



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Economic Policy Scrutiny Committee**

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**Inquiry into the Justice  
Legislation Amendment Bill 2018**

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**February 2019**



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## Chair's Preface

This report details the Committee's findings regarding its examination of the Justice Legislation Amendment Bill 2018.

The purpose of the Bill is to increase the age of retirement to 72 years for Judges of the Local Court, Judges or Associate Judges of the Supreme Court and persons appointed to the office of the Director of Public Prosecutions or the Solicitor-General of the Northern Territory. The Bill amends a number of Acts including the *Director of Public Prosecutions Act 1990*, *Law Officers Act 1978*, *Local Court Act 2015* and the *Supreme Court Act 1979*.

The Committee received three submissions, one supporting the Bill and two opposed. Submitters opposing the Bill raised concerns about the effect of ageing and length of tenure on the competency and performance of judges, and on the ability to maintain a Bench with a diverse composition. Having considered the evidence, the Committee is of the view that raising the retirement age by two years is unlikely to result in an increase in performance issues in the judiciary. Issues of competency can occur at any age and there is no sound evidence to suggest that those aged 72 years are less likely to be competent than those aged 70 years. Similarly, while retaining a younger retirement age will facilitate a more rapid turnover of judicial appointments, there is little evidence to suggest that the frequency of new appointments has a positive impact on the diversity of the Bench. Diversity of judicial appointments is more likely to occur as a result of having an appointment process that actively seeks this outcome.

Contemporary models of positive, active or successful ageing have resulted in policies that encourage later retirement. The amendments proposed in the Bill will more closely align the retirement age for judicial appointments with the current trend in the general Australian workforce which is towards either increasing mandatory retirement ages or eliminating them completely. The Committee considers this will be of benefit to the Territory as it will enable the retention of officers who have a store of cumulative experience and expertise developed from hearing a succession of cases over a long period.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

**Mr Tony Sievers MLA**

**Chair**

## Committee Members

	<b>Tony Sievers MLA</b> Member for Brennan	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	<b>Kate Worden MLA</b> Member for Sanderson	
	<b>Party:</b>	Territory Labor
	Parliamentary Position	Government Whip
	<b>Committee Membership</b>	
	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
	<b>Gary Higgins MLA</b> Member for Daly	
	<b>Party:</b>	Country Liberals
	Parliamentary Position:	Leader of the Opposition
	<b>Committee Membership</b>	
	Standing:	House, Standing Orders, Members' Interests
	Sessional:	Economic Policy Scrutiny
	<b>Lawrence Costa MLA</b> Member for Arafura	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Sessional:	Economic Policy Scrutiny
	Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
		<b>Yingiya Mark Guyula MLA</b> Member for Nhulunbuy
<b>Party:</b>		Independent
<b>Committee Membership</b>		
Sessional:		Economic Policy Scrutiny
On 1 February 2019, Member for Fong Lim, Mr Jeff Collins MLA, was discharged from the Committee and replaced by the Member for Sanderson, Mrs Kate Worden MLA.		

## Committee Secretariat

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## Acknowledgments

The Committee acknowledges the organisations that have made written submissions to this inquiry and the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, for providing comments on concerns raised in submissions.

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## Terms of Reference

### Sessional Order 13

#### *Establishment of Scrutiny Committees*

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
  - (a) The Social Policy Scrutiny Committee
  - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
  - (a) any matter within its subject area referred to it:
    - (i) by the Assembly;
    - (ii) by a Minister; or
    - (iii) on its own motion.
  - (b) any bill referred to it by the Assembly;
  - (c) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
  - (I) provides for the compulsory acquisition of property only with fair compensation; and
  - (J) has sufficient regard to Aboriginal tradition; and
  - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

## **Recommendation**

### **Recommendation 1**

The Committee recommends that the Legislative Assembly pass the Justice Legislation Amendment Bill 2018.

# 1 Introduction

## Introduction of the Bill

1.1 The Justice Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 28 November 2018. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 12 February 2019.<sup>1</sup>

## Conduct of the Inquiry

- 1.2 On 30 November 2018 the Committee called for submissions by 14 December 2018. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix A, the Committee received three submissions to its inquiry and sought advice from the Attorney-General regarding issues raised in the submissions.

## Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
  - (ii) whether the Assembly should amend the bill;
  - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
  - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Justice Legislation Amendment Bill 2018.**

## Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

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<sup>1</sup> Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Parliamentary Record, *Debates Day 2 - 28 November 2018*,: <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>, p. 7

## 2 Provisions of the Bill

### Background to the Bill

- 2.1 Demographic ageing and associated research has contributed to a re-thinking of old age, with constructions of ageing as decline and disengagement increasingly challenged by contemporary models of positive, active or successful ageing. The adoption of these more recent constructions of ageing have resulted in policies that encourage later retirement and part-time work in retirement. Similarly, the age at which eligible individuals can apply for the pension has increased (by July 2023 it will be 67 for all individuals born on or after 1 July 1957) and consideration has been given to raising the pension eligibility age to 70 years.<sup>2</sup>
- 2.2 In line with these policy shifts, compulsory retirement in Australia has largely been abolished and ‘is now prohibited within Australian workplaces’.<sup>3</sup> There are, however, a number of caveats with respect to compulsory retirement legislation. For example, judicial and quasi-judicial officers and military personnel are exempt from this legislation.<sup>4</sup> In addition, ‘discriminatory behaviour is exempt from the Act where the employee is “unable to carry out the inherent requirements of the particular employment because of his or her age”’.<sup>5</sup>
- 2.3 There is considerable variation in the retirement ages mandated for judicial and quasi-judicial officers. Under s 72 of the *Australian Constitution*, the maximum age for Justices of the High Court is 70 years. At the jurisdictional level, compulsory retirement ages for judicial and quasi-judicial officers vary from 65 to 72 in all states and territories except for New South Wales (NSW). Although the majority of jurisdictions have an upper retirement age limit of 70, there is an increasing trend to extend this age limit, which is now 72 in Tasmania, 75 in NSW and, in Victoria, ranges from 70-72 (see Appendix B).
- 2.4 In the Northern Territory (NT), the mandatory retirement age for judicial officers is 70 years. The last increase occurred in 2013 when the retirement age was raised from 65 to 70 years (except for Supreme Court Judges who already had a retirement age of 70 years).<sup>6</sup>

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<sup>2</sup> Department of Human Services, Australian Government,

<https://www.humanservices.gov.au/individuals/services/centrelink/age-pension/eligibility/age-rules>

<sup>3</sup> Blackham, A, *Judges and Retirement Ages*, 2016, Melbourne University Law Review, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0019/2061019/02-Blackham.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0019/2061019/02-Blackham.pdf) p. 769, see *Age Discrimination Act 2004* (Cth) 18(2) and the *Fair Work Act 2009* (Cth) 351(1).

<sup>4</sup> Australian Law Reform Commission, *Grey Areas – Age Barriers to Work in Commonwealth Laws* (DP 78), 2.105; 2.106; 2.111, <https://www.alrc.gov.au/publications/2-recruitment-and-employment-law/compulsory-retirement>

<sup>5</sup> Blackham, A. 2016. p. 769

<sup>6</sup> Fyles, Parliamentary Record, Debates Day 2 -28 November 2018,: <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>, pp. 6-7

## Purpose and Overview of the Bill

- 2.5 In presenting the Bill, the Attorney-General noted the 'trend in the general workforce towards either increasing retirement ages or doing away with them altogether'.<sup>7</sup> In line with this trend, the Bill provides for an increase in the mandated retirement age for judicial officers.
- 2.6 As noted in the Explanatory Statement, the purpose of the Bill:  
is to increase the age of retirement to 72 years for a person appointed to the office of Director of Public Prosecutions, or the Solicitor-General of the Northern Territory, or as a Judge of the Local Court or a Judge or Associate Judge of the Supreme Court.<sup>8</sup>
- 2.7 The Bill will amend the following Acts:
- *Director of Public Prosecutions Act 1990*;
  - *Law Officers Act 1978*;
  - *Local Court Act 2015*; and
  - *Supreme Court Act 1979*.
- 2.8 The Bill proposes that the Act commence following assent by the Administrator.

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<sup>7</sup> Fyles, Parliamentary Record, Debates Day 2 -28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>, p. 6

<sup>8</sup> Explanatory Statement, *Justice Legislation Amendment Bill 2018 (Serial 73)*, <https://parliament.nt.gov.au/committees/EPSC/73-2018>

### 3 Examination of the Bill

#### Introduction

- 3.1 The amendments proposed in the Bill simply change the mandated retirement age from 70 to 72. Consequently, the issues raised in submissions relate to the policy intent of the Bill and do not refer to specific clauses.
- 3.2 Neither the Law Society NT (the Law Society) nor the Criminal Lawyers Association of the Northern Territory (CLANT) support the Bill. Civil Liberties Australia supports the Bill but proposed additional amendments to manage any competency issues that may arise in older judicial officers due to age-related neuro-cognitive illnesses such as Alzheimer's disease.
- 3.3 The mandating of a retirement age for judicial officers is the subject of ongoing debate focused on a range of concerns such as: identifying an 'appropriate' retirement age; inter-generational fairness; the need for diversity on the Bench; and the impact of ageing and length of tenure on competency and performance.<sup>9</sup> A key question emerging from this debate is whether it is appropriate to use age to address issues such as diversity, competence and performance or whether they can be more equitably addressed through other means. The issues identified above have been raised in submissions and are discussed below.

#### Summary of Evidence Received

##### *Rationale for increasing the retirement age*

- 3.4 CLANT comments that no justification has been provided for proposing an increase to the retirement age and that, in its current form, the Bill applies to sitting judges thereby risking the appearance of bias and 'interference with judicial independence'.<sup>10</sup>
- 3.5 Both CLANT and the Law Society recommend that if the Bill is passed it only apply to new judicial appointments.
- 3.6 The Committee sought clarification from the Attorney-General regarding the rationale for extending the retirement age of judicial officers to 72 and was advised that this would create a closer alignment with current trends in the general Australian workforce, provide more secure tenure and enable the 'retention of officers with knowledge and expertise'.<sup>11</sup> The Attorney-General noted the importance of retaining experienced judicial officers, particularly given the tendency of Northern Territory judges to relocate to southern states when they retire, with this reducing the number

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<sup>9</sup> Blackham, A. 2016.

<sup>10</sup> Criminal Lawyers' Association of the Northern Territory (CLANT), Submission No. 2, 2018, p. 2

<sup>11</sup> Hon. Natasha Fyles, Attorney-General and Minister for Justice, Response to Written Questions from the Committee, p.2, <https://parliament.nt.gov.au/committees/EPSC/73-2018>

available to work as acting Supreme Court Judges and resulting in substantial cost impacts due to the need to recruit such judges from other jurisdictions.<sup>12</sup>

- 3.7 In response to the Committee's questions regarding CLANT's assertion that the amendment creates a perception of bias, and regarding the recommendation from the Law Society and CLANT that the Bill should not operate retrospectively, the Attorney-General advised that:

It is not clear how this amendment creates a perception of bias as it will apply equally to all officers and not only for the benefit of one or a class of them. Further it is not clear how this amendment would affect the principle of the separation of powers in our system of Government.

and

The application of the Bill is not retrospective in nature in the sense of applying to actions or events of the past. Rather the Bill is prospective in nature applying to future events (an officer attaining the mandatory age of retirement).<sup>13</sup>

### **Committee's Comments**

- 3.8 The Committee is satisfied with the Attorney-General's rationale for extending the retirement age and considers that the amendments proposed in the Bill reflect contemporary mores on retirement in which age is considered to be a weak predictor of an individual's ability to work productively.<sup>14</sup> Older judges have a store of cumulative experience and expertise developed from hearing a succession of cases over a long period and extending the retirement age will enable the Territory to retain this expertise for longer.<sup>15</sup>
- 3.9 The Committee is satisfied with the Attorney-General's response in relation to arguments that the Bill risks creating a perception of bias or should only apply to new judges.

### ***Inter-generational fairness, diversity and the impact of low turnover***

- 3.10 Both the Law Society and CLANT argue that the NT is in a unique position due to the small size of its population, with this resulting in a much lower turnover of judges compared to other Australian jurisdictions. Both submitters regarded this as having an adverse impact on the career paths of younger practitioners and as making it difficult to maintain a Bench with a diverse composition.
- 3.11 The Law Society commented on the importance of continuing 'to increase diversity, refresh the workforce, and facilitate succession planning' and of 'ensuring a bench that is reflective of the community it serves'.<sup>16</sup> In addition, it pointed out that the small number of appointments required in the NT, and the ability to appoint acting judges,

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<sup>12</sup> Fyles, Response to Written Questions from the Committee, p. 2

<sup>13</sup> Fyles, Response to Written Questions from the Committee, p. 3

<sup>14</sup> Blackham, A, 2016. p. 759

<sup>15</sup> Williams, G, 'Geoffrey Nettle's appointment shows how bench retirement age needs to better reflect society', UNSW Law News, posted 9 February 2015, <http://www.law.unsw.edu.au/news/2015/02/geoffrey-nettles-appointment-shows-how-bench-retirement-age-needs-better-reflect>

<sup>16</sup> Law Society NT, Submission No. 1, 2018, p. 2

including those who have retired, means there is no need to extend the retirement age in order to ensure against the risk of losing experienced jurists.<sup>17</sup>

- 3.12 Both submitters considered that a further increase to the retirement age will exacerbate the negative effects of low turnover, while CLANT commented that a further increase ‘may be seen as discriminatory to other worthy candidates, who have fresh perspective and passion to bring to the role’.<sup>18</sup>
- 3.13 In response to the Committee’s questions regarding the potential impact that extending the retirement age might have on the diversity of the composition of the judiciary, the Attorney-General advised that:

It is unlikely that increasing the mandatory retirement age to 72 would either benefit or adversely impact diversity generally, particularly in respect to gender. Diversity is a consideration for judicial appointments based always on the pool of eligible candidates at the relevant time and the willingness of eligible candidates to nominate or be nominated for a vacant position.<sup>19</sup>

- 3.14 In terms of the impact on turnover, the Attorney-General commented that not all members of the judiciary will choose to work until the mandated retirement age and that it is:

not unusual for an officer to retire from service before reaching the mandatory age of retirement, with recent examples including former Chief Justice Brian Ross Martin retiring at age 63, former Chief Justice Trevor Riley retiring at age 68 and Local Court Judge Sue Oliver retiring from the Local Court at 65.<sup>20</sup>

### **Committee’s Comments**

- 3.15 The Committee is satisfied with the Attorney-General’s response regarding the potential impact that a later retirement age might have on diversity. It considers that a diverse and balanced judiciary is important but notes there is little evidence to show that new judicial appointments result in a more diverse Bench.<sup>21</sup> Consequently, facilitating a more rapid turnover through retaining a younger retirement age would not necessarily deliver greater diversity.

### ***Impact of ageing and length of tenure on competency and performance***

- 3.16 CLANT argues that benefits would accrue from a higher rather than lower turnover of judges due to the stress associated with ‘prolonged exposure to (in particular) the criminal workload of the courts’.<sup>22</sup> The submission notes that there is:

a recognised correlation between the stress of judging, bullying behaviour on the bench, and resulting stress among the practitioners who appear in the courts.<sup>23</sup>

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<sup>17</sup> Law Society NT, Submission No. 1, 2018, p. 1

<sup>18</sup> Criminal Lawyers’ Association of the Northern Territory (CLANT), Submission No. 2, 2018, p. 2

<sup>19</sup> Fyles, *Response to Written Questions from the Committee*, p. 4

<sup>20</sup> Fyles, *Response to Written Questions from the Committee*, p. 2

<sup>21</sup> Blackham, A, 2016, p. 757

<sup>22</sup> Criminal Lawyers’ Association of the Northern Territory (CLANT), Submission No. 2, 2018, p. 1

<sup>23</sup> Criminal Lawyers’ Association of the Northern Territory (CLANT), Submission No. 2, 2018, p. 1

3.17 The Law Society makes a similar point regarding the adverse impact of stress on a judge's performance and suggests that extending the retirement age would further impact on stress levels due to a longer time on the Bench.

3.18 In response to the Committee's questions regarding the management of work-related stress in the Courts, the Attorney-General advised that:

Any poor or inappropriate performance by a judicial officer will always be of concern and unfortunately may occur at any age. The management of judicial conduct, levels of stress and overall well-being are matters for the Chief Justice or Chief Judge to deal with in ensuring the orderly and expeditious discharge of the business of their Courts.<sup>24</sup>

3.19 CLANT considered that the determination of an appropriate retirement age should take into account the differences in the average length of tenure for Supreme Court judges as opposed to Local Court Judges, with the latter being appointed earlier in their career and therefore serving longer. According to CLANT, longer service results in increased exposure to stress and lower turnover, both of which CLANT regards as a rationale for retaining 70 as the retirement age for Local Court Judges. CLANT recommended that if the Bill is passed, the increase in age should only apply to Supreme Court Justices.

3.20 The Attorney-General subsequently advised the Committee that the alignment of the retirement age of Local Court Judges with that of Supreme Court Judges in 2013 'was in response to concerns raised by the community and legal profession over a number of years about the differing retirement ages'.<sup>25</sup>

3.21 Civil Liberties Australia commented that judges should have the option to retire at any age and that 'an upper age limit should not become a "contractual norm"'.<sup>26</sup> Although Civil Liberties Australia supports the Bill, it qualifies its support with reference to the potential effects of ageing on older judges. It suggests the inclusion of additional clauses to take into account the increased potential for judicial officers to be affected by neuro-cognitive diseases such as Alzheimer's. The aim of these clauses would be to institute a mechanism for formal peer evaluation of judges, where this appears to be warranted, together with a mechanism for enforcing retirement where this is deemed necessary, for instance, in cases where a judge 'may try to continue beyond the age at which 'he/she continues to be physically capable of fulfilling such a crucial role in the community'.<sup>27</sup>

3.22 The Committee requested clarification from the Attorney-General regarding existing mechanisms for removing a judicial officer for proved misbehaviour or incapacity and was advised that:

The current provisions to remove or terminate a judicial officer under both the *Supreme Court Act* and the *Local Court Act* require ["A Judge who is not an acting Judge may be removed from office by the Administrator on an address from the Legislative Assembly praying for his removal on the ground of proved misbehaviour or incapacity, but shall not otherwise be removed from office"]. This

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<sup>24</sup> Fyles, Response to Written Questions from the Committee, p. 4

<sup>25</sup> Fyles, Response to Written Questions from the Committee, p. 5

<sup>26</sup> Civil Liberties Australia, Submission No. 3, 2018, p. 1

<sup>27</sup> Civil Liberties Australia, Submission No. 3, 2018, p. 1

is consistent with the system prevalent throughout Australia of removal being made by the Governor-General or the Governor following an address of Parliament.<sup>28</sup>

- 3.23 The Attorney-General referred the Committee to the 2009 report on the review of Australia's Judicial System and the Role of Judges by the Commonwealth Legal and Constitutional Affairs Committee which outlines the following principles to guide the termination of judicial officers:

That judges should not be subject to arbitrary removal, individually or collectively, by the executive, legislative or judicial branches of government. Removal of judges from office must be limited to fair and transparent proceedings for serious misconduct within judicial office, criminal offence or such incapacity that renders a judge unable to discharge his or her functions.<sup>29</sup>

- 3.24 The Attorney-General noted that 'No lesser system is appropriate; nor could it guarantee the same independence from political interference which the Australian judiciary presently enjoys'.<sup>30</sup>

- 3.25 The Attorney-General further advised that concerns raised about the process for removal of judges relate 'to the lack of articulated procedures for managing complaints which then initiate mechanisms for removal'.<sup>31</sup> Although the Supreme Court in the NT has a published protocol for dealing with judicial complaints there is no such protocol for the Local Court or for the Northern Territory Civil and Administrative Tribunal. Consideration has been given to establishing an independent judicial review process through the development of a statutory mechanism for inquiring into the conduct or capacity of judicial officers, such as that implemented in NSW.<sup>32</sup> Although this would have several advantages, such as greater 'transparency, certainty of procedure and a timely response to complaints', further consideration needs to be given regarding the benefits of such a commission in the NT, given its small size and the infrequency of complaints.<sup>33</sup> In addition, consideration of such a commission is outside the scope of the current Bill.

- 3.26 Regarding the specific amendments proposed by Civil Liberties Australia, the Attorney-General advised that such amendments might:

fall foul of the requirements for independence which provide that, in exercising the Court's judicial functions, the Court is not subject to the direction or control of any person. A process of 'peer review', in addition to falling outside the scope of judicial functions that a judge may be expected to exercise in their role as a judicial officer, could be perceived as potentially influencing or controlling the exercise of another judicial officer's judicial functions.<sup>34</sup>

### **Committee's Comments**

- 3.27 The Committee holds the view that stress has the potential to affect members of the legal profession across all age groups and does not consider that retention of the

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<sup>28</sup> Fyles, Response to Written Questions from the Committee, p. 5

<sup>29</sup> Fyles, Response to Written Questions from the Committee, p. 5

<sup>30</sup> Fyles, Response to Written Questions from the Committee, p. 5

<sup>31</sup> Fyles, Response to Written Questions from the Committee, p. 6

<sup>32</sup> Fyles, Response to Written Questions from the Committee, p. 6

<sup>33</sup> Fyles, Response to Written Questions from the Committee, p. 6

<sup>34</sup> Fyles, Response to Written Questions from the Committee, p. 7

current retirement age will resolve this issue. Similarly, health problems affecting competency and performance can occur at any age and, while increased age is a risk factor for neuro-cognitive conditions such as Alzheimer's, the evidence suggests that prior to age 75 the risk is comparatively small, with only 1.9 percent of 65-74 year olds having dementia in 2006 compared to 8.4 percent of 75-84 year olds.<sup>35</sup>

- 3.28 The Committee is satisfied with the Attorney-General's advice regarding current mechanisms for removal of judicial officers for misbehaviour or incapacity and of the inappropriateness of introducing a peer review model. It further notes that proposals submitted in relation to these matters are outside the scope of the Bill.

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<sup>35</sup> Australian Institute of Health and Welfare 2007, *Older Australia at a Glance*: 4<sup>th</sup> edition, Cat. No. AGE 52. Canberra: AIHW, <https://www.aihw.gov.au/getmedia/9fda45a0-e966-47a2-8a62-0e442c089e71/oag04-c03.pdf.aspx> p. 87

## Appendix A: Submissions Received

### Submissions Received

1. Law Society NT
2. Criminal Lawyers' Association of the Northern Territory
3. Civil Liberties Australia

**Note:** Copies of submissions are available at:

<https://parliament.nt.gov.au/committees/EPSC/73-2018>

## Appendix B: Retirement age for judicial officers in Australian jurisdictions

Jurisdiction	Retirement Age	Source
Victoria	Supreme Court Judges – 70 or 72	<i>Constitution Act 1975</i> (Vic) s 77 (amendments as at 1 July 2017)
	County Court Judges – 70 or 72	<i>County Court Act 1958</i> (Vic) s 14(1) (amendments as at 1 July 2018)
	Associate Judges – 70 or 72	<i>Supreme Court Act 1986</i> (Vic) s 104 (amendments as at 1 September 2018)
	Magistrates - 70	<i>Magistrates' Court Act 1989</i> (Vic) s12(a) (amendments as at 1 July 2018)
NSW	Judicial Officers – 75 unless granted retiring leave in which case it is at the end of that leave.	<i>Judicial Officers' Act 1986</i> (NSW) s 44(1)
	Magistrate – 75	<i>Judicial Officers' Act 1986</i> (NSW) s 44(3)
ACT	Judges - 70	<i>Supreme Court Act 1933</i> (ACT) s 4(3)
	Magistrates – 65	<i>Magistrates' Court Act 1930</i> (ACT) s 7D
Qld	Judges - 70	<i>Constitution of Queensland 2001</i> (Qld) s 60(2); <i>Supreme Court of Queensland Act 1991</i> (Qld) s 21; <i>District Court of Queensland Act 1967</i> (Qld) s 14
	Magistrates - 70	<i>Magistrates Act 1991</i> (Qld) s 42(d)
SA	Judges - 70	<i>Supreme Court Act 1935</i> (SA) s 13A(1); <i>District Court Act 1991</i> (SA)
	Magistrates - 70	<i>Magistrates' Act 1983</i> (SA) s 9(1)(c)
Tasmania	Supreme Court Judges – 72	<i>Supreme Court Act 1887</i> (Tas) s 6A(1)
	Magistrates – 72	<i>Magistrates' Court Act 1987</i> (Tas) s 9(4)(a)
WA	Judges – 70	<i>District Court of Western Australia Act 1969</i> (WA) s 16; <i>Judges Retirement Act 1937</i> (WA) s 3(1)
	Magistrates - 70	<i>Magistrates' Court Act 2004</i> (WA) sch 1 cl 11(1)(a)
NT	Judges 70	<i>Supreme Court Act 1979</i> (NT) s 38
	Magistrates 70	<i>Magistrates Act 1977</i> (NT) s 7

## Bibliography

Australian Institute of Health and Welfare 2007, Older Australia at a Glance: 4th edition, Cat. No. AGE 52. Canberra: AIHW, <https://www.aihw.gov.au/getmedia/9fda45a0-e966-47a2-8a62-0e442c089e71/oag04-c03.pdf.aspx>

Australian Law Reform Commission, Grey Areas – Age Barriers to Work in Commonwealth Laws (DP 78), <https://www.alrc.gov.au/publications/2-recruitment-and-employment-law/compulsory-retirement>

Blackham, A, Judges and Retirement Ages, 2016, Melbourne University Law Review, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0019/2061019/02-Blackham.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0019/2061019/02-Blackham.pdf)

*Constitution Act 1975* (Vic)

*Constitution of Queensland 2001* (Qld)

*County Court Act 1958* (Vic)

Department of Human Services, Australian Government, <https://www.humanservices.gov.au/individuals/services/centrelink/age-pension/eligibility/age-rules>

*Director of Public Prosecutions Act* (NT)

*District Court of Queensland Act 1967* (Qld)

*District Court Act 1991* (SA)

*District Court of Western Australia Act 1969* (WA)

Explanatory Statement, Justice Legislation Amendment Bill 2018 (Serial 73), <https://parliament.nt.gov.au/committees/EPSC/73-2018>

Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Parliamentary Record, Debates, Day 2 -28 November 2018: <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

*Judges Retirement Act 1937* (WA)

*Judicial Officers' Act 1986* (NSW)

*Law Officers Act* (NT)

*Local Court Act* (NT)

*Magistrates' Court Act 1930* (ACT)

*Magistrates Act 1977* (NT)

*Magistrates Act 1991* (Qld)

*Magistrates' Act 1983* (SA)

*Magistrates' Court Act 1987* (Tas)

*Magistrates' Court Act 1989* (Vic)

*Magistrates' Court Act 2004* (WA)

*Supreme Court Act 1933 (ACT)*

*Supreme Court Act 1979 (NT)*

*Supreme Court of Queensland Act 1991 (Qld)*

*Supreme Court Act 1935 (SA)*

*Supreme Court Act 1887 (Tas)*

*Supreme Court Act 1986 (Vic)*

Williams, G, 'Geoffrey Nettle's appointment shows how bench retirement age needs to better reflect society', UNSW Law News, posted 9 February 2015, <http://www.law.unsw.edu.au/news/2015/02/geoffrey-nettles-appointment-shows-how-bench-retirement-age-needs-better-reflect>