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By: *Family Court of Australia*

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FAMILY COURT JUDICIAL COMPLAINTS PROCEDURE

Judges, like all other citizens, are subject to the law, but the need to protect judicial independence in the interests of the whole community means that, in respect of their judicial conduct, they cannot be subject to direct discipline by anyone else, except in the extreme cases of proved misbehaviour or incapacity. In those circumstances, and in those only, a judge may be removed from office by the Governor-General upon a request from both Houses of Parliament.

Judges are accountable through the public nature of their work, the requirement that they give reasons for their decisions and the scrutiny of their decisions on appeal. (With rare exceptions, all Family Court hearings are open to the public and can be reported in the news media and nearly all judgments of the Court are available to the public through the internet). They are anonymised to comply with the requirements of section 121 of the *Family Law Act 1975* (Cth), which does not permit identification of parties or witnesses.

This complaints procedure does not, and cannot, provide a mechanism for disciplining a judge. It does, however, offer a process by which complaints made about judicial conduct by members of the public can be brought to the attention of the Chief Justice and the judge concerned and it provides an opportunity for a complaint to be dealt with in an appropriate manner.

For constitutional reasons, the participation of a judge in responding to a complaint is entirely voluntary. Nevertheless, it is accepted that a procedure for complaints can provide valuable feedback to the Court and to its judges and presents opportunities to explain the nature of its work, correct misunderstandings where they have occurred and, if it should fall short of judicial standards, to improve the performance of the Court.

Complaints about delay

A party may express concerns or may complain about delay in the delivery of a judgment. In such a case where a party is represented by a lawyer, the lawyer can send a letter to the president of the bar association or the law society in the State or Territory in which the case was heard and request that the president take up the matter with the Chief Justice. The president will then convey the concern or complaint to the Chief Justice without identifying which party complained. The Chief Justice will look into the matter and, if appropriate, take it up with the judge concerned. Complaints of this nature can also be made directly by letter addressed to the Chief Justice and where a party is not represented that is the procedure to be followed.¹

The Court aims to deliver all judgments promptly and has set a target of three months from the date the case is last heard or the last submission is received. Most judgments are delivered in much less than three months, but sometimes they take longer, particularly in complex cases.

¹ Chief Justice, Family Court of Australia, PO Box 9991 Melbourne

Complaints about cases that could be dealt with on appeal

Parties who are concerned about a result of a case or about whether any other matter in connection with the case that is capable of being raised in an appeal should consider whether or not to appeal to the Full Court of the Family Court. There are time limits for appeals and parties need to act promptly. In general, only a Full Court of three judges can set aside or change a decision made by a single judge. The Chief Justice has no power to interfere with any decision made by a single judge and complaints about the result of a case are generally outside the scope of the complaints procedure.

If a complaint is received about matters that are, or were, capable of being dealt with by an appeal to the Full Court, the Chief Justice will write to the person who has made the complaint advising that person that the matter cannot be dealt with under the complaints procedure.

Complaints about judicial conduct

A complaint about judicial conduct must be made by letter addressed to the Chief Justice. It must identify the complainant, the judge about whom the complaint is made and the judicial conduct about which the complaint is made. Judicial conduct, for the purposes of this procedure, means conduct of a judge in court or in connection with a case in the Family Court or in connection with the performance of a judge's judicial functions.

If the Chief Justice receives such a complaint she will first make sure that the complaint is about judicial conduct. She will make sure the complaint is not about the result of a case or about something capable of being raised on an appeal to the Full Court and therefore outside the scope of the judicial complaints procedure.

If the Chief Justice considers that the complaint is about judicial conduct, she will determine whether the complaint, on its face, has substance.

If the Chief Justice considers that dealing with the complaint might have an adverse effect on the disposition of a matter currently before the Court she may defer dealing with the complaint until the determination of the matter. If so, the judge dealing with the matter would not normally be advised of the complaint to avoid any possible perception of bias, and the complainant would be informed of this.

The Chief Justice's chambers will first arrange for a letter of acknowledgement to be dispatched. The Chief Justice will then refer the matter to the Deputy Chief Justice who, assisted by the Court's Judicial Complaints Adviser (a legally qualified Registrar of the Court) will investigate the matters raised. This will involve a detailed examination of the file and usually the transcript of the proceedings. The Judicial Complaints Adviser may also listen to an audio recording of the case. A detailed and comprehensive reply will then be prepared, which is then reviewed and settled by the Deputy Chief Justice. The judge concerned will be sent a copy of the complaint and invited to respond to the Deputy Chief Justice.

The complainant will receive a comprehensive response to all matters raised. Because the process cannot provide a mechanism for disciplining judges, the Court's response will not address anything other than the substance of the complaint.

As indicated however, it provides an opportunity for the Chief Justice to improve the performance of the Court if behaviour falls short of expected judicial standards.

If the matter warranted it, the Chief Justice would bring the conduct complained of to the attention of the Attorney-General.

The role of the Chief Justice in relation to a complaint is to determine how to deal with that complaint appropriately.

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