

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Question No. 1

Senator Heffernan asked the following question at the hearing on 31 October 2005:

- a) What sort of inappropriate behaviour could be contemplated by a federal judicial commission; and would it be matters which are not criminal but are regarded as inappropriate?
- b) What powers does the Chief Justice have?
- c) Are there guidelines for dealing with complaints?
- d) Are the guidelines enforceable?
- e) Have any complaints been upheld or acted on?

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

a) The Government has not made a decision about whether to establish a federal judicial commission. If a federal judicial commission were to be established with the power to receive and investigate complaints against federal judicial officers, the sort of behaviour that it might inquire into would depend on the nature of the jurisdiction which was conferred on the commission. Complaints that a judicial officer had made a wrong decision would not be appropriate for such a commission as this is the role of the appeals process. Generally, also, if an allegation of criminal behaviour were to be made, the criminal justice system would be invoked. If there were an allegation of incapacity, or misbehaviour, that was so serious as to justify removal, this would be a matter for the Parliament in accordance with section 72 of the Constitution.

b) The courts advise as follows:

The Chief Justice of the High Court, Murray Gleeson, in an address delivered on 27 April 2002 to the Judicial Conference of Australia, referred to the capacity of a Chief Justice of a court "to advise, warn and take appropriate administrative steps" in relation to alleged misconduct by a judge of the court.

The Chief Justice of the Federal Court, the Chief Justice of the Family Court and the Chief Federal Magistrate are responsible for managing the administrative affairs of their respective courts and for ensuring the orderly and expeditious discharge of the business of the court. While the Chief Justices or the Chief Federal Magistrate have no formal powers to deal with inappropriate behaviour by a Judge or Federal Magistrate, they are, by virtue of their office, in a position to refer a complaint about a Judge or a Federal Magistrate to the judicial officer for a response and to determine how the complaint should be dealt with. Where, for example, there are concerns that a judicial officer has a number of overdue judgments, the Chief Justices and the Chief Federal Magistrate could adjust a judicial officer's workload to allow him or her to concentrate on finalisation of judgments.

c) The courts advise as follows:

High Court

The High Court has a Service Charter that sets the standards of service that can be expected from the Court's Registry. It also makes provision for the resolution of complaints about the Registry or its staff. A copy of the Service Charter is attached.

There are no formal guidelines for dealing with complaints about Justices. In practice, any complaints about Justices are referred in the first instance to the Chief Executive and Principal Registrar of the Court who, if he considers it warranted, will bring the complaint to the attention of the Chief Justice.

Most complaints are from self-represented litigants who have been unsuccessful in their litigation in the High Court.

Federal Court

The Court has a Judicial Complaints Procedure which sets out the procedure for dealing with complaints about Federal Court Judges. The Procedure recognises the constitutional limitations and safeguards with respect to such matters, and therefore does not provide a mechanism for disciplining a judge. A copy of the Procedure is attached.

A litigant, lawyer or member of the public may obtain a copy of the Procedure from the Court's Principal Registry on request. The Court's web site directs complainants to the Principal Registry for that purpose.

Family Court

The Court has a Feedback and Complaints Policy, which is available on its Website. A pamphlet entitled *Do you have a complaint?* is also available on the Court's Website. The pamphlet summarises the policy and explains, in English and ten other languages, how to make a complaint and how the complaint will be dealt with by the Court. Copies of the Policy and the pamphlet are attached.

In accordance with the Court's policy and procedures, complaints relating to the personal or judicial conduct of judges or judicial registrars are recorded by the Court's Client Feedback Co-ordinator. The Chief Justice retains responsibility for dealing with complaints about judicial officers but has delegated the initial investigation of such complaints to the Deputy Chief Justice. All complaints are acknowledged and investigated. The complainant receives a further response upon completion of the investigative process.

Federal Magistrates Court

The Court has a service charter which sets out the level and standard of service that the administrative staff of the Court aim to provide.

The Court has a complaints policy, which is available on its website, that sets out how to make a complaint and how the complaint will be dealt with by the Court. A copy of the policy is attached.

d) The courts advise that they adhere to their Service Charter, Judicial Complaints Procedure or complaints policy, as the case may be.

e) The courts advise as follows:

High Court

Over the last 10 years, no complaints have been upheld or acted upon in relation to Justices of the High Court.

Federal Court

Over the last 10 years, one complaint in relation to the conduct of a Judge of the Federal Court has been upheld or acted upon. The complaint concerned the inadvertent use of a Judge's fax coversheet to transmit a non-official letter. The Chief Justice referred the complaint to the Judge, and both the Chief Justice and the Judge then wrote to the complainant in response.

Family Court

All complaints are dealt with in accordance with the procedures referred to above and in that sense action is taken on all complaints. During the first quarter of 2005-06, less than 2% of complaints have related to the Court's judges.

Federal Magistrates Court

All complainants receive a response and in this sense action is taken on all complaints.

Complaints provide valuable information about community perceptions of the court's work, client satisfaction, service delivery. For this reason, one of the performance standards of the Court is that less than one percent of cases litigated or divorces processed are subject to a complaint.

The number of complaints in 2004-05 was 140, representing 0.2 per cent of cases. Those complaints related to outstanding judgments (70), issues associated with the legal process (27), the conduct of federal magistrates and chambers staff (12), primary dispute resolution services (9), registry issues (5), case outcomes and appeals (6), administrative issues (7), enforcement of orders of the Court (2), and the conduct of legal representatives (2).