



OFFICE OF THE CHIEF MAGISTRATE
CENTRAL COURTS BUILDING
BRISBANE

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COMMITTEE

DMF:JFP

31 May 2002

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

Dear Ms Struthers

ISSUES OF CONSTITUTIONAL REFORM

Please find enclosed a Submission to the Legal Constitutional and Administrative Review Committee in relation to the Issues Paper – April 2002 – “The Queensland Constitution: Specific Content Issues”.

Thank you for the opportunity for the Queensland Magistracy to contribute to the debate on this important issue. As you will no doubt glean from the content of the submission, it is strongly felt by Queensland Magistrates that we, as judicial officers, in the busiest court in Queensland, should be afforded the same protection under the Constitution as is enjoyed by the higher court judges.

I hope to be able to attend the seminar on Wednesday night at Parliament House when the topics as outlined in the Issues Paper will be further discussed.

I have enclosed for your interest is a copy of our first Annual Report.

Yours sincerely

(DM FINGLETON)
CHIEF MAGISTRATE

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SUBMISSION TO THE LEGAL CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

CONSTITUTION OF QUEENSLAND 2001

The Magistracy (14.3.3)

1. Underpinning this submission are the following propositions:
 - that magistrates are today widely regarded as independent judicial officers;
 - it is therefore equitable and appropriate to put them on a similar footing to superior courts judges;
 - expectations of independent and impartial adjudication apply equally to magistrates;
 - the jurisdiction of magistrates is constantly enlarging and magistrates are performing increasingly complex work;
 - a high percentage of cases dealt with in Australia are resolved by magistrates, and most of the public who encounter the court system do so through the Magistrates Courts;
 - qualification for appointment as a magistrate are the same as the qualifications for appointment as a judge (although this has not always been the case, and some current magistrates were not required to possess these qualifications to be appointed);
 - increased status and working conditions would attract more barristers and solicitors of high quality and ability.

Independent judicial officers

2. In 1991 the Queensland Parliament passed the *Stipendiary Magistrates Act*. The preamble to the Act reads:

An Act relating to the office of Stipendiary Magistrates, the judicial independence of the magistracy, and for related purposes (underlining added).
3. John Lowndes SM, (Northern Territory) recently wrote a two-part article in the Australian Law Journal entitled *The Australian Magistracy: from Justices of the Peace to Judges and Beyond* (74 ALJ August 2000 at p. 509 and September 2000 at p. 592). He writes: *The modern Australian magistracy has its origins in the ancient English office of Justice of the Peace, which was transported to Australia during the early years of settlement.* (p. 509). After outlining the development of the magistracy in Australia, Lowndes concluded that there has emerged *a modern judicially independent magistracy whose members are true judicial officers, deserving of the title of "judges".* (p. 510).

4. Lowndes quotes Justice J.B. Thomas (as he then was) who had written: *I take it to be established that the magistracy is here to stay as a primary and clearly identifiable sector of the Australian judiciary.* (p. 594 – underlining added). As quoted by Lowndes, Thomas went on to write, referring to magistrates: *(they) pursue the same ideal, the dispensing of justice according to law....(they) have the same basic duties and procedures. There can be no doubt that (they) must all respond to a common ethical perception and regulate (their) activities accordingly.* (p. 595).
5. In February 2000, the Queensland Constitutional Review Commission delivered a report from which, it seems, certain reforms relating to the Queensland Constitution were drawn and included in the *Constitution of Queensland 2001*. The Constitution now gives constitutional protection to both the Supreme and District Courts, but not the Magistrates Court. At p.62 of its Report, the Commission recommended that *the District Court be brought under the same protection as is afforded the Supreme Court because the level of its existing jurisdiction has the same potential to bring its judges into conflict with the other two arms of government and attract their enmity. Those considerations do not, it is thought, apply to a comparable extent or at all, to the magistracy.*
6. With respect, it is submitted that the above proposition does not reflect the reality of the situation. For example, magistrates hear cases involving constitutional issues; can at committal dismiss the most serious of charges; manage coronial enquires having serious and far reaching consequences; are required to consider very large penalties in, say, instances of environmental damage; sit on matters pertaining to alleged offences by politicians. (See attached for some recent examples of some such matters as reported in the media).

Further decisions under the Workcover legislation can result in findings against the interests of government. In Small Claims Tribunal matters, the Housing Commission is often the relevant landlord. The Queensland government is often a party in quasi-criminal prosecutions. Whilst the jurisdiction of magistrates is generally at a lower level, instances of possible conflict with government are still possible. It is considered that the magistracy should be treated constitutionally the same as the superior courts.

7. In any event, such an argument as is quoted in para. 5 above cannot, it is submitted, be used to disqualify magistrates from being put on a similar footing to the judges. The equitable and proper approach is that as independent judicial officers, magistrates should enjoy similar levels of legislative support as do judges. At present, whilst the *Public Service Management and Employment Act 1988* does not apply to the appointment of a magistrate, once appointed and salary aside, magistrates are subject to many of the same conditions as those of public servants, e.g, entitlement to superannuation on retirement (but not a pension), (no jurisprudential or Expense of Office allowances are payable); four week's annual leave only per year; Long Service Leave and Sick Leave are available.

8. It should be noted that the generic term "judicial officers" is most commonly applied to judges and magistrates in Australia today. Such organisations as the Australian Institute of Judicial Administration and the Judicial Conference of Australia treat judges and magistrates equally in their membership requirements and for all other purposes within those organisations

Compulsory Retirement (14.5)

9. It is pointed out that judicially there is no requirement to retire at 65. The recently created Federal Magistracy has, as in the case of Federal and High Court judges, a retirement age of 70, as do the higher courts in Queensland. Again, it is submitted that it is equitable and appropriate to put the magistracy in a similar position.

Removal from office (14.6)

10. The Magistrates Act (1991) defines procedures in relation to the appointment of Acting Magistrates and removal from office of Magistrates. Therefore, no comment of relevance to the Magistracy can be made. However, if Magistrates' inclusion in the Constitution has ramifications for putting the Magistracy on an equal footing with the higher courts, then the issue can be discussed. The appointment of Magistrates follows much the same system as for the appointment of judges, i.e, consultation by the Attorney-General with relevant individuals and organisations and with the Chief Magistrate of the day.

Courts Governance

11. Given that the administration of, and resources for, the Court are dependent upon government funding, the Magistrates Court does not enjoy true independence from government as opposed to situations in other parts of Australia, e.g., South Australia where the courts are self-governed. This could lead to an impression of courts (including the Magistrates Court) being beholden to government for their funding and any implications that might flow from that.

Issues

With reference to the issues raised on page 35 of the Issues Paper, it is suggested that it is appropriate, in relation to paragraphs (a) (b) and (c), that your Committee is the appropriate body to conduct the relevant reviews.

**DM Fingleton
Chief Magistrate
31 May 2002**

CM 28 502

Hanson to face trial on fraud

Ben Dorries

A BRISBANE magistrate crashed Pauline Hanson's 48th birthday party yesterday, ordering her to stand trial on a count of fraudulently registering One Nation as a political party in 1997.

Dressed in a royal purple tunic and with a bouquet of flowers by her side, Hanson stood stony-faced as she was also ordered to face two charges of dishonestly claiming electoral funds totalling almost \$500,000 for the 1998 state election.

When asked if she had anything to say in court, she vehemently protested her innocence and thanked her supporters.

"I registered the party not for any personal gain but to give the people of Queensland another choice," she said.

"I achieved what I set out to do... I am innocent and I will fight."

Former party director David Ettridge was committed to stand trial on a charge of gaining a benefit from the fraudulent registration of the party.

Under the terms of his bail, Ettridge was told not to make any public comment on the case.

It had been revealed he had compiled an online commentary on the case for supporters.

During the hearing, the court was told that members of One Nation's support movement may have been deceived into thinking they were members of a political party.

Magistrate Michael Halliday said he had heard from 50 witnesses in the case.



BIRTHDAY on Pauline Hanson leaves court.

"The most telling evidence is that contained in video film which records and reveals the words of Mr Ettridge that the membership (of One Nation) is contained in the support movement," he said.

Mr Halliday said it was a question for a jury whether Hanson and Ettridge were aware of the falsity of that representation.

The two, who had pleaded not guilty, had submitted they had no case to answer.

Hanson praised Mr Halliday for his conduct during the four-week hearing.

"Thank you very much for being very fair," she said.

Hanson and Ettridge were committed to stand trial in the next sittings of the Brisbane District Court.

Hanson will also face court next month on a further charge of illegally withdrawing about \$25,000 from her fighting fund.

Outside court, Hanson urged Queenslanders to sit in judgment of her at her trial.

"The Australian people will have an opportunity to listen to the evidence that will be put forward and hopefully they will see that I am innocent," she said.

Coronial call on pool-fence laws

Ben Doerries and Rosemary Odgers

THOUSANDS of pool owners could be forced to build safety fences following an inquest into a toddler's drowning. Jaiden Kingston, 2, drowned in the family pool while his father slept at Thornlands, near Brisbane, last year. An inquest yesterday closed all pools be surrounded by isolation fencing. Under existing legislation,

only pools built since 1991 require a separate isolation safety fence detached from the family home.

Pools built before then were excluded from the tough laws, provided house doors were self-closing and could be locked. The inquest was told Jaiden's father Ronald fell asleep in a room adjacent to the pool and his son drowned as the father slept on January 1 last year. Police had sought manslaughter charges against Mr Kingston but Brisbane cor-

oner Christine Clements ruled there was no evidence to put him on trial.

In her findings, Ms Clements said the pool was not exclusively fenced from the house but was legal as it had been built before the tough legislation came into force. She said evidence from council authorities emphasised that uniform pool fencing to completely isolate swimming pools was imperative to protect children and she urged the State Government to act.

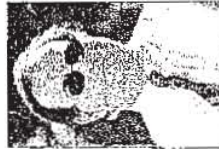
"I recommend that the Queensland Parliament pass laws requiring all swimming pools, irrespective of the date of construction of the pool or house, to comply with current legislative requirements," Ms Clements said.

Local Government Minister Nita Cunningham said child safety was paramount and the Government would examine the coroner's recommendation to determine if amendments to the legislation were required. Local Government Associ-

ation spokesman Greg Hoffman said the proposed law change could affect "tens of thousands" of Queenslanders.

"Local governments would be called upon to play their part but ultimately the costs would have to be passed on to the property owners," Mr Hoffman said. "It's obviously an issue for the State Government to consider."

Swimming coach and pool safety advocate Laurie Lawrence said yesterday that retrospective legislation to en-



RONALD Kingston ... fell asleep

sure uniform pool fencing was long overdue.

He said it was "silly" that anyone who built a new pool since 1991 had to comply with fence legislation but those who had a pool earlier than that didn't have to do anything. "Everyone has a responsibility to ensure kids are safe in pools and this would certainly be a step in the right direction," National Party spokesman Howard Hobbs said. The Opposition would support any

measures which prevented children from drowning.

"In an environment of increasing litigation and spiralling insurance premiums, it's also important for homeowners and accommodation institutions to do whatever they can to protect themselves from liability," Mr Hobbs said. "It's now 10 years since the legislation was introduced establishing the isolation fence obligation and in the current environment it makes sense to extend it to all pools."