

**Senate Legal and Constitutional Committee Inquiry: Australia’s Judicial System
and the Role of Judges**

Joint Submission by the Chief Justice of the Family Court

and the Chief Federal Magistrate on behalf of the

Family Court of Australia and

the Federal Magistrates Court of Australia

13 May 2009

The Family Court of Australia (“the Family Court”) and the Federal Magistrates Court of Australia (“the FMC”) (“the Family Law Courts”) welcome the opportunity to provide a joint submission responding to the Senate Legal and Constitutional Committee’s (“the Committee”) Inquiry into *Australia’s Judicial System and the Role of Judges* under the four discrete Terms of Reference identified by the Committee as matters of interest. This submission is made by the Chief Justice of the Family Court and the Chief Federal Magistrate of the FMC in consultation with the Judges and Federal Magistrates of the Family Law Courts. This submission responds to those identified areas of interest and follows a brief background about the Family Law Courts and their respective jurisdictions.

Background

- *The Family Court*

The Family Court is created by s 21 of the *Family Law Act 1975* (Cth) and is a superior court of record.¹ The Court consists of a Chief Judge (known as the Chief Justice),² a Deputy Chief Judge (known as the Deputy Chief Justice)³ and such other Judge Administrators, Senior Judges and Judges not exceeding a total as prescribed.⁴ There are no longer any judges serving who were appointed as Senior Judges or Judge Administrators.

¹ *Family Law Act 1975* (Cth) s 21(2).

² *Family Law Act 1975* (Cth) s 21(3)(a).

³ *Family Law Act 1975* (Cth) s 21(3)(b).

⁴ *Family Law Act 1975* (Cth) s 21(3)(c).

The Family Court has original jurisdiction in relation to the *Family Law Act 1975* (Cth), as well as jurisdiction under other legislation including:

- *Bankruptcy Act 1966* (Cth)
- *Corporations Act 2001* (Cth)
- *Child Support (Assessment) Act 1989* (Cth)
- *Child Support (Registration and Collection) Act 1988* (Cth)
- *Marriage Act 1961* (Cth)

There are other Acts, as well as many regulations made under various Acts, which define the Family Court's jurisdiction.

Generally speaking, the Family Court has jurisdiction in relation to matters concerning children, child and spousal support, and the division of property between parties to a marriage and parties to a de facto relationship. The court hears and determines the most complex cases in these areas.

The Family Court also exercises appellate jurisdiction in family law, including hearing appeals from Federal Magistrates (heard by either a single Family Court Judge or the Full Court of the Family Court) and single Judges of the Family Court (heard by the Full Court of the Family Court).

- *The Federal Magistrates Court*

The FMC is created by virtue of s 8(1) of the *Federal Magistrates Act 1999* (Cth) and is a court of record and a court of law and equity.⁵ The FMC consists of a Chief Federal Magistrate⁶ and such other Federal Magistrates as from time to time hold office in accordance with the *Federal Magistrates Act 1999* (Cth).⁷

Generally speaking, the jurisdiction of the FMC includes family law and child support, administrative law, bankruptcy, human rights, consumer protection and trade practices, privacy, migration, copyright, industrial law and admiralty law. The FMC shares those jurisdictions with the Family Court and the Federal Court of Australia.

⁵ *Federal Magistrates Act 1999* (Cth) s 8(3).

⁶ *Federal Magistrates Act 1999* (Cth) s 8(4)(a).

⁷ *Federal Magistrates Act 1999* (Cth) s 8(4)(b).

Recent Relevant Submissions

The Family Court provided a detailed submission to the 2007 Commonwealth Remuneration Tribunal *Inquiry into Remuneration Relativities Between the Family Court, the Federal Court and the Federal Magistrates Court* about the social and economic value of family law and the unique advantage of having a specialist Family Law Court. The FMC also provided a comprehensive submission to that inquiry.

(a) Procedures for appointment and method of termination of judges

- *The Constitution*

The *Constitution* provides the procedure for the appointment, and the termination of judicial appointments for the High Court of Australia and other courts created by the Commonwealth Parliament. As the Family Court was created by s 21 of the *Family Law Act 1975* (Cth) and the FMC by s 8(1) of the *Federal Magistrates Act 1999* (Cth) both Courts are created under and are subject to Chapter III of the *Constitution*. Family Court Judges and Federal Magistrates are appointed by the Governor-General in Council and may only be removed from office by the Governor-General in Council on an address from both Houses of the Parliament in the same session on the grounds of proved misbehaviour or incapacity.⁸

- *The Family Law Act 1975* (Cth)

The *Family Law Act 1975* (Cth) relevantly provides that a person shall not be appointed a Judge of the Family Court unless the person is or has been a Judge of another court created by the Commonwealth or State/Territory Parliament, or has been enrolled as a legal practitioner of the High Court of Australia or of the Supreme Court of a State or Territory for not less than 5 years.⁹ The person must also be, by reason of training, experience and personality, a suitable person to deal with

⁸ *Australian Constitution* s 72(ii). This provision is replicated in s 22(1)(a) & s 22(1)(b) respectively of the *Family Law Act 1975* (Cth).

⁹ *Family Law Act 1975* (Cth) s 22(2)(a).

matters of family law, a requirement that is unique amongst the federal courts.¹⁰ Similar provisions also exist for the appointment,¹¹ termination¹² and qualification¹³ of Judicial Registrars. Judicial Registrars are judicial officers appointed under the *Family Law Act 1975* (Cth) who exercise delegated judicial powers. There are limitations on the powers Judicial Registrars may exercise, such as final parenting orders and property disputes over \$2 million. There are currently two Judicial Registrars of the Family Court.

- *The Federal Magistrates Act 1999* (Cth)

The *Federal Magistrates Act 1999* (Cth) relevantly provides that the Governor-General appoints a Federal Magistrate by commission.¹⁴ A person must not be appointed as a Federal Magistrate unless he or she has been enrolled as a legal practitioner (however described) of the High Court of Australia or a State/Territory Supreme Court for at least 5 years.¹⁵

- *Termination of judicial appointments under the Constitution*

No judge of a federal court, including the High Court, has been removed from office by virtue of proved misbehaviour under the *Constitution*. Further, it is noted that changes to the procedure for termination of judicial appointments would require alteration to s 72(ii) of the *Constitution*.¹⁶

- *Appointments process for judicial officers*

Over the course of many years, there have been proposals made for an independent body to be established to recommend to the Government (in a manner that is binding or non-binding on the Government) candidates suitable for judicial appointment. The

¹⁰ *Family Law Act 1975* (Cth) s 22(2)(b).

¹¹ *Family Law Act 1975* (Cth) s 26A.

¹² *Family Law Act 1975* (Cth) s 26L. Section 26L(2) of the *Family Law Act 1975* (Cth) also provides a mechanism for the Governor-General to terminate the commission of a Judicial Registrar if “the Judicial Registrar becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.”

¹³ *Family Law Act 1975* (Cth) s 26H.

¹⁴ *Federal Magistrates Act 1999* (Cth) Schedule 1 Clause 1(1).

¹⁵ *Federal Magistrates Act 1999* (Cth) Schedule 1 Clause 1(2).

¹⁶ *Australian Constitution* s 128.

policy reason for the existence of such a body is that the appointment of judicial officers should be made “transparently free of political patronage.”¹⁷

It is recognised that the procedures for appointment of judicial officers are a policy decision for the Australian Government, and Chief Justice Bryant and Chief Federal Magistrate Pascoe have welcomed the Attorney-General’s newly instituted process for appointing federal judges and magistrates. This process enables broad consultation with the Australian legal community to identify persons suitable for appointment, as well as the placement of media notices seeking expressions of interest and nominations, and enabling appointment criteria to be accessible to candidates and the public generally. An Advisory Panel appointed by the Attorney-General then assesses the expressions of interest and nominations received against the appointment criteria to develop a shortlist of suitable candidates.¹⁸

- *The Family Court and the judicial appointments process*

The new judicial appointment process has been utilised for the appointment of a Family Court judge in Newcastle, NSW. The Advisory Panel considering the appointment and making recommendations to the Attorney-General consists of the Chief Justice of the Family Court, Diana Bryant, former High Court Justice, the Hon. Ian Callinan AC QC, former Family Court Justice, the Hon. Professor Richard Chisholm AM, and Attorney-General’s Department Deputy Secretary of the Civil Justice and Legal Services Group, Mr Ian Govey.

- *The FMC and the judicial appointments process*

The new process has similarly been utilised in relation to appointments to the FMC. The Advisory Panel that considers appointments of Federal Magistrates comprises Chief Federal Magistrate John Pascoe, a retired Family Court Judge and a senior officer of the Attorney-General’s Department.

- *Simple Review*

¹⁷ Geoffrey L. Davies ‘Appointment of Judges’ (Public Lecture presented at the Queensland University of Technology, 31 August 2006.)

¹⁸ Attorney-General’s Department, *Court Appointments*, Attorney-General’s Department website <http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_CourtAppointments>, as at 14 April 2009.

Following the recently released consultation paper *Future Governance Options for Federal Family Law Courts in Australia – Striking the Right Balance* (“the Semple Review”), Chief Justice Bryant and Chief Federal Magistrate Pascoe provided comments to the Attorney-General about possible changes to the Family Law Courts, including how a newly created or “merged” Court might be structured.

The Government has now announced its response to the Consultation Paper.

- *Complexity of the Family Law Act 1975 (Cth)*

This submission notes that the *Family Law Act 1975 (Cth)* is a voluminous statute that is difficult to navigate, particularly for people without legal training. It is submitted that any future changes to the *Family Law Act 1975 (Cth)* should take into account methods for reducing the length and complexity of the Act. For example, if it is now technically possible provisions concerning the establishment of the Family Court and its powers and functions might well be placed in a separate statute.

(b) Term of appointment, including the desirability of a compulsory retirement age, and the merit of full-time, part-time or other arrangements

- *The Constitution*

The *Constitution* provides that a Justice of a court created by the Parliament shall be appointed for a term expiring on his or her attaining the age that is the maximum age for a Justice of that Court, namely 70 years.¹⁹ Further, a person shall not be appointed a Justice of a court created by the Parliament if he or she has attained the maximum age of 70 years.²⁰

- *Policy rationale for compulsory maximum retiring age of 70 years*

The Hon. Michael Kirby AC CMG recently commented on suggestions that there should be a repeal of the maximum retiring age of 70 years. In disagreeing (in the context of discussing compulsory retirement of High Court Justices), he said:²¹

¹⁹ *Australian Constitution* s 72.

²⁰ *Australian Constitution* s 72, *Federal Magistrates Act 1999 (Cth)* Schedule 1 Clause (1)(3) & Clause (1)(4).

²¹ The Hon. Michael Kirby AC CMG, ‘The High Court of Australia: perspectives from the brink’ (2009) 21(2) *Judicial Officers’ Bulletin* 11, 13.

[ensuring] *change and turnover, fresh ideas and a reflection of the values of different generations, is a vital aspect of a dynamic and open-minded final national court.*

Chief Justice Bryant and Chief Federal Magistrate Pascoe agree with his Honour that the compulsory maximum retirement age of Judges (for federal courts generally, not just the High Court) should remain as it presently is under the *Constitution*. It is noted that changes to the compulsory retirement age of Judges would require alteration to s 72 of the *Constitution*.²²

- *Part-time appointments*

In recent years, the Family Court has proposed that a Judge of the Family Court who has retired after more than ten years of service may be appointed, by means of a new commission, to part-time judicial office in the Family Court as a “Senior Judge” until the age of 70 years. The title “Senior Judge” would reflect the senior status and judicial experience of the Judges provided with the new commission.²³

The Senior Judges would be assigned up to one third of a normal judicial workload and be paid in proportion. Pay could be either by means of a fixed amount for part-time office, or on a sessional rate for work undertaken, depending on legal advice as to the impact of the Constitution.

This proposal has the benefit of enabling suitably qualified Judges to provide flexibility in the management of dockets and be responsive to the needs of the Court in particular registries as those needs arise. The proposal would, however, require examination from a constitutional perspective such as whether or not there is a requirement that judicial office is, by its nature, full-time, and whether or not the proposal would likely offend the constitutional prohibition on diminishing remuneration during office.²⁴ There is scope for part-time appointments under the *Constitution*, by virtue of the fact that multiple commissions may be held by a Judge

²² *Australian Constitution* s 128.

²³ The title “Senior Judge” is one with which Australian family law is familiar, it having been incorporated into s 22 & s 23 of the *Family Law Act 1975* (Cth). Its use in connection with a senior semi-retired federal Judge is supported by the practice of the United State Federal Court system.

²⁴ Prohibited by virtue of s 72(iii) of the *Australian Constitution*.

and by the obvious practical reality that each commission cannot be exercised in a full-time capacity.

Appointments to the FMC may be made on a part-time basis where that is specified in the commission.²⁵ The office of Chief Federal Magistrate is held on a full-time basis.²⁶

- *Acting judicial appointments*

It is noted that the States and Territories are capable of supplementing their judicial work force through the use of acting judicial appointments. There cannot be an acting appointment to a federal court due to the prohibition in the *Constitution* against the diminution of judicial remuneration during office.²⁷ It is further noted that changes to enable acting appointments would require alteration to s 72 of the *Constitution*.²⁸

The Governing Council of the Judicial Conference of Australia is developing a paper regarding the appointment of acting judges across different Courts in Australia. It is understood that the paper will canvass such issues as: the history of any acting appointments to different Courts, where such appointments have been made from (e.g. other judicial officers or from the Bar), what powers Commonwealth/State/Territory Attorneys-General have to appoint and terminate the appointment of Judges and the impact of acting appointments upon the principle of judicial independence (if any). The paper should identify that the federal courts are in a different position from the courts in the states in that there is a view that there is a constitutional impediment to appointing acting Judges, and that without a change to the *Constitution* such appointments would not be possible. However, the above proposal in relation to part-time appointments to the Family Court may serve to circumvent some of these constitutional impediments.

(c) Jurisdictional issues, for example, the interface between the federal and state judicial system

²⁵ *Federal Magistrates Act 1999* (Cth) Schedule 1 Clause 1(6).

²⁶ *Federal Magistrates Act 1999* (Cth) Schedule 1 Clause 1(5).

²⁷ *Australian Constitution* s 72(iii).

²⁸ *Australian Constitution* s 128.

It is recognised that jurisdictional issues, arising from the division between federal and state judicial systems have served to inhibit the ability of the Family Law Courts to deal effectively with some matters such as child welfare and child protection in an appropriately holistic way. Jurisdictional issues in these areas are not new or groundbreaking but create inefficiencies for litigants, the Courts, relevant government agencies, taxpayers and the public at large. Further, the inability to resolve such jurisdictional issues serves only to generate hostility towards organisations like the Family Law Courts, which, in turn has far reaching consequences for an accessible justice system. These issues require serious consideration by appropriate bodies such as the Council of Australian Governments and the Standing Committee of Attorneys-General.

In 2003, the Attorney-General's Department identified the desirability for uniformity of laws, particularly in the area of family law, in its *Federal Civil Justice System Strategy Paper*.²⁹

The jurisdictional overlap in the area of child welfare and child protection across Australia serves to demonstrate the highly problematic issues faced by the Family Law Courts, such as the lack of power to compel State child welfare authorities to be involved in Family Law Court proceedings.³⁰ These issues have been noted by the Family Court over many years.³¹

The *Family Law Act 1975* (Cth) relevantly provides in s 69ZK that State child welfare laws are not affected by the Family Law Courts' jurisdiction. This means that the Family Law Courts have no power to make an order under the *Family Law Act 1975* (Cth) (except as specified under Part VII) in relation to a child who is under the care, however described, of a person under a State child welfare law, except where the order is expressed to come into effect when the child ceases to be under that care,³² or in certain other limited circumstances.³³ The Family Law Courts do, however, have

²⁹ Attorney-General's Department, *Federal Civil Justice System Strategy* (2003) 60.

³⁰ See Fiona Kelly & Belinda Fehlberg, 'Australia's fragmented Family Law system: jurisdictional overlap in the area of child protection' (2000) 14 *Australian Journal of Family Law* 211, .

³¹ See, for example, *Re Karen & Rita* (1995) FLC 92-632, 82-353 (Nicholson CJ).

³² *Family Law Act 1975* (Cth) s 69ZK(1)(a).

³³ See *Family Law Act 1975* (Cth) s 69ZK(1)(b) regarding proceedings relating a child in which the written consent of a state or territory child welfare officer has been obtained.

the power to make an order for a State or Territory child welfare authority to provide the Court with documents or information specified in an Order in relation to child proceedings.³⁴

More recently, in his address to the 4th World Congress on Family Law and Children's Rights, former Justice of the Family Court, the Hon. Tim Carmody SC, commented on the problems of inadequate child welfare protection in Australia. His Honour's observations neatly summarise the jurisdictional issues facing the Family Court, namely:³⁵

- there is no national child protection agency;
- the Family Court does not have an investigative role or capacity in their own right;
- the Family Court has to rely on relevant state and territory authorities to carry out necessary enquiries into child abuse notifications;
- the ability to verify whether reports about child abuse notifications are examined or actioned is limited and subject to the resourcing capabilities of state authorities; and
- state/territory child welfare authorities rarely intervene in Family Law proceedings despite the fact it is open for them to do so (those authorities cannot be forced to intervene).

It is not part of this submission though that the Family Court or the FMC or Courts with similar jurisdiction should have investigative powers. It is not the purpose of such Courts, nor is it appropriate for a Court to pursue an administrative function after the centuries of struggle to maintain the Separation of Powers. Recently, Chief Justice Bryant said:³⁶

³⁴ *Family Law Act 1975* (Cth) s 69ZW(1).

³⁵ The Hon. Tim Carmody SC, 'Removing obstructions to justice in Family Court sexual abuse cases' (Paper presented to the 4th World Congress on Family Law and Children's Rights, Cape Town, South Africa, 20 – 23 March 2005).

³⁶ The Hon. Diana Bryant, Chief Justice of the Family Court, *Family violence, Mental Health and Risk Assessment in the Family Law System*, paper presented at the Queensland University of Technology Public Lecture Series, 21 April 2009, p. 10.

It also needs to be understood that family courts are not forensic bodies. They do not have an independent investigatory capacity or role when violence or abuse is alleged. This is made explicit in New Zealand's Care of Children Act 2004 (NZ) and a similar provision might be a useful edition to the Family Law Act 1975 (Cth). Family courts are reliant upon other agencies, particularly child welfare departments and police, to undertake investigations into matters that may be relevant to the proceedings before it. And although the Court can make directions as to the filing of material and can issue subpoenas compelling the production of documents, it cannot order state agencies to undertake inquiries into particular matters. It is hardly an ideal situation but in the absence of the Commonwealth assuming responsibility for child protection from the states, that will continue to be the reality.

Chief Justice Bryant also recently suggested that the Family Court should be given additional powers vis-à-vis child welfare protection. Chief Justice Bryant stated:³⁷

...there is a real benefit in giving the Family Court some greater powers so that you can require intervention, and which would also enable the court in some cases to make an order to put a child into care when the options before the court were otherwise unsatisfactory.

It is understood that the Attorney-General is considering Chief Justice Bryant's suggestions as part of a range of options to improve child welfare protection nationally. However, as child protection is a traditional legislative area of the States, it is acknowledged that there would be constitutional impediments to be overcome in order for any additional powers regarding child protection to be conferred on the Family Law Courts.

- *New Commonwealth de facto property regime*

The importance and need for national uniformity and consistency in family law is evident in the recent amendments made to give the Family Law Court's jurisdiction over de facto property matters. Changes to the *Family Law Act 1975* (Cth) in this

³⁷ Carol Nader, 'Call for Family Court power to bypass parents – Chief justice says change needed', *The Age*, (Melbourne), 25 March 2009, 3.

area are a result of referrals from the majority of the States to the Commonwealth of power to legislate in this area of the law. The Family Law Courts only have jurisdiction over de facto property matters in participating jurisdictions,³⁸ being all States and Territories except for South Australian and Western Australia – the only two States not to refer their power in this area.

As a consequence of non-referral, persons in a de facto relationship who are ordinarily resident in South Australia will not be able to apply to the Family Law Courts for relief. Western Australia, having its own Family Court with federal jurisdiction, has jurisdiction over de facto property matters. However, the Family Court of Western Australia cannot make a superannuation splitting order in these matters, and that is a significant problem. These examples demonstrate how de facto couples in both jurisdictions may be at a disadvantage by virtue of the failure to refer power. It is noted that the Committee has considered these issues in more detail in its report of August 2008 on the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* at [3.148].

(d) The judicial complaints handling system

It is acknowledged that complaints about judicial officers from the public may warrant particularly serious examination, and in certain circumstances procedures leading to the termination of commission under s 72 of the *Constitution* may need to be activated.

- *The Family Court's judicial complaints policy*

The Family Court has implemented a judicial complaints handling policy that is readily available to the public on the Family Court website or upon request to individuals.

The Family Court takes seriously complaints about judicial officers or about the administration of the Court and the conduct of its staff. The policy does acknowledge

³⁸ *Family Law Act 1975* (Cth) s 90SD.

the importance of the public providing feedback about judicial conduct so that the Chief Justice and the judge concerned may deal with the complaint appropriately.³⁹

Family law, by its very nature, generates unhappiness and discontent amongst those who are involved in its processes. Certainly not all litigants feel satisfied with the outcome of proceedings. Because of the highly personal and emotional nature of family law litigation the parties are not necessarily able to satisfactorily comprehend the way in which the processes have worked and frequently their ability to make rational decisions is impeded. This situation is aggravated where the litigant is self-represented.

The Deputy Chief Justice, on behalf of the Chief Justice, has primary responsibility for the management of complaints against judicial officers and is assisted in the consideration and investigation of the complaints by a Judicial Complaints Adviser (a legally qualified Registrar of the Family Court). The first step in the process is for an assessment to be made of the complaint to ensure that it is about the conduct of the judicial officer, rather than the result of a judicial decision or a matter in proceedings which might be raised as a ground of appeal.⁴⁰ Care is taken to ensure that if the complaint is primarily about the result of a judicial decision the complainant is advised immediately about his or her rights of appeal.

Many complainants wrongly believe that the Chief Justice can interfere and overturn the decision of a Trial Judge independently of the appeal system. Such instances need to be identified quickly and the complainant advised of his or her appeal rights under the *Family Law Act 1975* (Cth).

Once the nature of the complaint has been identified, an appropriate initial response acknowledging the complaint is provided as soon as practicable. If the complaint pertains to conduct of a judicial officer, a detailed consideration of the proceedings

³⁹ Family Court of Australia, *Family Court Judicial Complaints Procedure*, Family Court of Australia website, <http://www.familycourt.gov.au/wps/wcm/resources/file/eb20ea0fc01d83e/Judicial_Complaints_Procedure_June_08.pdf> as at 24 April 2009.

⁴⁰ Ibid.

may be undertaken. This may involve an examination of the transcript or a review of the available audio of the proceedings.

A detailed and comprehensive reply is then prepared by the Judicial Complaints Adviser, and is reviewed and settled by the Deputy Chief Justice. In certain circumstances, the judge concerned will be sent a copy of the complaint by the Deputy Chief Justice and invited to respond should the Judge wish.

Depending on the focus of the complaint, the response may also provide explanation about such matters like:

- the manner in which judicial appointments are made;
- the doctrine of the separation of powers and the role of the Judiciary in that context;
- the oath or affirmation a Judge is required to take before the Chief Justice of the Family Court (or another Judge);⁴¹
- the professional training or experience of Judges of the Court;
- the power of the Court to make decisions when an application is made to the Court, based on findings of fact pertaining to relevant evidence presented to the Court; or
- the ability of individuals to request Judges disqualify themselves (through the filing of an appropriate application) because of a real possibility of biased or prejudiced mindset being brought by the Judge to the determination of an application, or that there might be a conflict of interest.

Complaints about perceived administrative deficiencies may be made through the Family Court's complaint process and will be investigated and dealt with accordingly. Complaints about the delay in the delivery of judgments, by protocol, are made through the relevant State or Territory Law Society or Bar Association. This ensures that anonymity for the person enquiring is maintained and that any perception that there might be prejudice against that person in the construction and delivery of the judgment is obviated.

⁴¹ *Family Law Act 1975* (Cth) s 26.

Importantly, if a complaint might have an adverse effect on the disposition of the matter which is currently before the Court, a response to the complaint may be deferred until after the final determination of the matter. The complainant would ordinarily be advised of this course of action.

- *The FMC's judicial complaints handling policy*

A similar policy to the Family Court exists for the FMC for complaints about judicial officers. The Chief Federal Magistrate is assisted by the Principal Registrar of the FMC in relation to consideration and investigation of such complaints. A copy of *Judicial Complaints Procedure* is available on the FMC's website.⁴²

- *The Family Law Courts' general feedback complaints policies*

Complaints about Court proceedings are considered under the Family Law Courts' respective feedback and complaints policies (the Family Court's *Feedback and Complaints Policy* and the FMC's *Complaints Policy*). These policies explain what action an individual may take in relation to perceived administrative failures. Complainants who are dissatisfied with the Family Court's response in relation to administrative issues may seek an internal review within the Family Court. A copy of the *Feedback and Complaints Policy* and the FMC's policy are available on the Family Court⁴³ and FMC⁴⁴ websites.

Chief Justice Bryant and Chief Federal Magistrate Pascoe have recently proposed the possibility of developing a joint complaints oversight committee between the two Courts for the purposes of providing a second tier of oversight for complaints made against judicial officers.

⁴² Federal Magistrates Court of Australia, *Judicial Complaints Procedure*, Federal Magistrates Court of Australia Website, <<http://www.fmc.gov.au/html/complaints.htm>> as at 29 April 2009.

⁴³ Family Court of Australia, *Feedback and Complaints Policy*, Family Court of Australia Website, <<http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Feedback/Complaints+and+fee+back>> as at 20 April 2009.

⁴⁴ Above n 47.

Conclusion

Thank you for the opportunity to make a submission to the Committee's inquiry. The Family Court and Federal Magistrates Court await the release of the Committee's final report with interest.