

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

Question No. 13

Senator Heffernan asked the following question at the hearing on 29 May 2013:

Senator HEFFERNAN: I just wanted to ask a question on workloads. Is there a uniform package for sick and compassionate leave? And could I have the median and the mean record of that leave?

Mr Soden: I am not sure I understand your question, Senator: sick and compassionate leave of whom?

Senator HEFFERNAN: Say I am appointed to the Federal bench—very unlikely!

Mr Soden: So, for judges?

Senator HEFFERNAN: What are the conditions under which I can take sick leave and compassionate leave? And what is the history of that leave amongst the bench?

Mr Soden: I do not have that kind of information at my fingertips, Senator. I would have to take that on notice.

Senator HEFFERNAN: As the minister knows, I have been asking these questions in various estimates. Just so you know, for instance, in DAFF, the median—which is the halfway point rather than the average—

Mr Soden: Yes, I understand that.

Senator HEFFERNAN: is 15 days a year sick leave.

Mr Soden: To be clear: are you talking about judges of the Federal Court?

Senator HEFFERNAN: I am, which is pertinent to this. Surely there are some—

Mr Soden: I will have to take that on notice—but it will be tiny.

Senator HEFFERNAN: Yes, that will be good.

Mr Soden: I will take that on notice.

...

Senator HEFFERNAN: Could we have on notice the record of allocated and authorised sick leave and compassionate leave from the bench—the record of how many work days. I do not know how you would manage it, but I would be interested to see just what the work record is.

Mr Soden: We will take that on notice and get you what we can.

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

Judges, like Members of Parliament, are not employees and, as such, the conditions of their appointment as justices under Section 72 of the Constitution do not include sick and compassionate leave. Consistent with this, determinations made by the Remuneration Tribunal over time in relation to judges of the Federal Court have never made provision for sick and compassionate leave. Consequently there is no annual credit of sick and compassionate leave for judges and no recording against such a credit of time taken for sick or compassionate leave.

Judges are allocated their case load on an assumption that it will be managed notwithstanding minor absence through illness and other unforeseen circumstances. To support judges in continuing to manage their workload even when ill or during other brief absences from chambers for other reasons, the Court provides them with laptop, tablet and smart-phone technology.

The Chief Justice approves all recreation leave and long leave proposals. The chief Justice is also usually advised by judges of any special leave requirements, such as short absences due to illness or compassionate grounds. More serious illnesses warranting, for example, surgery and longer periods of recuperation are discussed by the relevant judge with the Chief Justice so that alternative arrangements for the management of that judge's case load can be made.