Law Council
OF AUSTRALIA

30 April 2012

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Ms Dennett,

COURTS LEGISLATION AMENDMENT (JUDICIAL COMPLAINTS) BILL 2012 AND JUDICIAL MISBEHAVIOUR AND INCAPACITY (PARLIAMENTARY COMMISSIONS) BILL 2012

The Law Council welcomes the opportunity to respond to the Senate's inquiry into the *Courts Legislation Amendment (Judicial Complaints) Bill 2012* and *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012*.

The Law Council has considered the proposed models for the establishment of:

a) a formal process for the handling of allegations of misbehaviour and incapacity raised against Commonwealth judicial officers; and

b) Parliamentary Commissions to investigate allegations of misbehaviour and incapacity.

The Law Council considers that the establishment of a formal process to investigate allegations of misbehaviour and incapacity raised against Federal judicial officers will assist in further enhancing the transparency and integrity of the judicial system.

The Law Council considers that the proposed models provide a suitable mechanism through which to consider and investigate allegations of misbehaviour and incapacity raised against Federal judicial officers.

The Law Council notes that the proposed models appear to be based, in part, on the Judicial Commission of New South Wales (JCNSW). The JCNSW is regarded as providing an effective mechanism through which the public can raise concerns about the ability and behaviour of judicial officers.

Unlike the JCNSW, it appears that a federal Conduct Committee will not have any permanent administrative structures. Rather it is anticipated that these will be addressed through the existing internal structures and resources of the court. The proposed

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

establishment of a Conduct Committee by a Head of Jurisdiction, in cases of serious allegations, also includes the participation of a non-judicial member. The Law Council observes that additional funding may be needed to ensure that there are adequate resources and administrative support to facilitate the functions of the Conduct Committee.

The model for appointment of the Presiding Member of a Parliamentary Commission seems appropriate and appears to address concerns previously raised by the Law Council, in relation to the potential politicisation of the role and the subsequent risk of undermining judicial independence.

The Law Council would be happy to provide any further assistance, as necessary.

If you have any further queries, please contact Ms Stasia Tan on or by email at

Yours sincerely,

Margery Nicoll
Acting Secretary-General