

Toward judicial diversity

Why we need a judicial commission

I am proud of our solicitors whose intellectual rigour, technical, people and managerial skills, along with service to their communities, have led to their appointment to judicial positions.

But, there remains a disparity in the proportion of solicitors being appointed to judicial positions. Why is this a concern? Since 1938 both branches of the profession have enjoyed equal rights of appearance before the courts. In that time the solicitors' branch has seen a significant growth in advocacy and representation before all courts and tribunals in Queensland. Overall, solicitors now make the bulk of all appearances.

In addition, the diversity of our society is reflected in our numbers. With near 12,000 Queensland solicitors from a wide range of backgrounds, we are yet to see that diversity reflected in judicial appointments.

Solicitors are the integral nexus between the state, our courts and our communities in which they serve. The solicitors' branch of the profession provides extensive diversity across gender, culture and experience.

With this, I am confident our numbers on the bench can only increase and that a goal of judicial appointment ought to be a realistic aim for the career progression of a significant numbers of QLS members.

By way of example, former solicitor and now Senior Judge Administrator Justice Ann Lyons commenced her stellar judicial career in a number of tribunals before being appointed as the inaugural president of the Guardianship and Administration Tribunal in 2000. Then her Honour was appointed to the Supreme Court in 2006, and recently elevated to Senior Judge Administrator.

Justice David Thomas was a partner at Minter Ellison from 1981 until his appointment to the Supreme Court in 2013 and charged

with the stewardship of the Queensland Civil and Administrative Tribunal (QCAT) as its President from 2013 to 2016, at which time he was appointed as President of the Administrative Appeal Tribunal.

Current QCAT acting President Judge Suzanne Sheridan spent some 26 years at Minter Ellison as a solicitor, partner and consultant before being appointed as a judge of the District Court in 2014.

Other solicitors who transitioned directly to judicial office include Childrens Court Judge John Robertson, District Court Judge Ian Dearden and former QLS president Chief Magistrate Judge Ray Rinaudo, President of the Land Court Fleur Kingham, and Peta Stilgoe as member of the Land Court. There are also a number of magistrates, but nevertheless our numbers on the bench, in proportion, remain small.

There is simply no reason why more talented solicitors should not be recognised as worthy judicial candidates. This cannot be due to a lack of available talented solicitors. It is simply a mind shift that has not yet properly and rightfully taken hold since the legislation was implemented in 1938.

Much has been written about the qualities that make a good judge. Expertise, understanding and application of the law are fundamental. However, and importantly, the courts themselves have recognised that justice must be for the individual.

Solicitors are the nexus between our justice system and our rich and diverse community. Their deep understanding of the individual uniquely places them in the position of combining the necessary technical skills with an inherent cognizance of the facts and circumstances that see members of our community intersect with the justice system daily.

We could continue to speculate on why more appointments are not made to the bench from the solicitor's branch, or we could focus on improving the system and creating an environment which provides a level playing field while recognising and maintaining those



essential qualities. So, it is time that we looked more closely at the selection process for bearers of judicial office. It is for that reason that Queensland Law Society continues to advocate strenuously for a judicial commission for Queensland.

While this state has been very well served by its judiciary, past and present, not even the best long and esteemed profession can escape some avoidable hiccups. We consider a judicial commission is what a modern community requires to maintain public confidence in the administration of justice and the promotion of the separation of powers.

We will be advocating for such a commission in the lead-up to the next state election in our Call to Parties document as necessary to "enhance openness, transparency and independence in all processes surrounding the judicial system".

We see the role of such a commission as formulating a list for the appointment of judicial officers from which the Attorney-General would be required to choose, with any deviation from the list to be reported to Parliament.

The proposed commission would also address the reality of 'affinity bias'. In the field of human resources, there is acute awareness of this unconscious bias, which is when the recruiter will unconsciously favour a candidate who displays similar characteristics, whether they be ethnicity, schooling, religion or other traits.

While I believe those who select our judges have performed this role to the best of their ability, it makes sense to work towards removing affinity bias from the equation by implementing a judicial commission and judicial selection process that is structured, fair and transparent.

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