President's Column

Constitutional Convention and NPC

Steve Southwood, President

The Opening of the Legal Year was a great success in both Darwin and Alice Springs and I wish all members continued success during 1998. I would like to thank Justice Coldrey for his very fine and very entertaining speech and also thank Janet Neville and Julie Davis for the hard work in organising the Opening of the Legal year.

At its meeting on the 26th February 1998 the Law Society passed the following resolution (among others).:

1. The constitutional convention as proposed by the Chief Minister in his speech to Parliament on 4 December 1997 id fundamentally flawed and should not proceed as proposed.
2. The deficiencies of the proposal include:
   (a) the convention will be comprised entirely of person appointed by the government or from organisations nominated by the government and is therefore not adequately representative of the Northern Territory community;
   (b) the convention will be restrained from adopting, and therefore considering provisions that better entrench and protect the rights of Territorians;
   (c) the convention is restrained from explicitly recognising in the constitution rights in respect of indigenous people;
   (d) the parliament has reserved the right to make such changes as it sees fit to the draft produced by the convention;
   (e) there is no commitment to have the final document approved by referendum.
3. The Law Society asks the Government to abandon the current proposal and to adopt in its stead the unanimous recommendations of the Bi-partisan Sessional Committee on Constitutional development in its Interim Report No. 1.

The Bar Association has passed the same resolutions.

The Government's proposal for the convention is that it be made up of 45 delegates comprising 27 elected and 18 appointed members with the manner and process of election being largely determined by various industry/professional organisations rather than the public.

The Bi-partisan Sessional Committee on Constitutional Development in its Interim Report No 1 recommended:

1. 75% of the members of the convention be popularly elected by the population of the NT;
2. the convention not be restricted in relation to what constitutional matters it considers;
3. the NT Parliament could only refer matters back to the convention, not restrict the convention;
4. finally, there be a referendum.

It is clear that the model for the convention recommended by the Sessional Committee is much more likely to:

(a) ensure that the process es of the convention will have integrity and will be seen not only by the people of the NT but by the people of Australia to have integrity;
(b) demonstrate to the rest of Australia that the Northern Territory is a mature polity which should be granted statehood;
(c) ensure that all Territorians have a maximum say in the creation of their future state constitution;
(d) ensure that the best possible constitution is produced;
(e) ensure that the interests of all Territorians are fully considered.

The debate about national practising certificate is starting to heat up. It is the Law Society's position that there should not be a national practising certificate.

I am told the Law Society of Western Australia has adopted a similar position to the NT while Queensland is not exactly enthusiastic about the proposition. The main demand for a national practising certificate is being made by the larger firms in Sydney and Melbourne and by the NSW and Victorian Bars.

A national practising certificate should be opposed as:

(a) the local profession is familiar with the legal needs of Territorians, has an extensive knowledge of the laws of the NT and provides a very good legal service. For example, how many interstate lawyers could say they are thoroughly familiar with the Work Health Act?
(b) there will be no true reciprocity. While it may be convenient for large interstate firms to practise in the NT, very few NT practitioners practise interstate;
(c) because of our small size as a profession it is necessary for us to pay higher fees for a practising certificate. A national practising certificate will, in effect, mean interstate practitioners can practise in the NT for less;
(d) it will mean that the Law Society will lose tens of thousands of dollars as interstate practitioners will not ne paying for NT practising certificates;
(e) it will encourage the growth of legal oligopolies with the large Sydney and Melbourne firms potentially taking a greater share of the national market. Oligopolies are ultimately anti-competitive and tend to dictate price and service to the market rather than responding to the legal needs of the community;
(f) the payment of a fee for a practising certificate is not a prohibitive barrier to entry and is something which should have to be paid for the privilege of practising in the NT. After all, we have to pay it;
(g) given how small the NT profession is, it should have some protection against the rapacious south-east;
(h) there is nothing to indicate that the quality of legal services or the cost of providing legal services to the public of the NT will be improved by the introduction of a national practising certificate.