

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 15

Senator Fierravanti-Wells asked the following question at the hearing on 14 February 2006:

Please outline the Commonwealth and State procedures that currently exist to deal with complaints against the judiciary.

The answer to the Honourable Senator's question is as follows:

The Attorney-General is responsible for considering complaints about federal judicial officers referred to him by Members of Parliament and members of the public. Generally, he refers complaints to the head of the relevant court for consideration of the concerns raised. A complaint raising a possible breach of the criminal law may be referred to the appropriate law enforcement agency for consideration.

All federal courts have internal procedures through which members of the public can make complaints about judicial conduct and the delivery of judgments. Details of these procedures are set out in the response to Senator Heffernan's Question on Notice No. 1, 31 October 2005, which was tabled in the Senate on 20 January 2006 (**Attachment A**).

Removal of federal judicial officers is a matter for the Commonwealth Parliament.

I am advised that the following procedures exist in the States:

New South Wales

Complaints against New South Wales judicial officers may be made to the Judicial Commission of New South Wales. A copy of the complaints process and a complaints form, which are available on the Commission's web site, are at **Attachment B**.

The Commission is required to conduct a preliminary investigation of all formal complaints. On the basis of this investigation, the Commission may summarily dismiss a complaint, classify a complaint as 'minor', or classify a complaint as 'serious'. The Commission does not ordinarily consider allegations of criminal conduct.

The Commission does not have the power to impose penalties or otherwise discipline judicial officers.

A 'minor' complaint may be referred on to the appropriate head of jurisdiction or to the Conduct Division of the Commission.

A complaint is regarded as 'serious' where, if substantiated, the grounds would justify parliamentary consideration of the removal of the judicial officer in question. All serious complaints are referred to the Conduct Division for investigation. The Conduct Division consists of a panel of three judicial officers, or two judicial officers and a retired judicial officer.

In cases where a serious complaint is wholly or partly substantiated, and the Conduct Division is of the view that the matter may justify parliamentary consideration of the removal of the judge or magistrate from office, the New South Wales Attorney-General is required to lay the report by the Conduct Division before both Houses of Parliament.

Removal of a judicial officer is a matter for the New South Wales Parliament.

Victoria

The Victorian Supreme and County Courts each have complaints processes that set out the procedures for dealing with complaints about judges, masters and court staff. Complaints regarding the conduct of a judicial officer of the Supreme Court or County Court may be made respectively to the Chief Justice of the Supreme Court or the Chief Judge of the County Court, in writing. The Chief Justice or the Chief Judge determines how the concerns raised should be addressed.

The processes are available on the Supreme Court and the County Court websites. A copy of the Supreme Court process is at **Attachment C** and a copy of the County Court process is at **Attachment D**.

Complaints about magistrates of the Magistrates Court are to be directed to the Chief Magistrate and are to be in writing. A document setting out the process for making complaints, which is available on the Magistrates Court's web site, is at **Attachment E**.

The investigation of serious complaints against Victorian judicial officers will be provided for under the Victorian Constitution when the *Courts Legislation (Judicial Conduct) Act 2005* (Vic) comes into effect (which at the latest will be 1 June 2006). Removal is a matter for the Victorian Parliament.

Queensland

Generally, complaints against judicial officers received by the Queensland Attorney-General are referred to the relevant heads of jurisdiction for appropriate action.

Serious complaints about judicial officers may be investigated by the Chairperson of the Crime and Misconduct Commission, who must have served as a Judge of a State Supreme Court, the High Court of Australia or the Federal Court of Australia. The Commission's authority to investigate the conduct of judicial officers is limited to investigating complaints of misconduct of a kind that, if established, would warrant removal from office. The Commission, when performing its functions in relation to the conduct of judicial officers, must have proper regard for judicial independence.

Reports following investigations where the Commission decides that prosecution proceedings or disciplinary action should be considered may be referred to an appropriate prosecuting authority and/or the relevant head of court.

A brochure outlining the role of the Commission and how to make a complaint to the Commission is available on the Commission's web site and is reproduced in **Attachment F**.

Removal of judicial officers of the Supreme Court and the District Court is a matter for the Queensland Parliament.

Western Australia

Western Australia has adopted a protocol for complaints of misconduct, both non-criminal and criminal, against judicial officers. This is set out in **Attachment G**.

Removal of judges is a matter for the Western Australian Parliament.

South Australia

There are no formal guidelines about how complaints against the judiciary are dealt with.

Removal of a judge of the Supreme Court or the District Court is a matter for the South Australian Parliament. Removal of a magistrate is a matter for the Governor after a determination by the Full Court of the Supreme Court on application by the Attorney-General.

Tasmania

There are no formal guidelines for dealing with complaints regarding the judiciary.

Removal of a judge is a matter for the Tasmanian Parliament.