ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

09/28935, MC09/23666

- 7 JAN 2010

Mrs Julia Irwin MP
Chair
House of Representatives Standing Committee on Petitions
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mrs Irwin

I refer to your letter dated 26 November 2009 attaching three petitions relating to the Family Court submitted to the House of Representatives Standing Committee on Petitions.

The first and second petitions seek the removal of judicial officers pursuant to section 72(ii) of The Constitution. Section 72 provides for the removal of judicial officers, by the Governor-General in Council on an address from both Houses of the Parliament, in only the most serious of circumstances—namely, proved misbehaviour or incapacity.

As the judicial branch of the Australian Government, the federal courts are of fundamental importance to the Australian community and I take any dissatisfaction with them seriously. Where a legitimate and substantiated allegation of misbehaviour or incapacity is made against a federal judicial officer, that allegation should be treated seriously and given due consideration by the Parliament.

Complaints against the conduct of judicial officers that do not amount to the level set out in the Constitution are appropriately directed to the Head of Jurisdiction in the court concerned. I also note that, if a person is not satisfied with the outcome of a particular matter, the appropriate avenue of redress is through the appeals process.

The information contained in the two petitions is not sufficient to determine the nature of the alleged conduct. As a result, it is not possible to ascertain the seriousness of the complaint and therefore whether it is appropriately to be considered by the Parliament or the Head of Jurisdiction of the relevant court. It would also be difficult to assess the merits of the allegation.

The third petition seeks the enactment of laws defining the rights and obligations of a McKenzie friend in federal court proceedings. The petition requests that those laws be parallel to the provisions of the *Family Law Rules 2004* on case guardians, including the right of audience but not the right to make written applications on behalf of a party.

A case guardian is permitted to do, for the benefit of the disabled party, anything permitted to be done by that party whereas a McKenzie friend is a person who is not an advocate, but sits beside the litigant at the bar table to take notes, make quiet suggestions and assist the litigant in presenting his or her case to the Court.

The *Family Law Act 1975* and *Federal Magistrates Act 1999* empower judges and magistrates or a majority of them to make rules in relation to practice and procedure to be followed in family law courts. Whilst the Rules include provisions about case guardians, they do not directly address the position of McKenzie friends, who play a less formal role in legal proceedings. The Committee might like to inform the petitioner that he may bring his concerns about the application or clarity of the relevant court rules—including as these relate to McKenzie friends—to the attention of the Chief Justice of the Family Court or Chief Magistrate of the Federal Magistrates Court.

The third petition also seeks amendment of section 33 of the *Judiciary Act 1903*. This section gives the High Court the power to make certain orders or direct the issue of certain writs. The amendment is sought for the purpose of enabling 'correction of judicial wrongs and errors in the High Court'. The amendment that would appear to be sought is already given effect by subsection 38(e) of the Judiciary Act. However, if a person is not satisfied with a decision of a court in a particular matter, the appropriate avenue of redress is through the appeals process.

I hope this information is of assistance to the Committee.

Yours sincerely

Robert McClelland