

JUDICIAL COMPLAINTS POLICY

The Role of Magistrates

Magistrates and Supreme Court judges are members of the Tasmanian judiciary.

For a legal system in a democracy to work properly it is necessary for its three elements to be separate and independent. The three elements are:

- Law Makers (State Parliament), also called the Legislature;
- Law Enforcers (Police and the Public Service), also called the Executive; and
- Law Interpreters (Courts and Judiciary), also called the Judiciary.

A magistrate's role is to apply the law to every case that comes before the court. This includes interpreting legislation passed by Parliament and acting on the case law developed by superior courts, such as the High Court of Australia and the Supreme Court of Tasmania.

It is important to make sure that political or other pressures do not influence magistrates when they are making decisions in individual cases, otherwise the integrity of the justice system would be undermined.

Judicial immunity is a protection given to members of the judiciary as a result of which they cannot be sued for actions they perform in their judicial capacity. This means that magistrates can make decisions on the cases before them without interference or fear of adverse consequences to themselves.

Magistrates hold a responsible and important position in society. Their behaviour is expected to meet certain standards.

Magistrates will:

- act with care and diligence in the course of their work;
- treat everyone with respect and dignity;
- behave honestly and in a way that does not adversely affect the integrity and good reputation of the judiciary.

Magistrates are accountable through the public nature of their work. They have an obligation to hear both sides of a case and to give reasons for their decisions. Their decisions are subject to appeal. They must disqualify themselves from hearing a case in which they have a personal interest.

Magistrates are ultimately accountable to the community through a process which states that a magistrate can only be suspended or removed from office by the Governor, on a request from both Houses of Parliament on the ground of proved misbehaviour or incapacity.

Scope of the Judicial Complaints Policy

This policy sets out how to make a complaint about:

- the conduct of a magistrate, including complaints about a magistrate's language or behaviour;
- delay in handing down a decision.

The judicial complaints policy does not cover complaints about the decisions magistrates make.

If a party believes that a magistrate's decision is wrong they may have appeal or review rights to the Supreme Court where a judge will decide whether the decision was correct.

A complaint may be made by any member of the public, including lawyers and other professionals who appear before the Court in the course of their work.

Magistrates are not responsible for the conduct of court staff. If you have a complaint about the behaviour or conduct of court staff, or any aspect of court facilities, you should refer to the Complaints and Feedback section of our website at:

<https://www.magistratescourt.tas.gov.au/contact>.

Complaints about staff or court facilities should be made in writing and addressed to:

**Administrator of Courts
Magistrates Court
GPO Box 354
HOBART TAS 7001**

Should I Make a Complaint?

Making a complaint about a magistrate is a serious matter.

When considering whether you have a complaint that can be investigated under this policy, you should be aware that it is a magistrate's duty to manage court proceedings to ensure that cases are dealt with fairly and efficiently and without undue delay. At times this will require a firm and assertive approach by the magistrate.

The Court aims to deliver all decisions promptly but timeframes vary, and often take longer for more complex cases.

In court proceedings most people believe that their position is correct or that they are entitled to a particular outcome. Usually a magistrate will be required to reject the evidence, submissions, or pleas of one party (resulting in an unpopular decision from that party's point of view) and decide in favour of the other party. Magistrates are independent of the parties involved in a case and, therefore, objective and impartial in the decision making process.

You may like to consider seeking the advice of a lawyer before making a complaint.

How do I make a complaint against a magistrate?

Complaints about the conduct of a magistrate must be made in writing and be addressed to the Chief Magistrate. Complaints will be dealt with in accordance with this policy.

Your letter should:

- clearly set out the conduct and issues that are relevant to your complaint; and
- identify as specifically as possible the conduct that has caused you concern.

You should send your complaint to:

**Chief Magistrate
Magistrates Court of Tasmania
GPO Box 354
Hobart Tasmania 7000**

If your complaint is about the Chief Magistrate you should address your letter to the Deputy Chief Magistrate. The Deputy Chief Magistrate will take the steps outlined below in the same way the Chief Magistrate would.

How will the complaint be handled?

The Chief Magistrate will generally provide a formal acknowledgement of your complaint within 7 working days of receipt of your complaint. A considered response will ordinarily be forwarded within 20 working days of receipt of your complaint. If it is not possible to respond within that time a letter will be sent outlining the reason for the delay.

After your complaint is received the following lines of inquiry will occur:

Is the complaint about judicial conduct or delay?

The Chief Magistrate must first ensure that the complaint is about judicial conduct or delay. If it is not, you will be informed of other more appropriate options to consider.

Does the complaint have substance?

The next step is to determine whether the complaint has substance.

If it appears that the complaint does have substance, the Chief Magistrate will discuss the content of your complaint with the magistrate, and any response that they make will be taken into account. The Chief Magistrate may also make further enquiries in order to determine how serious the complaint is and what action, if any, should be taken.

The Chief Magistrate will dismiss the complaint, and you will be advised of this in writing, if:

- the complaint is frivolous, vexatious or not in good faith;
- the complaint is misconceived;
- the subject matter of the complaint is trivial;
- the matter complained about occurred at too remote a time to justify further consideration;
- another means of redress is available to the complainant;
- the complaint relates to the exercise of a judicial function that was subject to

- appeal or review; or
- the person complained about is no longer a magistrate.

The Chief Magistrate will notify the complainant and magistrate concerned (where appropriate) if a complaint is dismissed.

What action can be taken?

Magistrates are not subject to direct discipline by others. A magistrate can only be suspended or removed from office by the Governor, on a request from both Houses of Parliament on the ground of proved misbehaviour or incapacity. This only occurs in very serious cases and the Attorney-General has the responsibility for setting these procedures in motion.

If your complaint has substance the Chief Magistrate may take what steps they deem appropriate, including:

- counselling the magistrate who is the subject of the complaint about their conduct or behaviour;
- having them undertake relevant professional development; or
- providing support (such as time out of court) to finalise a delayed decision.

The process provides an opportunity for the Chief Magistrate to improve the performance of the Court if behaviour falls short of expected judicial standards.

If the conduct warrants it the Chief Magistrate may write to the Attorney-General recommending that the Attorney-General take steps to remove the magistrate from office.

If a magistrate commits a crime or an offence they are subject to the same laws and penalties as other members of society. If it appears a magistrate may have committed an offence the matter may be referred to the police.

The Chief Magistrate cannot review, overrule or set aside a judicial decision of another magistrate.

The Chief Magistrate will notify the complainant and magistrate concerned (where appropriate) where a complaint is resolved to the Chief Magistrate's satisfaction.

Catherine Geason
Chief Magistrate

21 December 2020