



# **Courts Legislation Amendment (Judicial Complaints) Act 2012**

**No. 187, 2012**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Amendments</b>		3
	<i>Family Law Act 1975</i>	3
	<i>Federal Court of Australia Act 1976</i>	6
	<i>Federal Magistrates Act 1999</i>	10
	<i>Freedom of Information Act 1982</i>	13





# **Courts Legislation Amendment (Judicial Complaints) Act 2012**

**No. 187, 2012**

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

*[Assented to 11 December 2012]*

The Parliament of Australia enacts:

## **1 Short title**

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

## Schedule 1 Amendments

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### *Family Law Act 1975*

#### **1 Subsection 4(1)**

Insert:

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

#### **2 Subsection 4(1)**

Insert:

*complaint handler* means:

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

#### **3 Subsection 4(1)**

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.

#### **4 Subsection 4(1)**

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

**Schedule 1** Amendments

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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.

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

Add:

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

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

Insert:

- (1B) The Chief Judge may, if a complaint is made about another Judge, deal with the complaint by doing either or both of the following in respect of the complaint:
  - (a) deciding whether or not to handle the complaint and then doing one of the following:
    - (i) dismissing the complaint;
    - (ii) handling the complaint if the Chief Judge has a relevant belief in relation to the complaint about the other Judge;
    - (iii) arranging for any other complaint handlers to assist the Chief Judge to handle the complaint if the Chief Judge has a relevant belief in relation to the complaint about the other Judge;
  - (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:
    - (i) dismiss the complaint;



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

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

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

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

**8 Subsection 21B(3)**

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

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

Insert:

- (3A) The Chief Judge may authorise, in writing, a person or a body to do one or more of the following:
- (a) assist the Chief Judge to handle complaints or a specified complaint;
  - (b) decide whether or not to handle complaints or a specified complaint;
  - (c) dismiss complaints or a specified complaint;
  - (d) handle complaints or a specified complaint.
- (3B) To avoid doubt, the Chief Judge may authorise under subsection (3A):
- (a) the Deputy Chief Judge or a Judge Administrator; or
  - (b) a body that includes the Deputy Chief Judge or a Judge Administrator.

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

Add:

Note: See also section 38Y.

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

Add “, (1B) or (3A)”.

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

**Schedule 1** Amendments

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Add:

**38Y Protection of persons involved in handling etc. complaints**

- (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.
- (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.
- (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.
- (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.

**13 Application of items 1 to 12**

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:

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

***Federal Court of Australia Act 1976***

**14 Section 4**

Insert:

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

**15Section 4**

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:

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**Schedule 1** Amendments

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

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

Insert:

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

- (a) deciding whether or not to handle the complaint and then doing one of the following:
  - (i) dismissing the complaint;
  - (ii) handling the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;
  - (iii) arranging for any other complaint handlers to assist the Chief Justice to handle the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;
- (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:
  - (i) dismiss the complaint;
  - (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint about the other Judge.

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

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

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

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

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

Add:

Note: See also section 18XA.

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

Add “, (1AAA) or (1AAB)”.

**22 After section 18X**

Insert:

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

- (1) In exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA), 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.
- (2) In authorising a person or body under subsection 15(1AAB), the Chief Justice has the same protection and immunity as a Justice of the High Court.
- (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.
- (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.

**23 Application of items 14 to 22**

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

**Schedule 1** Amendments

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

***Federal Magistrates Act 1999***

**24 Section 5**

Insert:

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

**25 Section 5**

Insert:

***complaint handler*** means:

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

**26 Section 5**

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.

**27 Section 5**

Insert:

***relevant belief***: a person has a ***relevant belief*** in relation to a complaint about a Federal Magistrate 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 Federal Magistrate 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 Federal Magistrate; or
    - (ii) have the capacity to adversely affect, or have adversely affected, the reputation of the Federal Magistrates Court.

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

Add:

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

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

Insert:

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

## **Schedule 1 Amendments**

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(b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:

- (i) dismiss the complaint;
- (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint about the other Federal Magistrate.

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

(3AB) The Chief Federal Magistrate may authorise, in writing, a person or a body to do one or more of the following:

- (a) assist the Chief Federal Magistrate to handle complaints or a specified complaint;
- (b) decide whether or not to handle complaints or a specified complaint;
- (c) dismiss complaints or a specified complaint;
- (d) handle complaints or a specified complaint.

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

Add:

Note: See also section 118A.

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

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

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

Add:

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

- (1) In exercising powers or performing functions under paragraph 12(3)(c) and subsection 12(3AA), 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.
- (2) In authorising a person or body under subsection 12(3AB), the Chief Federal Magistrate 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.
  - (4) A legal practitioner 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.

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

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

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

## ***Freedom of Information Act 1982***

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

Insert:

*Courts other than courts of Norfolk Island—general*

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

Insert:

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

- (1A) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):
  - (a) exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA) of the *Federal Court of Australia Act 1976*; or
  - (b) assisting in exercising those powers or performing those functions.

**Schedule 1** Amendments

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

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

- (1B) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):
- (a) exercising powers or performing functions under paragraph 21B(1A)(c) and subsection 21B(1B) of the *Family Law Act 1975*; or
  - (b) assisting in exercising those powers or performing those functions.

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

*Certain documents relating to complaint handling—Federal Magistrates*

- (1C) This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):
- (a) exercising powers or performing functions under paragraph 12(3)(c) and subsection 12(3AA) of the *Federal Magistrates Act 1999*; or
  - (b) assisting in exercising those powers or performing those functions.

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

*Courts of Norfolk Island*

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*[Minister's second reading speech made in—  
House of Representatives on 14 March 2012  
Senate on 12 September 2012]*

(259/11)

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*Courts Legislation Amendment (Judicial Complaints) Act 2012No. 187, 201215*