

Economic Policy Scrutiny Committee
Dr Jennifer Buckley
Committee Secretary
by Email: EPSC@nt.gov.au

Friday 14 December 2018

Submission: Justice Legislation Amendment Bill 2018

Civil Liberties Australia thanks the Committee for the invitation to make a submission on this Bill. In general, we believe the Bill is appropriate. We make no comment other than the following, related to age.

We support the raising of the forced retirement age of judges to 72. If it was to be raised to 75, we would have no objections. Judges continue to have an option to retire at any age: an upper age limit should not become a 'contractual' norm.

However, there are ramifications connected with raising the age that we think the Committee should consider. The Committee and the Parliament may decide to alter the Bill appropriately: we suggest that happens.

People are living longer. The federal government is making changes to the retirement age and superannuation based on that fact. But it is also equally indisputable that subtle effects of ageing are, in some cases, becoming evident at an earlier age. Also, new research is leading to possible future options to identify early-stage deleterious ageing effects, such as Alzheimers, memory problems/loss, and the like, which could affect the performance of judicial duties.

CLA proposes that the committee introduce to this Bill some clauses that cover the possibility that 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. Rather than providing prescriptive wording for such clauses, we offer the following suggestions as the basis for drafting:

- Beyond the age of 70, fellow judges and legally qualified people who appear regularly before a judge (or magistrate) should have a mechanism, privately in writing, to propose to the Chief Justice (or his/her deputy) that a period of formal observation be undertaken of the behaviour, demeanour and performance (NOT of his/her legal decisions) of a judge, magistrate or like appointee. The period might be three to six months.
- After such a period of observation, should the CJ or deputy believe it necessary, after consulting with half or two-thirds of his/her other fellow judges/magistrates*, formal discussions by the CJ/deputy with the relevant judge should be enabled, with full recording of all details in writing and by audio/video means. These discussions would address anything inappropriate observed during the 3-6 month period.

* These consultations with the relevant judge should also be of a formal nature, and be recorded.

- Should there be no satisfactory resolution regarding future performance of aspects of the judicial role and duties identified as inappropriate during the observation period, a mechanism be put in place for the judge/magistrate to be invited to retire, formally in writing, by the CJ, deputy or Attorney-General.
- If the relevant judge refuses to retire, there needs to be a method of enforcing retirement, based on the earlier formally-recorded observations and discussions.

We would also propose that the legislation leaves open the possibility of formal tests for 'ageing' medical conditions being undertaken either:

- as part of the above process, and/or
- at reaching age milestones (say at 70 and then every two years).

(There may be advantage, to judges and to the Crown, by testing at an earlier age, say 65 onwards, when relevant and reliable testing becomes available).

The concept of ensuring competence in advancing age is already established in the driver's licence system. The important role and responsibility of judicial officers in our society is certainly not less than that of vehicle drivers.

We would point out that retired judges can continue to be a great community asset. They form a pool of qualified people possibly still young enough to be appointed to inquiries of various kinds, and able to provide valuable commentary and mentoring when they are no longer constrained by their judicial duties.

Yours Truly

Dr Kristine Klugman OAM
President

Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies, forces and the corporate sector to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to help keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Australians' civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all.