BRIEF TO THE HON. YVETTE D'ATH, ATTORNEY-GENERAL OF QUEENSLAND AND MINISTER FOR JUSTICE: PROPOSAL TO CHANGE TITLE FROM "MAGISTRATE" TO "JUDGE"

Issue:	Legislatively amend the *Magistrates Courts Act 1921* (Qld) and the *Magistrates Act 1991* (Qld) to retitle Queensland Magistrates as "Judges"
Supporting Reasons	• the historical foundations upon which the title "Magistrate" is based no longer exists; • a change in title would foster and uphold the rule of law and increase confidence in the judiciary; • a change in title is heavily supported across Australian jurisdictions, and is in line with international practice in comparative jurisdictions; There will be no deleterious effect of this amendment: the amendment to the legislation would be simple, and a change in name of Queensland Magistrates would not have any financial ramifications for the Government.
Background	This request follows discussion over the course of a number of years within the legal community, and has been a longstanding agenda item for the Council of Chief Magistrates since at least 2009. The Queensland Magistracy has undergone significant changes in its structure, its composition, and the jurisdiction exercised by it. Work performed by Queensland Magistrates had changed dramatically in the last century, largely as a result of successive government reforms enhancing the criminal and civil jurisdiction of the Magistrates Court in matters which were once the exclusive purview of the District Court. The Queensland Magistrates court exercises broad jurisdiction, and 95% of cases are determined in the Court in cities and towns across Queensland. In regional areas of Queensland, where the District and Supreme Courts have limited presence, Magistrates are heavily relied upon to dispense justice and uphold the rule of law. The proposed reform would increase the status of the office held by magistrates, and the Court itself, in the eyes of the general public, the legal profession, the media and other judicial officers. This will in turn enhance the pool of candidates from whom magistrates are recruited, thereby strengthening the rule of law in the State. The submission set out at **Annex I** is supported broadly within the Queensland Magistracy, and also finds support across the country from judicial and bar associations such as the Judicial Conference of Australia, the Australian Association of Magistrates and Queensland Bar Association. The Federal Government has also recognised the need for titular distinction, amending the title of Federal Magistrates to Judges in 2013. The proposal would also be in line with other common law jurisdictions, such as the United States, the United Kingdom, Canada, and New Zealand.

ANNEX I

SUBMISSION BY THE QUEENSLAND MAGISTRATES COURT PROPOSAL TO CHANGE TITLE FROM "MAGISTRATE" TO "JUDGE"

TABLE OF CONTENTS

A. Introduction

1. This submission is filed on behalf of the Queensland Magistrates, and concerns the proposal to change their title from Magistrate to Judge.

2. The legal profession is built on the premise that words matter. This applies equally to complex legal advocacy with respect to carefully worded statutes, extensive interpretation of terminology by the judiciary in case law, and to titles within the legal profession. Continued use of the title "Magistrate" instead of Judge, a term which is based purely on historical factors, removes these judicial officers from their post in the judiciary; putting judges in one category, and magistrates in another.

3. A change in title from "Magistrate" to "Judge" to remove this anomaly is not only fair, but it is well supported, as demonstrated by the following considerations (outlined in full in **Part B** of this submission):

a. *First*, the historical foundations upon which the title "Magistrate" is based no longer exists;

b. *Second*, a change in title would foster and uphold the rule of law;

c. *Third*, a change in title would increase confidence in the judiciary;

d. *Fourth*, a change in title is heavily supported across Australian jurisdictions; and

e. *Finally*, a title change is in line with international practice in comparative jurisdictions.

4. In addition, concerns surrounding a change in title will not have the deleterious effect that those opposed to this proposal expect. The question of whether a change in title would adversely impact upon the judicial arm of government, or those it serves, should not be dictated by ego or a desire to merely maintain the status quo. To the extent that there are tangible, supported, concerns to this proposal – which is disputed – it is submitted that these issues can be mitigated through the implementation process. To this end, and to assist with this process, this submission also provides suggested ways in which a change in title may be most efficiently and effectively executed (**Part C**).

B. A Change in Title is Well Supported

1. The Historical Basis for the Title "Magistrate" No Longer Exists

5. The role of magistrates has changed significantly in the last century, from the introduction of police magistrates, through to the change in title to stipendiary magistrates, to radical changes to the role that magistrates play in the Queensland judicial system. The historical basis for the title "Magistrate", originally differentiated to reflect the significant difference in work in police and stipendiary magistrates, no longer exists.

The argument that this term is truly reflective of the work the Queensland Magistracy now undertakes is misguided and fatally flawed. As this remainder of this section make clear, the work of the Magistrates Court is foundational to the Queensland judicial system and any argument that the term "Magistrate" is accurate for historical reasons must be dismissed out of hand.

6. The title 'Magistrate' was the term originally designated to voluntary justices of the peace, who sat with very limited jurisdiction from the ranks of the public service in the Court of Petty Sessions. These Justices of the Peace were later retitled 'police magistrates', who served in the State before Queensland was even formed.[1] The justices of the peace and police magistrates performed broad non-judicial functions, such as acting as electoral officers, registrars of births, agents for the Lands Department, and customs, immigration and quarantine officials. The only legal training or instruction many of these early magistrates had was from watching proceedings at the circuit courts.[2] Some 100 years later, the enactment of the *Magistrates Act 1991* (Qld) transformed the Court to ensure magistrates comprised of a professional, legally trained and competent body of judicial officers, rather than the lay, untrained and unqualified magistracy which formed part of the public service.[3]

7. Since then, the role of the Magistrates Court has evolved over time from an arm of the Executive Government to a functioning and independent Court of Record with a District Court judge in the role of Chief Magistrate. This increasing judicialisation of the Queensland Magistrates Court is no more evidenced than by the expanding jurisdiction of the Court, where Queensland Magistrates now sit as trier of both fact and law in summary trials. The jurisdiction of the Court, both criminal and civil, has increased considerably and continues to do so, to such a point where it has shed the traditional administrative functions associated with early magistrates and assumed true judicial functions.

8. A brief overview of the breadth of cases overseen by Queensland Magistrates serves to highlight to complexity and scope of this judicial work, which previously was undertaken by the District Court. The Moynihan reforms, for example, substantially increased the jurisdictional reach of Queensland Magistrates by: shifting criminal indictable matters from the District Court to the Magistrates Court; increasing the civil jurisdiction limit to $150,000, taking from the District Court's once exclusive jurisdiction; and introducing discretion on the part of magistrates to dismiss charges under the Mental Health Act 2016.

9. Virtually all criminal cases are commenced in the Magistrates Court. An examination of the *Criminal Code* (Qld) governing the summary disposal of indictable offences in Queensland not only discloses the wide range of offences over which Queensland Magistrates exercise jurisdiction, but also the serious nature of many of those offences.

---

[1] Magistrates have existed in what was to become Queensland since 1842, with the appointment of John Wickham as police magistrate. *See* Magistrate's Court of Queensland, ANNUAL REPORT 2007-2008 (Queensland Courts, 2008), p. 25.

[2] The Prosecution Project, Griffith University, QUEENSLAND COURTS: EARLY JUSTICE, *available at* https://prosecutionproject.griffith.edu.au/other-resources/queensland-courts/ (last accessed 20 July 2018).

[3] John Lowndes, *The Australian Magistracy: From Justices of the Peace and Beyond* (2000) 74 AUSTRALIAN LAW JOURNAL 509, pp. 1-2.

In addition, Queensland Magistrates exercise summary jurisdiction over Commonwealth criminal matters under the *Crimes Act* (Cth).[4]

10. The Queensland Magistrates Court now exercise a substantially increased civil jurisdiction, both in terms of monetary limits and complexity. Far from the early days of the Court of Petty Sessions, the Magistrates Court now hears civil matters up to a value of $150,000, matters that were previously within the exclusive jurisdiction of the District Court. In addition, Queensland Magistrates exercise both a common law and equitable jurisdiction, which affords litigants a vast array of remedies and relief.

11. Furthermore, and in addition to the large criminal and civil jurisdiction of the Court, Queensland Magistrates preside over a wide range of cases including, *inter alia*, coronial inquests, matters falling within the Family Law Act (Cth), domestic violence and child welfare issues, mental health matters and other Commonwealth matters, such as those covered by the *Customs Act 1901* (Cth), *Social Security Act 1991* (Cth) and *Taxation Act 1953* (Cth).

12. Undoubtedly, the current role of Queensland Magistrates is far removed from that of a police magistrate. As the Honourable Justice Thomas stated in 1991:

> Clearly the Magistrates' Courts are simply the courts of first instance in the judicial structure throughout Australia. The professionalization of the magistracy has been one of the most notable changes in legal professional life over the past two decades. That is the period over which the magistracy has been transformed in substance from a body of persons largely public service trained to a body of professionally trained and legally qualified practitioners.[5]

13. The Queensland Magistracy has undergone significant changes in its structure, its composition, and the jurisdiction exercised by it. It has been severed from the executive arm of government, the public service and any connection with the police force, and shed the jurisdictional limitations of administrative functions, and has attained true judicial independence. The modern Queensland Magistracy is a result of an evolutionary process, developed against the background of a combination of political, administrative and social factors. Today, magistrates apply the law, are the sentencing body and carry out the same function as a judge. The fact that judicial officers of the Magistrates Court continue to be distinguished by title from the judicial officers of the higher courts is purely the result of the separate historical development of the magistracy, and the traditional distinction between an office of the public service and that of a judicial officer. Yet this historical difference no longer exists, as evidenced by the foregoing.

14. There is not only no reason to maintain the distinction in title, but a change in title would be the next logical step in marking the final disentanglement of the magistracy from the executive branch of government to complete the process of judicialisation of the Magistrates Court in Queensland. To ensure that the Magistrates Court does not stagnate,

---

[4] *Crimes Act 1914* (Cth), Section 4J.

[5] R.J. Cahill CSM, *Eligibility for Appointment to the Bench – A Magistrate's Viewpoint*, Bicentennial Australian Legal Convention, Canberra 30 August 1988, ASMA VOL. 10 NO. 2, p 10 (cited in John Lowndes, *The Australian Magistracy: From Justices of the Peace and Beyond* (2000) 74 AUSTRALIAN LAW JOURNAL 509).

and to recognise this evolution over the past century, it is incumbent on this Government to officially recognise that there is no longer any basis to distinguish magistrates from "Judges".

2. A Change in Title Would Foster and Uphold the Rule of Law

15. A fundamental premise of the rule of law is the separation of powers. The judiciary has a particularly important role in upholding the rule of law in Australia because it responsible for overseeing the criminal justice system to ensure that an accused receives a fair trial and that justice is done. Judges are empowered to protect and are ultimately responsible for the fairness of trials which happen in their courts. Independent and impartial judges are an important part in all legal matters, whether criminal or civil.[6]

16. In addition, it is imperative that laws are publicly adjudicated in courts that are independent from the executive arm of government, and that the dispute settlement is fair and efficient.[7] In Australia today, the rule of law requires that the legal system and government should provide: just outcomes when a person is brought before a court; consistent, fair and impartial decisions about legal matters; and protection of individuals' rights and freedoms.

17. The role magistrates play in upholding the rule of law was considered by Justice Kirby:

> In some ways the work of the Justices of the High Court is similar to the work of magistrates. We are all judicial officers. We share the responsibility of deciding cases placed before us, and doing so justly and in accordance with law. All of us are the guardians of the Constitution and of the rule of law, the unwritten implied principle of Australian constitutionalism. In the performance of our adjudicative functions, we are all independent of any directions from Parliament or the Executive Government as to how we should render our particular dispositive orders. . . .[8]

18. Magistrates preside over courts which lie at the bottom of the judicial hierarchy. However, the status of magistrates should not be viewed solely in terms of the position which they occupy within this hierarchy. Magistrates perform identical functions to those performed by judges: "they are responsible as an integral tier of the Australian Judiciary for performing identical tasks to those persons identified as Judges."[9] As the Honourable Justice Thomas stated:

> [Magistrates] pursue the same ideal, the dispensing of justice according to law. . . . [they] have the same basic duties and procedures. There can be no doubt that [they] must all respond

---

[6] The Rule of Law Institute of Australia, RULE OF LAW, *available at* https://www.ruleoflaw.org.au/guide/index.html (last accessed 20 July 2018).

[7] Commonwealth Attorney-General's Department, RULE OF LAW, *available at* https://www.ag.gov.au/About/Pages/Ruleoflaw.aspx

[8] The Hon. Justice Michael Kirby AC CMG, *The Rise and Rise of the Australian Magistracy*, ASSOCIATION OF AUSTRALIAN MAGISTRATES XVI BIENNIAL CONFERENCE, 7 June 2008, p. 2.

[9] John Lowndes, *The Australian Magistracy: From Justices of the Peace and Beyond* (2000) 74 AUSTRALIAN LAW JOURNAL 509, p. 42 (citing R.B. Lawrence SM, *Magistrates – Change of Name*, p. 1).

> to a common ethical perception and regulate [their] activities accordingly.[10]

19. Just as judges do, magistrates perform the primary task and carry the basic responsibility of the judiciary to "resolve disputes between citizens, or between citizens and government, by the application of statute law and by the judge made common law".[11] In the same way as judges, magistrates decide cases "by finding the facts, ascertaining the law and applying the law to the facts as found or admitted".[12]

20. The business of judging also involves elements of pragmatism, discretion and choice; and magistrates exercise all three in deciding cases. There are other important dimensions of the rule of law relevant to the work of both magistrates and judges – the notion of "fairness" and the need for openness, transparency and impartiality. Both magistrates and judges are required, in accordance with the precept of natural justice, to respond to the arguments advanced by the parties and to give reasons for decision so as to lend openness and transparency to the judicial process. Impartiality, which requires neutrality and objectivity on the part of a judge, is an essential component of judicial decision-making; and magistrates are required to bring the same open, unbiased and impartial mind to the decision making process.

21. Yet there is often a perception that the work done by magistrates is trivial, inferior, non-qualitative judicial works; that while the Magistrates Court is still a court of law, somehow magistrates themselves are not judges and somehow operate in a manner distinct from the courts of law and the judicial arm of government. The distinction and dichotomy between magistrate and judge perpetuates the perception, and allows fissures within the broader concept of the rule of law itself. The maintenance of outdated titles necessarily means that the work completed in the Magistrates Court – the sentencing of criminal matters, findings in civil disputes, coronial findings and recommendations – is undermined as somehow less than judicial, and not beholden to the rule of law. This is clearly not the case.

22. The severance of the Magistrates Court from the public service was an unabashed recognition of the application of judicial independence to Queensland Magistrates; a recognition that there existed a conflict between the incorporation of magistracy within the public service and the rule of law cornerstone of an impartial and independent judiciary. To ensure that the rule of law continues to advance, and to correct the view that there remains distinction within the levels of the judiciary in terms of accountability and independence, "Magistrates" should be retitled as "Judges".

3. A Change in Title would Result in Increased Confidence in the Judiciary

23. The abolition of the term "Magistrate" in favour of "Judge" in the Queensland Magistrates Court will also increase public confidence in the Queensland judiciary, for several interrelated reasons:

---

[10] Justice Thomas, *The Ethics of Magistrates* (1991) 65 AUSTRALIAN LAW JOURNAL 387, p. 401.

[11] M Sexton and L.W Maher, THE LEGAL MYSTIQUE, THE ROLE OF LAWYERS IN AUSTRALIAN SOCIETY (Angus & Robertson Publishers, 1982), p. 62.

[12] Association of Australian Magistrates, *Submission to Senate Standing Committee on Legal and Constitutional Affairs: Inquiry into Australia's Judicial System and the Role of Judges*, 30 April 2009, p. 1.

a. The only interaction the vast majority of the public will ever have with the judicial system is through the Magistrates Court. Retitling "Magistrates" as "Judges" reinforces that justice is served in the community by the Queensland judiciary;

b. A change in title will encourage a high quality of candidates, which in turn operates to strengthen the pool of the judiciary, and increases confidence in the judicial system as a whole.

c. By eliminating any public confusion in the role of magistrates as judicial officers, it will become clear that magistrates are held to a high standard of professionalism, ethics, and conduct; in the same way as judges.

24. *First*, the Magistrates' Courts are, for most citizens, the only place where direct contact is made with a judicial officer. As outlined above, the Queensland Magistrates Court exercises broad jurisdiction, and hears about 95% of cases.[13] This is further expounded by the fact that Queensland is a de-centralised State, spread over a very large geographical area. In the regional areas of the State, Magistrates are heavily relied upon to uphold the rule of law and dispense justice, given that the District and Supreme Courts have a comparatively limited presence in the vast majority of the State.

25. There is, however, an unfortunate paradox created by the difference in title between "Magistrate" and "Judge". On the one hand, there is an expectation on the part of the community that those who preside over Magistrates' Courts will act judicially. This is reinforced by the fact that studies have shown the majority of the public appearing before the Magistrates' Court perceive the magistrate to be a judge and will address that person accordingly.[14] Indeed, as long ago as 1987, former Chief Magistrate Briese, in the course of contemplating the future direction of the New South Wales magistracy, referred to the "public perception moulded by the media which shows magistrates to be judges who are addressed as 'Your Honour'".[15]

26. On the other hand, however, there continues to exist differentiation in the minds of the legal profession and some members of the public as to the role and status of magistrates compared with judges. Given the huge breadth of cases now dealt with by the Magistrates Court, as opposed to the District Court, the community at large – and more particularly the criminal community – could be excused from believing that these types of matters are no longer sufficiently important to attract the attention of judges. Empowering magistrates to deal with matters that have traditionally been the preserve of judges should be

---

[13] Queensland Courts, ABOUT THE MAGISTRATES COURT, *available at* http://www.courts.qld.gov.au/courts/magistrates-court/about-the-magistrates-court (last accessed 20 July 2018).

[14] R.B. Lawrence, *Magistrates – Change of Name*, p. 3 (cited in John Lowndes, *The Australian Magistracy: From Justices of the Peace and Beyond* (2000) 74 AUSTRALIAN LAW JOURNAL 509).

[15] C.R. Briese, *Future Directions in Local Courts of New South Wales* (1987) UNIVERSITY OF NEW SOUTH WALES LAW JOURNAL 10(1), p. 133.

properly supported by ensuring the community knows that magistrates bear the same responsibilities and perform the same duties as judges.

27. This likewise applies within the broader legal profession. For example, some legal practitioners fail to treat magistrates with the deference and respect normally accord to recognized judicial officer, hampering the effectiveness of the Court. This results in diminished effectiveness, as noted by one commentator who stated:

> Some magistrates view the title 'judge' not only as an entitlement [for themselves as judicial officers], but as a functional necessity if they are to perform effectively when presiding over trials. . . . Many litigants may automatically prefer to have their cases heard by someone bearing the title 'judge'. As a result, magistrates lose opportunities to gain visibility and build their reputations as judicial officers, and the potential flexibility and judicial economy of the magistrate system are diminished.[16]

28. Addressing this contradiction is not only in the interest of upholding the rule of law itself, as discussed above, but to enhance public confidence in the Magistrates Court. Given most of the public who encounter the court system do so through the Magistrates Court, changing the title from "Magistrate" to "Judge" will consequently increase the status of the office and the courts in the eyes of the public, including the media who may be more circumspect in their attacks on individual judicial officers sitting in the Court.

29. As the former Attorney-General of Victoria noted, a change in title is important:

> [N]ot only to assist the public in recognising that the Court now has …more extensive jurisdictions but also to further help foster and encourage public confidence in the Government's determination both in the past and possibly in the future to widen the jurisdictions of [the Magistrates Court] thereby increasing the public's access to affordable and expeditious justice.[17]

30. These observations are equally application to the Queensland Magistrates Court, and the proposed change in title.

31. *Second*, changing the title from "Magistrate" to "Judge" would enhance the pool of candidates from whom magistrates are recruited. It is no longer valid to view the magistracy as a hybrid creature, part public servant, and part judicial officer, disadvantaged by inadequate training and with an imperfect understanding of the judicial role.

32. The calibre of persons appointed to the Queensland Magistracy in the past decades has been very high, with appointees comprising of highly qualified and experienced

---

[16] Christopher E. Smith, *From U.S. Magistrates to U.S. Magistrate Judges: Developments Affecting the Federal District Courts' Lower Tier of Judicial Officers* (1992) 75(4) JUDICATURE 210, p. 211.

[17] John Lowndes, *The Australian Magistracy: From Justices of the Peace and Beyond* (2000) 74 AUSTRALIAN LAW JOURNAL 509, p. 6.

legal practitioners and legal academics drawn from both the public sector and private enterprise. Attracting the best candidates to accept appointment to the Queensland Magistrates Court will be greatly assisted by a demarcation of this Court as it is now from the days when its members did not hold law degrees and had not practised as lawyers. It will help elevate the court's standing not only in the community at large but also within the legal profession and it will encourage the better integration and communication between all judicial officers of this State which in turn will help the administration of justice. As recognised by the Former Chief Magistrate of New South Wales "the increased status and working conditions would attract more barristers and solicitors of high quality and ability to consider appointment as a Judge of the Local Court."[18]

33. The Queensland Magistracy constitutes a highly professional body, and the professionalism of the judiciary would be neither diminished nor compromised by the elevation of magistrates to the status of judges. The fact that a number of magistrates have been appointed judges of a number of different courts adds further weight to the proposal that magistrates be elevated to the status of judges in title.

34. *Third*, and finally, by eliminating any public confusion in the role of magistrates as judicial officers, it will become clear that magistrates are held to a high standard of professionalism, ethics, and conduct; in the same way as judges.

35. Judges and magistrates are subject to common standards of judicial conduct. For example, the Introduction of the AIJA Guide to Judicial Conduct notes that "[t]he purpose of this publication is to give practical guidance to members of the Australian judiciary at all levels. The words 'judge' and 'judiciary' when used include all judges and magistrates."[19] The Guide makes it clear that the Chief Justices of Australia not only consider the magistracy to be an integral part of the judiciary, but also consider magistrates to be judges.

36. It is inconsistent to regard magistrates as being subject to the same standards of conduct that apply to judges (on the basis that magistrates are judges) and to simultaneously withhold from them the title of "Judge". There is no basis to use different terminology when they are bound by the same set of ethical standards that apply to their superior colleagues in other courts. As acknowledged by the Hon. Justice Susan Kiefel AC, Chief Justice of Australia, "it is by maintaining the high standards of [judicial] conduct. . . . that the reputation of the Australian judiciary is secured and public confidence in it is maintained".[20]

37. The change of title would not only recognise the important judicial role performed by magistrates, but emphasising the fact that magistrates should be viewed in the same light as judicial officers of the higher courts would enhance the standing of the lower courts in the community at large, and within the legal profession, and increase public confidence in the administration of justice overall. The best way of ensuring that magistrates

---

[18] C.R. Briese, *Future Directions in Local Courts of New South Wales* (1987) UNIVERSITY OF NEW SOUTH WALES LAW JOURNAL 10(1), p. 133.

[19] The Australasian Institute of Judicial Administration Incorporated, GUIDE TO JUDICIAL CONDUCT (3rd Ed., published by the Council of Chief Justices of Australia and New Zealand by the Australasian Institute of Judicial Administration Incorporated, 2017), p. 1.

[20] *Ibid*, p. ix.

are seen to be bound by the same ethical standards as the judges of higher courts and maintaining public confidence in the judiciary is to formally recognise magistrates as judges.

4. A Change in Title is Heavily Supported across Australia

38. This change is supported broadly within the Queensland Magistracy, and also finds support across the country from judicial and bar associations such as the Judicial Conference of Australia, the Australian Association of Magistrates and Queensland Bar Association. The Federal Government has also recognised the need for titular distinction, amending the title of Federal Magistrates to Judges in 2013 (discussed below).

39. The only Australian jurisdiction to have enacted such a change is the Northern Territory, who reported that there has been "no negative impact" as a result.[21] Other Australian jurisdictions have confirmed their support for a change in title:

- New South Wales: "[The New South Wales Magistrates] stand resolutely behind your court and indeed every other summary trial court within the Commonwealth on this issue . . . . This has been a long standing agenda item for the Council of Chief Magistrates".[22]

- Western Australia: "The Magistrates of Western Australia support the Queensland Magistrates in their request to change their title from Magistrate to Judge. We agree with the advantages of such a change".[23]

- South Australia: "I write in support of the Queensland Magistrates who are seeking to change their title from Magistrate to Judge. South Australian Magistrates have also been actively pursuing a name and title change from the Magistrates Court of South Australia to the Local Court of South Australia and the title of Magistrate to Local Court Judge."[24]

- Victoria: "On behalf of the Victorian magistrates, I wholeheartedly support the change of title for Queensland magistrates to judges."[25]

---

[21] Letter from Michael Grant, Chief Justice, Supreme Court Darwin, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 28 March 2018.

[22] Letter from Judge Graeme Henson AM, Chief Magistrate of New South Wales, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 28 March 2018.

[23] Letter from Steven Heath, Chief Magistrate of Western Australia, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 4 April 2018.

[24] Letter from Judge Mary-Louise Hribal, Chief Magistrate of Adelaide, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 28 March 2018.

[25] Letter from Peter Lauritsen, Chief Magistrate of Victoria, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 28 March 2018.

- Tasmania: "I support the proposal that there should be a change of title so that magistrates are referred to as judges. . . . Subsequently the judges of the Supreme Court of Tasmania discussed the proposed change and all agreed with it. . . ."[26]

- Australian Capital Territory: "[A]s far as the ACT Magistrates are concerned, it is my view and that of my fellow judges that the Magistrates should be known as Judges, as that is the appropriate description for the work that they undertake."[27]

40. Evidently, the proposal enjoys wide support, as many jurisdictions consider the options available to them to remedy the outmoded title. Long term, change appears inevitable, and the Queensland Government now has the opportunity to lead reform in Australia and champion recognition for all judicial officers in the interests of broader law and justice.

5. A Change in Title is in Line with International Practice in Comparative Jurisdictions

41. The proposed change of title is neither radical nor without international precedent. As noted by the Council of Chief Magistrates in 2009:

> Had it been the case that the wider body of the judiciary did not support the proposed change of title or that such a change would be unique within the common law world we would accept that maintaining the title of magistrate had a purpose. However, the universal agreement from within the Governing Council of the Judicial Conference of Australia, the remarkably uncontentious manner in which the Parliaments of the United Kingdom, Canada and New Zealand made such a change without exciting any public disquiet leads us as a unified Council to request that this issue be reconsidered by the Standing Committee of Attorney's General with a view to achieving a positive recommendation for change to your respective governments.[28]

42. As the following sections indicate, this issue has been fully addressed in the United States, Canada, New Zealand and even the United Kingdom – the legal system upon which Australia is based.

a) United States

43. In 1990, the United States Congress changed the title from United States Magistrate to United States Magistrate Judge. In a Report to Congress supporting this

[26] Letter from the Hon. Alan Blow AO, Chief Justice of Tasmania, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 29 March 2018.

[27] Letter from Helen Murrell, Chief Justice of Supreme Court of Australian Capital Territory, to Judge Orazio Rinaudo AO, Chief Magistrate of Queensland, dated 12 April 2018.

[28] Letter from the Council of Chief Magistrates to New South Wales Attorney General, 13 October 2009.

change, the Judicial Conference of the United States outlined reasons which are equally applicable in Australia:

> Those who would prefer a change in title state that the term 'magistrate' has traditionally been referred to a low-level local official who performs a narrow range of functions in criminal cases, i.e. a justice of the peace. They point out that this traditional association of the term is inaccurate. . . . The new title and form of address will help educate attorneys and litigants about the magistrate judges' status as authoritative judicial officers within the federal courts. This should enhance the magistrates judges' contributions to effective case processing within the district court".[29]

44. Further, these changes were supported by the Supreme Court of the United States itself when it acknowledged that "magistrates account for a staggering volume of judicial work" and are "indispensable." The same can, and has, been said for Australian magistrates.[30]

b) Canada

45. In Canada, magistrates were traditionally retired police officers. As early as 1971, in recognition of the changing role of the office, magistrates were retitled as provincial court judges.[31] Much like Queensland Magistrates, these judges are judicial officers with summary jurisdiction in both criminal and civil actions, hearing minor indictable offences and those cases where the accused may elect the mode of trial. They may preside over family court or small-claims court, and are ex officio commissioners for oaths.

46. The Supreme Court of Canada has confirmed that the same principles of independence apply to all levels of the judiciary, even if such protection is not explicitly enshrined in the Constitution.[32]

c) United Kingdom

47. Stipendiary magistrates were renamed "District Judges" in 2000, and since the Constitutional Reform Act 2005, all members of the judiciary have the same level of protection. Even in the United Kingdom, "where one might have expected the appeal of traditional nomenclature to be the strongest",[33] the changing nature of work falling within the

---

[29] Christopher E. Smith, *From U.S. Magistrates to U.S. Magistrate Judges: Developments Affecting the Federal District Courts' Lower Tier of Judicial Officers* (1992) 75(4) JUDICATURE 210, p. 212.

[30] The Hon. Justice Michael Kirby AC CMG, *The Rise and Rise of the Australian Magistracy*, ASSOCIATION OF AUSTRALIAN MAGISTRATES XVI BIENNIAL CONFERENCE, 7 June 2008, p. 2 ("I read one paper describing the magistracy of Australia as "the under-valued work-horse of the court system. . . . I recognise the enormous importance of the work of the magistracy and the great changes that have come over the magistracy in my professional lifetime.").

[31] *See*, *e.g.*, *An Act to Amend the Police Magistrates and Justices Act 1970* (Alberta), Section 71.

[32] *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island: Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island* [1997] 3 S.C.J. 3.

[33] Association of Australian Magistrates, *Submission to Senate Standing Committee on Legal and Constitutional Affairs: Inquiry into Australia's Judicial System and the Role of Judges*, 30 April 2009, p. 7.

purview of the lower court jurisdiction has been recognised and reformed as is appropriate. A report from the United Kingdom in 2013 noted that, in England and Wales, all criminal cases arrive at the first instance in the magistrates court, and about 95% of them are dealt with at that level.[34] This statistic is mirrored in Queensland.[35]

48. The United Kingdom did maintain the traditional notion of "magistrates", but is clear to distinguish these figures from judicial officers. Current "magistrates" in the United Kingdom they are volunteers screened by non-profit local advisory committees, who are not legally trained, and who must be supervised by a trained legal advisor.[36] Clearly, the role of Queensland Magistrates can be starkly differentiated as being one of a judicial office.

d) New Zealand

49. Finally, Australia's closest neighbour dealt with this issue nearly 30 years ago, when it conferred the title of "Judge" to magistrates in New Zealand. The magistrates' courts became increasingly important and pressure grew to improve the status of the magistrates and the court. In 1980, the Magistrates Court was renamed as the District Court and were given extended jurisdiction. Stipendiary Magistrates became District Court Judges as part of the reform.[37]

50. The observations made in 1978 by the New Zealand Royal Commission on the Courts, which recommended the change, are pertinent to the current position in Australia:

> A further submission which we endorse is that Magistrates' Courts currently exercise wide general jurisdiction requiring a high degree of judicial competence that is not reflected in the term 'magistrate'. In our opinion, these courts should be named "District Courts" and presided over by judges . . . . [W]e must emphasise that our aim is not a radical transformation of the Magistrates' Courts; we seek to increase the respect for and the responsibilities of these courts but wish them to essentially remain the people's courts[38]

C. Practicalities of Implementation

1. Legislative Amendments

51. Changing the title of a "Magistrate" to "Judge" would require legislative amendment to the *Magistrates Courts Act 1921* (Qld) and the *Magistrates Act 1991* (Qld). However, such an amendment would be simple, and would not require significant or drafting

---

[34] The Commonwealth Magistrates and Judges Association, *Report: The Status of Magistrates in the Commonwealth* (Commonwealth Magistrates and Judges Association, February 2013), p. 5.

[35] *See* para. 24, *supra*.

[36] Courts and Tribunals Judiciary, MAGISTRATES, *available at* https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/ (last accessed 31 July 2018).

[37] Courts of New Zealand, HISTORY OF COURT SYSTEM, *available at* https://www.courtsofnz.govt.nz/about-the-judiciary/copy_of_overview/#district (last accessed 20 July 2018).

[38] New Zealand Royal Commission on the Courts, REPORT OF ROYAL COMMISSION ON THE COURTS (Govt. Printer, Wellington, 1978).

or parliamentary consideration. Examples of how such amendment could be enacted can be drawn from the experiences of the Commonwealth and the Northern Territory.

52. For example, in retitling Federal Magistrates as Judges in 2013, the Federal Circuit Court of Australia Legislation Amendment Bill 2012 amended the *Federal Magistrates Act 1999* (Cth) to: rename the Federal Magistrates Court as the Federal Circuit Court of Australia; change the titles of Chief Federal Magistrate to Chief Judge and Federal Magistrate to Judge; and amend the long and short titles of the Act. Consequential amendments were made through the *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)* (Cth), to ensure consistency across federal legislation.

53. The Explanatory Statement to that legislation noted:

> Changing the name of the Federal Magistrates Court is not intended to create a new, separate federal court, or to change existing entitlements for Federal Magistrates. The Acts and the Regulation will continue the Court in existence under the new name and will not alter its jurisdiction or status as a court of record.
>
> The new name of the Court more accurately reflects its modern role by highlighting the valuable service provided to regional Australians. The Court is the only federal court with a program of regular circuits (court sittings) to occur in regional locations.
>
> The new titles 'Chief Judge' and 'Judge' reflect the status of Federal Magistrates as Chapter III judicial officers and the increasingly complex work being undertaken by judicial officers within the Court.[39]

54. In another model, the *Local Court Act 2015* (NT) introduced new legislation to amalgamate the Northern Territory Local Court and the Court of Summary Jurisdiction into one court called the Northern Territory Local Court and rename "Magistrates" as "Judges". Again, consequential amendments were made to ensure consistency across all pieces of legislation.[40]

55. While the Queensland Magistrates do not consider it necessary to introduce new legislation, as simple amendment of the *Magistrates Courts Act* and the *Magistrates Act* would likely suffice, these examples could be nonetheless utilised as a basis upon which the Queensland Legislature could draft and enact the change in title.

2. Relieving Magistrates

56. The use of acting magistrates for when a magistrate is ill or otherwise absent has been identified as a concern for the proposal, with some arguing that the use of acting

---

[39] *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)*, Explanatory Statement, Select Legislative Instrument 2013 No. 51.

[40] *See*, *e.g.*, *Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016* (Cth).

magistrates somehow this taints the judicial nature of the Magistrates Court. These concerns are unfounded and are, in any event, easily addressed.

57. Where magistrates need to take personal leave or otherwise, and cannot be covered by other magistrates either as a result of location or workload, their positions can be covered in a manner which does not offend a sense of justice or undermine the rule of law. This is particularly pertinent given magistrates now deal with an extremely limited number of matters which are not directly judicial in nature, and therefore acting magistrates are inappropriate. A simple change in policy within the courts, rather than the amendment of legislation, would suffice to address this issue.

58. For example, such a policy could direct that there be a minimum number of floating part-time magistrates, who will backfill any positions required. Given the increased pool of Queensland Magistrates, now approaching 100,[41] a number of which work part time, this is entirely feasible. The use of acting magistrates has increasingly been effected by drawing from the ranks of retired magistrates. A policy change to use only part-time or retired magistrates could be created to draw from when, and as, required. Such a change of policy has, for example, been successfully effected in other States, such as Victoria, and reflects the type of work undertaken by magistrates.

59. Many policy options, like those identified, are available and easily able to be implemented without the need to amend legislation, negating the so-called concerns about "tainting" the judiciary by changing the title of magistrates.

3. Entitlements

60. There have been some broad concerns that changing the name of "Magistrate" to "Judge" will generate claims for access to the various Judges' Pensions Schemes that operate to the benefit of the judiciary at higher levels. At the Council of Chief Magistrates in Perth in November 2008, however, it was agreed that such a change would not mean access to such schemes.

61. The Queensland Magistrates reaffirm this commitment, acknowledging the modern trend in the provision of superannuation within the community and that certain bodies of the judiciary are not immune to or protected from the realities of life.

62. Accordingly, the Queensland Magistrates agree that there would be no change in entitlements and therefore no negative impact, fiscal or otherwise for the Magistrates Court should the title of "Magistrate" be changed to "Judge".

D. Conclusion

63. Clearly, the proposal to re-title "Magistrates" as "Judges" is well supported both in theory and in practice, and enjoys broad endorsement from Australian jurisdictions and comparative international jurisdictions.

---

[41] Queensland Courts, MAGISTRATES IN QUEENSLAND, *available at* http://www.courts.qld.gov.au/contacts/judiciary-contacts/magistrates-in-queensland (last accessed 20 July 2018).

64. More than 150 years since the first police magistrate was appointed in Queensland, the time is ripe for reform to reflect the role magistrates play in the Queensland judiciary.

65. The reform could easily be implemented by minor legislative amendments and policy changes, and would not have the deleterious effect that those opposed to the proposal fear. There would be no financial ramifications and the independence and the impartiality of the judiciary would not be affected (if anything, it would likely be enhanced, as outlined above). There no valid reasons to reject the proposal.

66. Retitling "Magistrate" to "Judge" is not only fair in light of the role magistrates now perform in the Queensland judiciary, but it is beneficial to the work of the courts in advancing the rule of law and increasing public confidence in the judicial system.