

Hon Murray Kellam QC AO

Review of Designation of Queens Counsel

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Dear Murray

This is a short Submission from **Len Hartnett**, **Laurence Maher** and **Greg Barns**. All are members of the Victorian Bar, Mr Barns is on the Interstate List and practices in Tasmania as well as Victoria. Mr Barns has also contributed to research on the issue of senior counsel generally over the past two decades.

This Submission deals with the issue of the redesignation of QC in 2014 but firstly we make the point that consideration should be given to the abolition of the division between senior and junior counsel.

It is difficult to disagree with the comment from Peter Reeves, a UK researcher¹ that;

Few reasons of any substance are advanced to justify the existence of silk. Comment generally centres upon administrative convenience with praise for the excellence of those who hold the office. Little is said about its value as a contribution to the effective dispensation of justice. Criticism of the system has been met with the bland assertion that silk are an important element in the provision of legal services and the appointment of high court judges.

While this observation was made in the context of the United Kingdom it is of direct relevance to Victoria.

The argument for abolition of silks can be put this way. There should in a true market be a situation where advocacy services are priced according to true merit, not on whether someone has initials after their name, conferred upon them by an opaque process that should deal explicitly with the needs of our clients.

The cost of justice, particularly in the provision of Legal Aid, is made more expensive by the need to allow silks to charge more than a junior counsel who may have vastly more experience and skill.

One of the authors of this Submission recently witnessed firsthand how the silks system distorts the cost of justice. A board of a state government organisation decided it needed to get the advice of a silk to rebut a view taken by another lawyer about the powers of the organisation under its governing legislation. The issues were straightforward questions of statutory interpretation. The

¹ P Reeves (1998) Silk Cut: Are QCs necessary (Adam Smith Institute London) p33

organisation paid \$7000 of taxpayers' funds to obtain a 7 page advice from a silk! When challenged on why it had not used counsel who was not silk the response was that having a silk's advice made it more authoritative.

This is of course a nonsense. An advice from a lawyer should be judged according to its quality not on the initials at the end of the name of the lawyer who wrote the advice.

We note also it is antithetical to promote the idea of silks as some form of superior legal creature when the law professes to treat everyone equally.

It seems to us that, if asked, a fair sample of the ordinary people on the street would regard the return to the designation QC as more evidence if it be needed that we lawyers are living in the past. It might be said, for example, that Australia is a kind of de facto republic already. It must be the case that the QC designation will not really be missed by the overwhelming proportion of Australians.

The only real argument put was that legal consumers preferred QC as a designation to SC and to compete in Asia one was at a disadvantage if one did not have the title QC.

We note there is not one shred, and we use that phrase advisedly, to support this proposition. There is no empirical or even anecdotal evidence that a legal services provider forgoes income by virtue of the designation SC. Any suggestion to the contrary is simply misleading.

Importantly we note that in both Singapore and Hong Kong the designation SC is used. QC has been replaced.

We can do no better than cite Reeves again:

Clearly the office of silk does not meet modern demands. An archaic and misleading title is bestowed upon a relatively few practitioners. The cost of litigation is artificially increased because of the prestige attaching to silk and limited number appointed. For these advantages to be in the gift of a single unelected member of the government is hardly compatible with the spirit of democracy.²

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Members of the Victorian Bar

² Reeves, ibid p33