

**Submission to Legal and Constitutional References Committee's Inquiry into Australia's Judicial
System and the Role of Judges**

Submission by Peter Faris QC

12 June 2009

1. I have been asked to make comment about the concept of a Judicial Commission to monitor the conduct of judges.
2. My qualifications to comment are as follows: I am a criminal barrister practicing in Melbourne and around Australia. I have done so for over 45 years. I have been a QC since 1986.
3. In my opinion, there should be a Federal Judicial Commission.
4. In my home State (Victoria) there is no such commission.
5. In recent years there has been a move in many areas to make persons who are employed by the state (as judges are) more accountable for their conduct during their employment.
6. As well as this, lawyers in practice are subject to rigorous controls in the public interest.
7. I believe that both the taxpayer and public interest would be best served if the type of controls exercised over lawyers and their conduct be extended to judges. After all, they are lawyers and were once practitioners subject to those controls.
8. As things stand, there is no satisfactory system for making complaints against Federal judges (or for that matter, Victorian judicial officers). It is very difficult for lawyers to do so for fear that, consciously or unconsciously, they will be "punished" or suffer future prejudice from the judge in question or his colleagues. Lawyers are basically conservative people and do

not feel free to complain about the behaviour of a judge in court. These are the sort of problems that the “whistle-blower” legislation was introduced to deal with in other areas.

9. When I have had serious concerns about the conduct of a judge, I have resolved the matter by approaching the bar association who, in turn, may speak informally to the Chief Justice or to the judge himself. This is no substitute for a proper formal complaint. It is also not really available to members of the public. It has no transparency and accountability.

10. The main argument against a judicial commission is that (somehow) it attacks the “independence of judges”. In my opinion, it does nothing of the sort. Good judges would be the first to acknowledge that they should be held responsible for their conduct. I regard myself as an independent lawyer who is briefed to act in his client’s interests: the fact that I am supervised by the Legal Services Commission does not interfere with my independence.

This is true of all lawyers.

Peter Faris QC

Melbourne

12 June 2009