SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. 40

Senator Brandis asked the following question at the hearing on 25 May 2009:

What is Chief Justice Bryant's view that if the Courts were integrated in the manner suggested by Mr Semple, would those former federal magistrates who would constitute the lower tier of the Court have a say in the making of rules of court equal to the senior tier of Family Court Judges?

The answer to the honourable senator's question is as follows:

The Chief Justice has always understood that factors such as a Rule making power for the second tier are a matter for legislation and therefore a matter for Government.

On 5 February 2009, in the response to the recommendations of the Semple Report and the consultation paper, the Chief Justice wrote:

Rule making power

Legislation will need to confer the power to make its own rules on the re-structured Court. This power is currently found in section 123 of the Family Law Act 1975 (Cth).

A decision will be required as to whether to provide a separate rule making power for each division, enabling each division to make their own rules, or to create one rule making power for the Court as a whole. As it is the Government's intention, as I understand it, to preserve the culture and case management systems of each Court, it would be necessary for the rules of court – were there to be one set of rules only – to be of a relatively high level of generality and for each court's case management system to be promulgated through practice directions or like means. I understand this is the case in the Supreme Court of New South Wales, whereby there are uniform rules that apply to the Court and practice directions are utilised to set out the process and procedure followed in the Common Law and Equity Divisions. Realistically however, my expectation is that there would be a gradual progression towards rule harmonisation.

As the Chief Justice stated in her address to the Senate inquiry into access to justice, and in her letter of 12 May 2009 (a copy of which was provided to the committee in response to Q 39), she supports each tier having the capacity, however legislatively expressed, to determine its own practices and procedures.

The Chief Justice notes that ultimately, it is a matter for Government.