 At the end of subsection 12(6A)**

21 Add:

22 Note: See also section 118A.

23 **31 Subsection 12(6B)**

24 After “subsection (3)”, insert “, (3AA) or (3AB)”.

25 **32 At the end of Division 5 of Part 7**

26 Add:

27 **118A Protection of persons involved in handling etc. complaints**

- 28 (1) In exercising powers or performing functions under paragraph
29 12(3)(c) and subsection 12(3AA), or assisting in exercising those
30 powers or performing those functions, a complaint handler has the
31 same protection and immunity as a Justice of the High Court.
32 (2) In authorising a person or body under subsection 12(3AB), the
33 Chief Federal Magistrate has the same protection and immunity as
34 a Justice of the High Court.

1 (3) A witness requested to attend, or appearing, before a complaint
2 handler handling a complaint has the same protection, and is
3 subject to the same liabilities in a proceeding, as a witness in a case
4 tried by the High Court.

5 (4) A legal practitioner assisting, or appearing on behalf of a person
6 before, a complaint handler handling a complaint has the same
7 protection and immunity as a barrister has in appearing for a party
8 in proceedings in the High Court.

9 **33 Application of items 24 to 32**

10 The amendments made by items 24 to 32 of this Schedule apply on or
11 after the commencement of this item in relation to a complaint,
12 regardless of whether:

- 13 (a) the complaint was made before, on or after that
14 commencement; or
15 (b) the circumstances that gave rise to the complaint occurred
16 before, on or after that commencement.

17 ***Freedom of Information Act 1982***

18 **34 Before subsection 5(1)**

19 Insert:

20 *Courts other than courts of Norfolk Island—general*

21 **35 After subsection 5(1)**

22 Insert:

23 *Certain documents relating to complaint handling—Federal Court*
24 *Judges*

25 (1A) This Act does not apply to any request for access to a document of
26 a court (other than a court of Norfolk Island) that relates to a
27 complaint handler (or a body consisting of complaint handlers):

- 28 (a) exercising powers or performing functions under paragraph
29 15(1AA)(c) and subsection 15(1AAA) of the *Federal Court*
30 *of Australia Act 1976*; or
31 (b) assisting in exercising those powers or performing those
32 functions.

1 For this purpose **complaint handler** has the meaning given by that
2 Act.

3 *Certain documents relating to complaint handling—Family Court*
4 *Judges*

5 (1B) This Act does not apply to any request for access to a document of
6 a court (other than a court of Norfolk Island) that relates to a
7 complaint handler (or a body consisting of complaint handlers):

8 (a) exercising powers or performing functions under paragraph
9 21B(1A)(c) and subsection 21B(1B) of the *Family Law Act*
10 *1975*; or

11 (b) assisting in exercising those powers or performing those
12 functions.

13 For this purpose **complaint handler** has the meaning given by that
14 Act.

15 *Certain documents relating to complaint handling—Federal*
16 *Magistrates*

17 (1C) This Act does not apply to any request for access to a document of
18 a court (other than a court of Norfolk Island) that relates to a
19 complaint handler (or a body consisting of complaint handlers):

20 (a) exercising powers or performing functions under paragraph
21 12(3)(c) and subsection 12(3AA) of the *Federal Magistrates*
22 *Act 1999*; or

23 (b) assisting in exercising those powers or performing those
24 functions.

25 For this purpose **complaint handler** has the meaning given by that
26 Act.

27 *Courts of Norfolk Island*