CLA

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Attorney-General, Australia
Parliament House
Canberra ACT 2600
Copies: AGs, States and Territories

Australia Day, 26 January 2018

Dear AG Christian Porter

We ask you to respond by letter or email, please, with details of planning and activities you are undertaking to improve the quality of judicial practice in Australia.

CLA's 10-point, 10-year Better Justice project, under the heading 'Quality', states a national aim should be to introduce mandatory extra qualification training for magistrates and judges, at least equal to a Graduate Diploma or, for higher courts, a Masters degree.

It is conceded even by critics of mandatory judicial training that the roles and requirements of judges are vastly different in character from those of a barrister in court. The barrister works adversarially and advocates a particular viewpoint. The judge must remain impartial in managing a competitive debate while enforcing specialist legal rules, and assess facts and people in a non-partisan, independent manner. It is a quite different function and requires an enhanced skill set. Judging requires greater knowledge of court management laws, of psychology and of people skills, of government and community services available, and an unbiased commonsense not necessarily acquired as a partisan advocate, from whose ranks magistrates and judges are most frequently drawn.

The need for senior legal figures to undergo training in "judging " and "judgement" before (and after) they are appointed has drawn strenuous criticism from some in the legal profession. Their arguments are that such training would not assist, the courses would not be appropriate and that the 'independence' of judges may be compromised.

Taking the objections in turn: the 'training' can be whatever the judicial college and/or university faculties determine – in conjunction with judges – that it should be. Its content and character can be decided by agreement. The argument as to unduly influencing potential judges is self-serving, fallacious and obviously a nonsense.

Finally, would you please explain why you believe the law, alone among the professions, does not require extra training for a more senior position? Are judges so special that they cannot learn from higher education tailored to their and the community's needs?

If extra qualifications are required to become specialist doctors, or surgeons, CLA asks why you believe the top echelon of the legal profession needs no extra qualifications to do different and more skilful work? We keenly await your reply as to what you are planning.

Yours Truly

Dr Kristine Klugman OAM

One of CLA's annual Australia Day letter series