



Media Statement

Supreme Court (Parliamentary Commission of Inquiry) Bill 2023

From Justice Michael Walton
President of the Australian Judicial Officers Association

8 December 2023

The Australian Judicial Officers Association is a voluntary association of serving and retired judges and magistrates drawn from all jurisdictions across Australia. The AJOA is committed to furthering the public interest in maintaining a strong and independent judiciary within a democratic society that adheres to the rule of law.

The AJOA notes the public statement by the Attorney-General of Tasmania that the Tasmanian Parliament is to be recalled on 12 December 2023 to consider legislation to establish an enquiry into Justice Gregory Geason of the Supreme Court of Tasmania. It has been reported in the media that Justice Geason (who is not a member of the AJOA), has been charged with one count of common assault and one count of emotional abuse to which he has pleaded not guilty. It is not to be overlooked that the charges against Justice Geason have not been determined and are next listed for mention before the Magistrates' Court on 6 February 2024.

The AJOA does not seek to comment on the charges brought against Justice Geason, other than to note that, like the rest of the community, judges are subject to the law, including the presumption of innocence.

The AJOA is, however, very concerned about the manner in which the Tasmanian government has proposed to respond to the situation which has arisen in relation to Justice Geason.

The AJOA supports the establishment of procedures and bodies to receive and determine complaints made about the conduct of judges. Most states, but not Tasmania, already have such bodies. The urgent recall of the Tasmanian Parliament proposed by the Attorney-General is not, however, for the purpose of considering legislation to establish an equivalent body in Tasmania, but to pass legislation directed only at Justice Geason.

Judges of the Supreme Court of Tasmania may only be suspended or removed from office upon the address of both Houses of Parliament. It is therefore open to Parliament to make enquiries into the conduct or behaviour of a judge to the extent that it is thought that their conduct or behaviour might render them unsuitable to continue in office. Any such enquiries must, however, be formulated so as not to infringe legal principles, including the separation of powers between the legislature, the executive and the judiciary.

The AJOA has serious concerns that the legislation proposed to facilitate an enquiry into Justice Geason's conduct and behaviour, the *Supreme Court (Parliamentary Commission of Inquiry) Bill 2023*, does not meet these essential standards in certain key respects.

If enacted, s 17(1) of the *Supreme Court (Parliamentary Commission of Inquiry) Bill 2023* would give the Minister for Justice the power to suspend Justice Geason in certain circumstances, including where he is charged with an offence that is punishable by imprisonment for a term of 12 months or more. The charges brought against Justice Geason are of this type. The Minister is also given power to specify the terms and conditions in relation to the suspension and to lift the suspension at any time (s 17(3)). These provisions, if enacted, would constitute a flagrant interference by the executive with the independence of the judiciary.

Section 6(2) of the *Supreme Court (Parliamentary Commission of Inquiry) Bill 2023* appears to abrogate all vital and long-established common law privileges, including legal professional privilege. The Commission of Inquiry into Justice Geason would be empowered to conduct its inquiry and obtain information 'in any manner it considers appropriate', and would not be restricted by law or by any privilege from 'reviewing records, documents or information'. Further, s 7(5)(b) makes s 26 of the Commissions of Inquiry Act 1995 applicable. That provision abrogates privilege against self-incrimination.

The proposed Commission of Inquiry into Justice Geason would be required to complete its inquiry as soon as practicable (s 5(2)) and would be empowered to prepare an interim report (s 8(1)) containing 'interim findings of fact' upon which it could express its opinion about whether the Judge's conduct and behaviour warrants his suspension or removal from office. The capacity of the Commission of Inquiry to express an opinion that a judicial officer should be removed from office based only upon 'interim findings of fact' contained in an interim report undermines the integrity of the proposed inquiry and offends against basic notions of fairness.

The Australian Judicial Officers Association is the professional association of judges and magistrates in Australia. For further information, contact Karen Sloan, Australian Judicial Officers Association Secretariat: secretariat@ajoa.asn.au | 02 6125 5763.

The President of the AJOA is not available for broadcast or television interviews on this matter.