



Queensland Law Society Inc

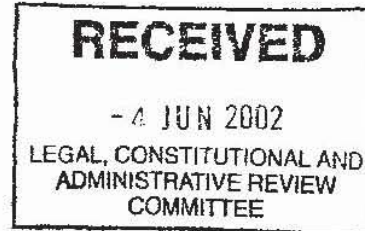
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30 May 2002

The Research Director
Legal Constitutional & Administrative
Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Newton

RE: ISSUES OF CONSTITUTIONAL REFORM

Thank you for the opportunity to comment on the Legal Constitutional and Administrative Review Committee's Discussion Paper on the Queensland Constitution and Constitutional Reform.

Of particular interest to the Queensland Law Society are those proposed areas of constitutional reform dealing with the judiciary.

The Society agrees that the independence of the judiciary is a fundamental element to the maintenance of the rule of law and the protection of individuals' rights in Queensland, and we are of the firm view that a separate and independent judiciary should be recognised in the Queensland Constitution.

Chapter 3 of the Commonwealth Constitution provides that the appointment, tenure, removal and remuneration of judicial officers at the Federal level must be protected from control or influence by the Executive or the legislature so as to ensure that independence is maintained. The judiciary in Queensland should be assured of enjoying the same protection in relation to tenure and remuneration as their Federal counterparts, thus maintaining public confidence in the impartiality of the judiciary in Queensland.

We note that the Queensland Constitutional Review Commission in its report on the possible reform and the changes to the Acts and laws that relate to the Queensland Constitution (February 2000) recommends at Page 62 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 potential to bring its Judges into conflict with the other two arms of Government and attract their enmity. This is entirely appropriate, but we would argue, does not go far enough.

The Society submits that Magistrates should also be afforded constitutional recognition and protection in relation to their independence, similar to that currently enjoyed by the Supreme Court Judges and proposed for District Court Judges under the Queensland Constitution 2001.

The arguments put forward in favour of elevating Magistrates to the status of Judges taken from the article written by Lowndes J SM entitled *The Australian Magistracy: from Justices of the Peace to Judges and Beyond - Part II* are entirely in line with the current thinking of the Queensland Law Society. Further, that Magistrates should be included as the bottom rung of a three tier judiciary has been recognised in other jurisdictions. See for example, the Tasmanian *Magistrates Court Act 1987* Section 10A and Section 14 of the Victorian *Magistrates Court Act 1989*. Both these jurisdictions grant Magistrates the same immunities as Judges of the Supreme Court of those States when performing his or her duties as a Magistrate. Similarly, the New South Wales *Judicial Officers Act 1986* in Section 3 defines a Judicial Officer as "a Judge or a Magistrate".

There are of course a number of other factors which have contributed to the need to recognise the judicial independence of Queensland Magistrates. These are listed in Lowndes J SM's article (op sit) and are worth revisiting here:

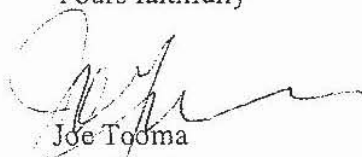
- The gradual severance of the Magistracy from the Executive arm of Government, that is, the Public Service;
- The emergence of a self consciousness on the part of a Magistracy as to the importance of the concept of judicial independence and its application to the Magistracy;
- The introduction of higher qualifications (that is legal) for appointment as a Magistrate and the appointment of legally qualified persons;
- The expanding jurisdiction of Magistrates by which necessity shed them of their administrative functions and diverted them into the performance of judicial functions;
- The public expectation that Magistrates will hear and determine cases in the same impartial and judicially independent way that Judges do.

The constitutional confirmation of the independence of the Magistracy and their inclusion in the judiciary of Queensland is not simply an exercise in status elevation. Rather, it is a necessary step in cementing the principle that the Magistrates Court is an integral and independent part of Queensland's judicial system.

The Queensland Law Society strongly supports the view that further consideration should be given to the constitutional recognition and protection of the independence of Queensland's judiciary, and that this consideration must include a review of the status of Queensland's magistracy.

The Queensland Law Society would welcome the opportunity to make a further, more detailed submission in relation to the status of Queensland's magistracy at a later date should that be appropriate. Further, the Society would be happy to assist the Committee with its review of any of the issues raised in so far as they affect the magistracy and the judiciary in Queensland.

Yours faithfully



Joe Tooma
President