

From the President

Yesterday the Government gazetted the appointments of three Judges of the District Court as Auxiliary Justices of the Supreme Court. The appointments were not to deal with a particular case and were for a period of fifteen months until 30 June 2017.

The three Auxiliary Justices are excellent lawyers and any Supreme Court cases to which they may be allocated will be presided over with distinction. Nothing which follows should be understood in any way as a criticism of the capacity of the three Auxiliary Justices to sit as Justices of the Supreme Court.

Justice Sulan retires from the Supreme Court later this month. I sincerely hope that the appointment of three Auxiliary Justices from the ranks of the District Court is not intended to be a substitute for the appointment of a full-time Supreme Court Judge for the purpose of saving money. The taxpayers of South Australia might wonder at the priorities of a Government which is prepared to spend \$180 million on the wrecking of Rymill Park to deliver irrelevant O-Bahn transit time savings and yet consistently fails to fund the third arm of Government.

My principal concern however is with the corrosive effect which such appointments can have on the appearance of judicial independence. I have no issue with Auxiliary appointments being made for specific cases to deal, for example, with a case where most Justices of the Supreme Court are conflicted. These sorts of cases are however comparatively rare and will come onto the radar well in advance of a hearing date. Auxiliary appointments to deal with such cases could easily be made on a case by case basis.

Likewise, if the Government decided that it wanted all District Court Judges to be available at short notice to "pinch hit" in the Supreme Court then appointing all District Court Judges as Auxiliary Justices of the Supreme Court would achieve that outcome. The Attorney-General has raised for discussion the possibility of having one trial court (effectively amalgamating the first instance work of the District Court and the Supreme Court) and having a standing Court of Appeal. I personally do not favour this proposal. It doesn't work in the Northern Territory and it won't work here. I would not favour the appointment of all District Court Judges as Auxiliary Justices of the Supreme Court for this reason, however it would at least remove the perception created by the recent appointments that there is an "A" team and a "B" team in the District Court. This is not only unfair on Judges of the District Court, it is also untrue.

My principal concern however is that the perception of the fair-minded bystander will be that the three Auxiliary Justices are on some form of probation or trial run to see whether or not they can secure a permanent appointment to the Supreme Court. This is the antithesis of judicial independence where Judges carry out their duties without fear or favour and without regard to how the Government which appointed them will react to their

decisions. As lawyers we know that the three Auxiliary Justices will carry out their duties fearlessly and independently but the issue is the perception of the general public who do not know what we know. It is an issue of principle and not of personalities.

I would have thought that the Government would have done better by making three additional permanent appointments of Judges to the District Court in addition to a permanent appointment to the Supreme Court. The backlog of cases and listing problems in the District Court is unlikely to be improved by some of the Judges of that Court being absent from time to time on Auxiliary Supreme Court duties.

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