

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Question No. 11

Senator Brandis asked the following question at the hearing on 25 May 2011:

Senator BRANDIS: Minister, does it continue to be the policy of the government to reduce the total establishment of the Family Court as more and more of the family law work is taken up by the Federal Magistrates Court?

Senator Ludwig: I will need to take that on notice, obviously. I will see if I can get an answer to you. I am not confirming or denying the preface to your statement. I will check.

Senator BRANDIS: There has been, as you know, during the life of this government a gradual reduction in the aggregate number of Family Court judges, as has been explained in previous estimates committees, when it was expected that there would be a consolidation of the Family Court and the Federal Magistrates Court. That was a deliberate and perhaps understandable policy. Now that the government has decided not to do that, I wonder whether it is still the plan to continue to reduce the total number of Family Court judges so that more of the Family Court's routine work can be done by federal magistrates, or whether that is not the case. Mr Foster?

Senator Ludwig: I will just intervene there for the moment, Chair. I am not confirming whether it is the plan because of course that is your phraseology. I will take that on notice because I would have thought it would be more dependent on workload – that is just an observation – rather than numbers. It does seem that you are fixated on numbers not workload and where the resources are best served. What I indicated is that I can provide, and I will take that on notice to ensure that you get a full response about the issue that you raise.

Senator BRANDIS: I think it is a very uncontroversial proposition, which has been the case under governments of both political persuasions, that the number of judges or judicial officers is directly a function of the workload of the court. The peculiarity here is that in its confusion for two years the government was proposing to eliminate the Federal Magistrates Court and consolidate it with the Family Court. One can understand why, while that process was underway or imminent, some judicial officers were not replaced until the new structure was bedded down. But the government changed its policy a year ago to abandon that proposal as announced by the Attorney-General in May 2010. Hence I am wondering whether the antecedent practice of keeping the number of judges on the Family Court up to the existing establishment has been reinstated or whether the plan is to continue to deplete the number of Family Court judges. If it is the latter that is perfectly understandable because, as Mr Foster has rightly said, 85 per cent of family law filings are in the Federal Magistrates Court. I would just like to know. I am not being political here; I would just like to know what the plan is.

Senator Ludwig: And I am not trying to leave you in suspense. I will take your question on notice and see what the Attorney-General can provide.

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

Overall, there has been a net increase of 19 judicial officers across the federal courts between 30 June 2005 and June 2011. However, the numbers of judicial officers has declined in the Federal Court and the Family Court as judicial officer positions have been realigned to the Federal Magistrates Court.

Each time a retirement or resignation occurs, the Department makes a recommendation to the Attorney-General as to whether or not he should appoint a replacement. Before making that recommendation, the Department consults the relevant court and carefully analyses trends in volume, complexity and location of filings. A replacement may not be recommended to the same

registry from which there was a retirement. The Department also considers which type of judicial officer should be appointed.

As at 25 May 2011, the Family Court had 32 judges (excluding 5 judges of the Family Court of WA). The Government has indicated its intention to replace two recently retired judges and one serving judge who has indicated an intention to resign in the near future. Whether replacements are warranted for two other resignations is still under consideration. In addition, public notices calling for expressions of interest and nominations for two new Federal Magistrate positions were published in national and local newspapers on 26, 27 and 28 May 2011. These appointments are being made to meet judicial resourcing needs.