

9 April 2009



Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Inquiry into Australia's Judicial System and the Role of Judges

I respond to the invitation to provide a submission to the Inquiry and offer the following comments in relation to the Terms of Reference and add some additional points of my own.

- a) **Procedures for appointment and method of termination of judges**
- Although the Constitution prescribes that judges are selected and appointed by the Governor-General in Council, 'in practice that means an appointment by Cabinet, generally on the recommendation of the Attorney-General'¹.
 - Despite any amendment to the Constitution requiring a referendum, the appointment process should be modified if the judiciary is to be more representative of the community it serves.
 - There should be wider input, including genuine consultation, as well as consideration of a 'judicial appointments commission' which could comprise, for example, community members, serving judges and representatives of Law Societies.
 - A more participatory system with meaningful selection criteria should result in a wider range of appointments, more transparency and increased public confidence in the appointment process itself.

¹ Sir Anthony Mason in RW Gotterson QC, 'The Appointment of Judges', Third Annual Colloquium of the Judicial Conference of Australia Inc., 6-8 November 1998, p 2.

b) Term of appointment, including the desirability of a compulsory retirement age and the merit of full-time, part-time or other arrangements

- Although the Constitution sets down a maximum age of 70 years for Justices, there should be **no** compulsory retirement age. The only consideration should be performance: able and willing to do the job.
- Appointments should have the flexibility of being either full-time or part-time, since the latter would allow more women, in particular, to act as judges.

c) Jurisdictional issues, for example, the interface between the federal and state judicial system

- A similar selection and operational process to that above should apply across Australia.

d) The judicial complaints handling system

- A system involving the Chief Justice and some senior independent panel members with a mixture of legal/non legal, somewhat akin to a Professional Conduct Board, should be established.

e) Other

- A carefully structured and operated process should be introduced whereby judges and magistrates interface at **infrequent** intervals with Members of Parliament, eg via an appropriate Parliamentary Panel.
- This process/forum would focus on issues such as the changing role of the courts *vis a vis* Parliament, public criticism of court outcomes.
 - The discourse would revolve round **general** aspects of deterrence, equity, justice, **not** discussion of individual cases.
- It should be possible to maintain the essential independence of the judiciary while, at the same time, discussing in an appropriate forum/committee important issues confronting the judicial system, such as the changing role of the courts.

Yours sincerely



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