

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

Program: 1.4 Justice Services

Question No. BE16/013

Senator Heffernan asked the following question at the hearing on 5 May 2016:

Senator HEFFERNAN: Could the department confirm to me that the CEO of the Family Court is retiring on 30 June?

Mr Manning: Yes, that is our understanding.

Senator HEFFERNAN: I recently had a conversation, and I presume the CEO will not be appearing again before the estimates committee because we have run out of time, so he is in the clear. But he did confirm that to me after the last estimates, and I did put some questions on notice, which I believe have not come back—correct?—because you been so busy.

Mr Manning: I am not sure of the status of those questions on notice.

Senator HEFFERNAN: No, you have not. That does not come as a shock. But he did confirm to me that I was right—that there is no way of dealing with an issue of inappropriate behaviour, misconduct et cetera in the family jurisdiction of the court, which is the federal jurisdiction, outside of the courtroom. Could you confirm that.

Mr Manning: I would like to take it notice. Without the benefit of seeing what the court answered, which I assume would reflect the Chief Justice's opinion—

Senator HEFFERNAN: No, that was in a conversation. What I am trying to do, as you may or may not be aware, is set out the case for a federal judicial commission. I am about to give you some examples, and I am hoping to take this up with the Attorney, who has been delayed, when he gets here. I just want to give you an idea. There is no question—you can do all the research you like. There is no way of dealing with inappropriate behaviour outside of the courtroom in either the High Court or the Family Court, other than a criminal matter. It was well publicised recently that:

THE Chief Justice of the Family Court, Diana Bryant, has been forced to apologise to some of Australia's most senior judges after they stormed out of a dinner, hosted by her, which featured a sexually explicit comedy act.

Are you aware of that?

Mr Manning: I am not aware of that.

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

Complaints about the conduct of a federal judicial officer that are so serious as to warrant consideration of the removal of the judge from office would be a matter for the Parliament under section 72(ii) of the *Constitution*. The *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* provides a mechanism to assist the Parliament consider the removal from office of a judicial officer under the Constitution, on the grounds of proved misbehaviour or incapacity, by establishing a Parliamentary Commission.

In addition, under the *Courts Legislation Amendment (Judicial Complaints) Act 2012* the Chief Justices of the Family Court and the Federal Court and the Chief Judge of the Federal Circuit Court are empowered to consider, investigate, and otherwise handle complaints about judicial officers that are referred to them.