

Appointment of Queen's Counsel

Following a request from the Chief Justice in April this year the Society sought the views of members on the Chief Justice's proposed protocol for the appointment of Queen's Counsel.

The replies received from members were very informative as they not only commented on the proposed protocol but in addition commented on whether the system of appointing Queen's Counsel should continue.

It was the view of the majority of those members who commented that the practice of appointing Queen's Counsel should be abolished.

It was also the view of the majority of those members that if the practice was to continue, acknowledgement should be made of the fact that the Northern Territory has a fused profession and appointments should be from the whole profession and not limited to members of the bar.

In the March 1994 Trade Practices Commission report on a study of the legal profession, the Commission made the following recommendations:-

- All States and Territories should withdraw from the official selection and endorsement of Queen's Counsel.
- Rules which continue the demarcation between senior barristers and juniors and the work each may perform should be removed.
- Where relevant, the courts, legal aid commissions and Bar Associations should amend those provisions in fee scales or professional rules which refer directly or indirectly to, the two-thirds rule and variants of it regarding the fees charged by juniors or senior barristers.
- All barristers should be able to advertise their fees, services, experience, qualifications, specialist fields of practice and other relevant information material, subject to the general prohibition of false, misleading and deceptive advertising.

The views expressed by members were mainly in accord with the above recommendations.

Subsequent to the request from the Chief Justice the then Attorney-General also sought the views of the Society and both were informed of the comments from members.

On 6 October 1995 the Attorney-General wrote to me enclosing a copy of his letter to the Chief Justice concerning the draft protocol for the appointment of Queen's Counsel and the following is a copy of that letter:-

*"The Hon. Chief Justice B F Martin AO MBE
Supreme Court of the Northern Territory
GPO Box 3946
DARWIN NT 0801*

Dear Chief Justice

I refer to your letter of 2 August 1995 and advise that the Government has now considered your draft "Protocol for Appointment of Queen's Counsel". The Government has also taken into account the views of stakeholders including the Law Society and the Bar Association in formulating its position.

In the main, the Government regards the matters set out in your draft protocol as an appropriate

statement of the proper obligations and responsibilities attached to this important office.

In keeping with initiatives being coordinated by the Council of Australian Governments at a national level on the application of competition policy to the legal profession, the Government has decided that the appointment of Queen's Counsel should be open to all legal practitioners as a recognition of general legal excellence and contribution to the community.

It is an important element of the COAG initiatives that the legal profession be fused and that as much as possible practitioners be free to practise in the manner that they choose. In view of the competitive advantages offered by the conferring of the title "Queen's Counsel", it is important that no section of the legal profession be disadvantaged. You would appreciate that if appointments as Queen's Counsel were to continue to be effectively confined to members of the Bar, this would disadvantage those advocates and practitioners who choose to conduct their practice other than as members of the Bar.

Accordingly, the Government has decided that any protocol for the appointment of Queen's Counsel should contain the following elements:

- (a) appointments to be at the discretion of Executive Council;*
- (b) appointments be open to all legal practitioners;*
- (c) applications for appointment be to the Chief Justice and the Attorney-General;*
- (d) the Chief Justice, at his option, to provide a recommendation to the Attorney-General based on consultations with:

 - (i) other judges;*
 - (ii) the Chief Magistrate;*
 - (iii) President of the Bar Association (NT);*
 - (iv) President of the Law Society (NT);*
 - (v) Chief Judge of the Federal Court;*
 - (vi) Chief Judge of the Family Court**
- (e) alternatively, the Attorney-General is authorised to make appropriate inquiries regarding the suitability of an applicant for appointment as Queen's Counsel and to provide a recommendation to the Executive Council;*
- (f) appointment by the Administrator to be upon the advice of Executive Council*

This Government firmly believes it desirable that the Chief Justice play a central role in the making of these appointments and I believe that the above protocol recognises and affirms that role. Accordingly, I look forward to working with you on the implementation of the protocol.

Yours sincerely

STEVE HATTON"

In my September 1995 column I introduced the new Member Services Officer Claire Manock. Claire will shortly be contacting many members seeking assistance in making "Balance" a more interesting journal and also requesting advice as to how member services can be improved. I know that you will all assist Claire in her endeavour.

Once again, if you have not yet joined the Society please do so as we need your support.