

APPENDIX 8

FEDERAL COURT OF AUSTRALIA 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 the 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 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.)

This complaints procedure does not, and cannot, provide a mechanism for disciplining a judge. It does, however, offer a process by which complaints by a member of the public about judicial conduct 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 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 complaints about delay in the delivery of a judgment. In such a case a party 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.

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. Longer target dates apply in native title cases, most of which are very complex.

Complaints about cases that could be dealt with on appeal or by prerogative writ

Parties who are concerned about the result of a case or about 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 Federal Court. There are time limits for appeals and parties need to act promptly. In general, only a Full Court of three judges (or occasionally five) 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. A similar situation exists in respect of any matter that is or was capable of being raised by a prerogative writ under s 75(v) of the Constitution.

If a complaint is received about matters that are, or were, capable of being dealt with by an appeal to a Full Court or by a prerogative writ, 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 Federal Court, or in connection with the performance of a judge's judicial functions.

If the Chief Justice receives such a complaint he will first make sure that the complaint is about judicial conduct. He will make sure that the complaint is not about the result of the case or about something else that was capable of being raised in an appeal to the Full Court or by prerogative writ and therefore outside the scope of the complaints procedure. If the Chief Justice considers that the complaint is about judicial conduct, he will then determine whether, on its face, the complaint has substance. If it appears that it might have substance, the complaint will be referred for a response to the judge whose conduct is in question. The Chief Justice may also make further enquiries to determine the seriousness of the complaint.

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

The Chief Justice, or the Registrar on his behalf, will acknowledge a letter of complaint and advise the complainant of the outcome of the complaint. If the Chief Justice considers that dealing with the complaint might have an adverse affect on the disposition of a matter currently before the Court he may defer dealing with the complaint until after the determination of that matter.

In the event that the Chief Justice is unavailable to deal with a complaint or it is inappropriate for him to do so, the procedure will apply with the next most senior available judge acting in place of the Chief Justice.

FEDERAL MAGISTRATES COURT OF AUSTRALIA JUDICIAL COMPLAINTS PROCEDURE

Federal Magistrates, 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 proven misbehaviour or incapacity. In those circumstances, and in those only, a Federal Magistrate may be removed from office by the Governor-General upon a request from both Houses of the Parliament

Federal Magistrates 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 court hearings are open to the public and can be reported in the news media. However, there are statutory limitations on the reporting of certain proceedings. For example, the identification of parties or witnesses to family law proceedings is not permitted (see section 121 of the Family Law Act 1975 (Cth)) and the names of applicants in protection visa related migration proceedings are not permitted to be published (see section 91X of the Migration Act 1958 (Cth)). A substantial number of judgments of the Court are available to the public through the internet. In relation to family law and migration decisions, they are anonymised to comply with the statutory requirements.

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

For constitutional reasons, the participation of a Federal Magistrate 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 Federal Magistrates and presents opportunities to explain the nature of its work, correct misunderstandings where they have occurred, and, where appropriate, to improve the performance of the Court.

Complaints about delay

A party may express concerns or make complaints about delay in the delivery of a judgment. In such a case a party 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 Federal Magistrate. The president will then convey the concern or complaint to the Chief Federal Magistrate without identifying which party complained. The Chief Federal Magistrate will look into the matter and, if appropriate, take it up with the Federal Magistrate concerned. Complaints of this nature can also be made directly by letter addressed to the Chief

Federal Magistrate and where a party is not represented that is the procedure to be followed.

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.

Complaints about cases that could be dealt with on appeal

Parties who are concerned about the result of a case, or about 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 Federal Court or the Family Court of Australia (depending on the matter which is being appealed). There are time limits for appeals and parties need to act promptly. The Chief Federal Magistrate has no power to interfere with any decision made by a Federal Magistrate 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, a letter will be sent to the complainant indicating 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 Federal Magistrate. It must identify the complainant, the Federal Magistrate 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 Federal Magistrate in court or in connection with a case in the Federal Magistrates Court, or in connection with the performance of a Federal Magistrate's judicial functions.

If the Chief Federal Magistrate receives such a complaint he will first make sure that the complaint is about judicial conduct. He will make sure that the complaint is not about the result of the case or about something else that was capable of being raised in an appeal and therefore outside the scope of the complaints procedure.

If the Chief Federal Magistrate considers that the complaint is about judicial conduct, he will then determine whether, on its face, the complaint has substance.

If the Chief Federal Magistrate considers that dealing with the complaint might have an adverse effect on the disposition of a matter currently before the Court he may defer dealing with the complaint until the determination of the matter. If so, the Federal Magistrate, 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.

All complaints generally receive a letter of acknowledgement prior to a substantive reply. The Chief Federal Magistrate is assisted by the Principal Registrar in dealing

with complaints. Because the process cannot provide a mechanism for disciplining Federal Magistrates, the Court's response will not address anything other than the substance of the complaint. However, as indicated, it provides an opportunity for the Chief Federal Magistrate to improve the performance of the Court if behaviour falls short of expected judicial standards.

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

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