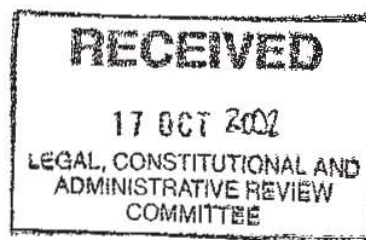


FROM CHIEF JUDGE P.M. WOLFE

CHAMBERS OF THE CHIEF JUDGE  
DISTRICT COURT  
BRISBANE  
QLD 4000

11 October 2002

K Struthers MP  
Chairperson  
Legal, Constitutional and Administrative  
Review Committee  
Legislative Assembly of Queensland  
Parliament House  
George Street  
BRISBANE Q 4000



Dear Ms Struthers,

**Re: Issues of Constitutional Reform**

I have consulted with the Judges of the District Court of Queensland about your Committee's review.

The judges of the District Court make the following submission in respect of issues raised and recommendations made by your Committee.

You sought our submissions as to which parts of the Constitution should be entrenched and how any such entrenchment should be effected. The following submissions address the matters raised in Part 3 of Report No. 36 of the Legal, Constitutional and Administrative Review Committee, and those proposals of the Committee which are deemed relevant to the District Court of Queensland.

### **Judicial Independence**

#### Recommendation 28

The District Court supports Recommendation 28, regarding the express recognition of the principle of judicial independence through the inclusion of a provision in the *Constitution of Queensland 2001* in the same terms as those recommended. Such a statement of principle should be a referendum entrenched provision.

#### Committee Proposal 15

S.57 of the *Constitution of Queensland 2001* deals with the Supreme and District Courts. Currently, this provision is not entrenched. The District Court supports the referendum entrenchment of this provision in its entirety. However, the Committee recommends that only the Supreme Court should be referendum entrenched and the District Court parliamentary entrenched. This distinction is founded on the notion that referendum entrenching the District Court might unnecessarily restrict the capacity of future governments to modify the structure of the court system.

The judiciary is one of the three arms of government and, as such, is an integral part of the State's constitutional system. Consistent with the recommendations of the QCRC, the District Court should be afforded the same protection in relation to appointment, tenure and removal of judicial officers as the Supreme Court. The superior jurisdiction of the Supreme Court is recognised pursuant to s.58, which should also be referendum entrenched.

### **Review of Certain Matters Relating to the Judiciary**

#### Recommendation 29

The District Court supports the undertaking of a comprehensive review in relation to paragraphs (a) and (b) of this recommendation (the matters which affect the higher courts) before finalising the current process of constitutional reform.

### **Form of Inquiry into Certain Matters Relating to the Judiciary**

#### Recommendation 30

The Court endorses the Committee's Recommendation 30 as to the form and constitution of such inquiry, subject to the commission being led by the serving Chief Justice of Queensland.

### **Acting Judges**

#### Recommendation 31

Subject to the following, the District Court supports Recommendation 31. The Judges of the District Court urge that the qualifications for appointment as an Acting Judge be in similar terms for those for an Acting Supreme Court Judge. Thus, for this Court, a person who is or has been a Judge of the Supreme, District or County Court of another state or territory or of the Federal Court of Australia should be eligible for appointment as an Acting Judge. This would reflect similar provisions that apply to the New South Wales District Court, which also allows for the acting appointment of retired judges. A copy of the relevant section is enclosed. Some of the Judges of this Court also request that the Committee investigate the efficacy of the practice in some other states of retired judges being appointed as acting judges from time to time.

The appointment of a judge of a court of coordinate jurisdiction as an acting judge would accommodate the possibility that litigation could arise in Queensland where, because of the individual concerned, it was inappropriate for a Queensland judge to deal with the matter. This provision could be inserted in the Constitution to accommodate that possibility, or provision could be made in the Constitution to accommodate the passing of special legislation for the appointment of such acting judges.

### **Compulsory Retirement**

#### Recommendation 32

The District Court supports the compulsory retirement of judicial officers at age 70. It is important that this provision be entrenched in the same way as provisions which guarantee judicial tenure.

## Removal of Judges from Office

### Recommendation 33

The District Court does not wish to express any opinion in relation to Recommendation 33.

## Judicial Remuneration

There is one further issue, which has not been the subject of any recommendation or proposal, which the District Court wishes to raise for consideration by the Committee. Section 62(2) of the *Constitution of Queensland 2001* provides that the amount of a judge's salary may not be decreased. This is an important safeguard for judicial independence. As presently expressed the provision is inadequate in that there are other components of a judge's remuneration package apart from salary. As the law presently stands, there would be much that the Executive (or the Legislature) could do, either generally or in a particular case, to mark disapproval of either judges generally or a particular judge, by cutting back on aspects of judicial entitlements without actually reducing the salary figure.

The equivalent provision in the Commonwealth Constitution, s.72(iii), provides that in the case of a justice of the High Court and other Federal courts their "remuneration shall not be diminished during their continuance in office". The judges of the District Court would urge that s.62(2) be amended to substitute for the word 'salary', the word 'remuneration', in order to give proper effect to the principle of judicial independence. There is no reason why the constitutional protection afforded to Queensland judges should be less than that provided to Commonwealth judges.

Yours sincerely,



Chief Judge P M Wolfe





## New South Wales Consolidated Acts

[\[Index\]](#) [\[Table\]](#) [\[Search\]](#) [\[Search this Act\]](#) [\[Notes\]](#) [\[Noteup\]](#) [\[Previous\]](#) [\[Next\]](#) [\[Download\]](#) [\[Help\]](#)

---

### DISTRICT COURT ACT 1973 - SECT 18

#### Acting Judges

(1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding 12 months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed, for the time and subject to the conditions or limitations specified in the person's commission, shall have the powers and authorities and fulfil the duties of the Judge and shall, for the purposes of this or any other Act (other than the *Statutory and Other Offices Remuneration Act 1975*), be deemed to be a Judge.

(3A) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

(3B) The person so appointed is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*. The remuneration payable to such a person is to be paid to the person so long as he or she continues to hold office.

(4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission or the Industrial Relations Commission) may be so appointed even though the retired Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

(4A) A person who is or has been a judge of the Federal Court of Australia or of the Supreme Court, District Court or County Court of another State or Territory may be so appointed even though that person has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

(5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as prior judicial service (within the meaning of section 8 of the *Judges' Pensions Act 1953*) by the person.

(6) A person appointed under this section may be appointed under the title of Acting Judge or Associate Judge.