

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

**Program:** 1.4 Justice Services

**Question No. BE16/016**

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

Senator HEFFERNAN: Just one final one, Macca. There is a judge in New South Wales who used to pick up kids in the toilet opposite Marcellin College—this is in the police intelligence report, which includes video surveillance. He heard the case of a guy who sexually whatevered someone who was underage, found him guilty and gave him 'to the rising of the court' as a sentence.

Senator Brandis: I do not know anything about that.

Senator HEFFERNAN: I bloody well do. Thank you very much!

CHAIR: I am going to stop that there. Senator Brandis, perhaps on notice, could you highlight the difficulties of engaging an existing—and there is only one—commission to deal, on contract, with any of these rare occasions. From what Senator Heffernan has been saying for years now, he apparently has evidence. Some already established commission could do it. It is not a great cost and it would be rarely used, for the reasons you mention. And I agree, the federal judiciary has had an almost impeccable and unimpeachable record. Perhaps on notice, could you give us an answer on why that would not be possible?

Senator Brandis: I will take the question on notice, but I want to repeat the main rejoinder I have to Senator Heffernan and others who raise this issue. If people have evidence of a crime they should give that evidence to the police. If they are dissatisfied with the way in which the police are pursuing the matter, then there are vehicles and avenues to complain about the prosecution or the investigation of the matter by the police. It is very, very inappropriate, in my view, for politicians to act as prosecutors.

**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 Parliament already has a mechanism in place to consider serious complaints against judges through establishing a Parliamentary Commission pursuant to the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* which would investigate and report on the alleged misbehaviour or incapacity to the Parliament.