



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

10/4168, MC10/3517

Ms Julia Irwin  
Chair  
Standing Committee on Petitions  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

05 MAY 2010

Dear Ms Irwin

I refer to your letter dated 18 March 2009 seeking a written response to petitions submitted to your Committee regarding complaints of judicial conduct and difficulties faced by self-represented litigants.

In relation to the petition concerning judicial conduct, I note that a working group established by the Standing Committee of Attorneys-General is considering a range of options for implementing a national mechanism for handling complaints against judicial officers, including the adoption of a consistent set of rules, procedures and standards and an appropriate complaints handling body. The working group's recommendations will assist with the Government's consideration of these issues.

In relation to the petitioner's allegation that there is a lack of accountability for judicial officers, I note that important mechanisms for ensuring judicial accountability include the appeals process, open courts, procedural fairness, the provision by courts of reasons for decisions, the existence of publicly available complaints mechanisms within the courts and public and media scrutiny.

In relation to the petition concerning self-represented litigants and McKenzie friends, I note that courts have an inherent power to permit McKenzie friends to appear. A McKenzie friend is a person who assists a litigant during proceedings but is not legally qualified. Leave to permit appearance by McKenzie friends is at the discretion of the individual Judge or Federal Magistrate, and will only be granted in exceptional circumstances. The reason for this is that courts should be assisted either by parties who are familiar with their own case or qualified legal practitioners who can make informed submissions to assist the court. In addition, legal practitioners have ethical duties both to their clients and to the court, while unqualified persons do not have these duties.

Parties who may have difficulty affording legal representation may seek assistance from a Legal Aid Commission office in their State or Territory, which will, I understand, grant a first interview regardless of means. Parties may also seek assistance from local Community Legal Services.

I hope this information is of assistance to the Committee.

Yours sincerely

Robert McClelland