

## Cover Note

It is requested that this submission to the Inquiry into Australia's Judicial System and Judges not be posted on the Inquiry website until after the Committee have accepted it.

I am assuming that once the Committee have accepted this submission that it will have the benefit of full Parliamentary Privilege. If this assumption is not correct then I would request that this submission be kept confidential.



Submission to the Senate Legal and Constitutional Affairs Committee:  
Inquiry into Australia's Judicial System and the Role of Judges  
16 April 2009

Submitted By:



Dear Sir,

I welcome the opportunity to make this submission to the inquiry. The focus of this submission will be on section (d) of the Terms of Reference, which is the judicial complaints handling system. I would like to convey my personal experience with the judicial system and my dissatisfaction in not having recourse to an independent body where I could make a complaint.

I have been informed by The Hon C. Christian Porter MLA, the Attorney General in WA, of the possible establishment of a Judicial Commission in WA, which presumably would be similar to the Judicial Commission in NSW. I would like this Inquiry to make a recommendation that all Australian Jurisdictions establish Judicial Commissions to hear complaints and review the conduct of judicial officers.

I would like to convey my recent personal experience in the Supreme Court of Western Australia as an example of a situation where such a Judicial Commission would have been desirable and crucial in ensuring justice was served.

Background

The matter began in [redacted] involving my family company, [redacted] and the [redacted]. During the course of this dispute [redacted] was joined by two other parties and action was also taken against individual Councillors.

[redacted] purchased land, which had Ministerial approvals under the [redacted] to be re-zoned, on advice from the City's Town Planner. The council had openly supported the development of [redacted] on the land and worked with [redacted] in the planning stages of the development. However development was then delayed by the council for approximately two years as the City refused to approve the project.

[redacted] and two other parties brought an action against the City to recover damages incurred due to the conduct of the Council. One Councillor, [redacted] removed himself from all meetings involving this project because he believed the Council was acting illegally at this time.

[redacted] was unsuccessful in this action, which was heard before [redacted] in the Supreme Court. We wanted to appeal the decision. However, due to the conduct [redacted]

of our legal representatives, we were not able to so. This is another matter and has been handled by the Legal Practitioners Complaints Committee, which issued orders against both our solicitor and barrister. Our concern is, having been denied our opportunity to appeal the case, we do not have a similar recourse to make a complaint against

#### Complaint Against the Judge

I understand that the Inquiry cannot bring action against nor can it overrule his decision. However, I wish to tell you about his actions in this case as an example of why it is desirable to establish a Judicial Commission in each Australian jurisdiction to review the conduct of judicial officers.

Our complaint concerns the suspected personal relationship between and one of the Councillors sued by in relation to this matter, and their respective spouses.

before he was appointed to the bench of the had been a partner at along with In addition to this the and the ived two doors apart This is supported by property records and land titles.

and had both bought property in the There is approximately only a fifteen minute drive between the two properties.

The transcript of the trial, which records the interaction between and may indicate that a personal familiarity exists between the two of them. Transcripts of course are limited in the information they convey and it is not definitive, but I believe the transcripts further support the claim that had a personal or social relationship with

To my knowledge never disclosed these details to the court or the parties prior to hearing this case and, although these facts do not prove a personal or social relationship existed, there is certainly enough proximity and connection between the and the to raise suspicion. I believe a Judicial Commission would be able to review this matter and make a decision regarding conduct in this case. Although the decision may not be overturned, judicial officers would be held accountable and ensure that even the pretence of a conflict of interest would be disclosed.

#### Lack of Complaint or Review Board

Unsuccessful litigants are often frustrated by any decision which goes against them. In this case the issue is compounded by the possibility that the judge may have allowed his personal relationship with one of the parties to bias his decision.

If a Judicial Commission were available to review the conduct of judicial officers, this uncertainty could be clarified and litigants would know whether they had received a decision from an impartial judge.

The Judicial Commission would provide accountability and encourage judicial officers to act openly and disclose the extent of their relationships with people appearing in matters before them.

Although I recognise that the Inquiry cannot make a decision regarding the case in question, or the conduct of the judge, I hope that the situation is noted as one where an independent Judicial Commission would be invaluable to the provision of justice. I therefore urge the Inquiry to review the current system for handling complaints about the judicial system and recommend that each jurisdiction establish a Judicial Commission to hear complaints and review the conduct of judicial officers.

Yours faithfully,