

24 June 2019

Our ref: MAC
Your ref: COMM2019/00015.68

Secretary to the Committee,
Legislation Scrutineering Committee

Via email only: LSC@nt.gov.au

Dear Committee

JUDICIAL COMMISSION BILL 2020

I refer to your email dated 14 February 2020 inviting a submission by the Northern Territory Bar Association (“**NTBA**”) to your inquiry into the Judicial Commission Bill 2020 (“**the Bill**”).

For the reasons that follow, the NTBA submits

1. The Assembly should amend Clauses 7 and 10 of the Bill;
2. The Bill as amended should be passed by the Assembly;
3. Consequential amendments should be made to the *Supreme Court Act 1979* and the *Local Court Act 2015*.

The establishment of a Judicial Commission is strongly supported by the NTBA. It is not considered that the proposed amendments should impede the passage of this important and long overdue legislation.

Clause 7 Composition of the Judicial Commission

One of the members of the Commission is to be the President of the Law Society Northern Territory (“**LSNT**”). The President may appoint another member of the Council of the LSNT to act in their place: Clause 10(4). There is no role for the NTBA in this process.

The NTBA is a professional body speaking for those members of the legal profession who have chosen to act solely as barristers. As such, its members regularly appear



before judicial officers and are thereby directly affected by the capacity and conduct of such officers. The status of the

NTBA is recognised, for example, by the Judicial

Appointments Protocol, which requires the Presidents of both the LSNT and the NTBA to be consulted as part of the judicial appointments process.

It is therefore submitted the NTBA should have a role in establishment of the Commission. To avoid the Commission becoming unwieldy in size, it is suggested that Clause 7 (1)(d) of the Bill which currently provides for a member of the Commission to be

(d) the President of the Council of the Law Society Northern Territory

be amended to read

(d) a member appointed by the President of the Law Society of the Northern Territory following consultation with the President of the Northern Territory Bar Association

Clause 10(4) as a consequence would need to be amended as follows

(4) Following consultation with the President of the Northern Territory Bar Association ~~the President of the Council of the Law Society Northern Territory may appoint another~~ an acting member of the Council of the Law Society Northern Territory to act as a member of the Judicial Commission during a period, or all periods, when the appointee of the ~~President of the Law Society Northern Territory is unable or unavailable to perform functions or exercise powers of a member of the Judicial Commission.~~

Action by Head of Jurisdiction

Clause 49 enables the Judicial Commission to refer a complaint to the head of jurisdiction. Clause 56 requires an investigation panel in certain circumstances to report its findings to the head of jurisdiction. The referral or report may include recommendations as to what action should be taken.

Clause 60 then provides for action by the head of jurisdiction. However, it is unclear what powers the heads of jurisdiction have to act upon any recommendations or otherwise to take action.

While section 14 of the *Northern Territory Civil and Administrative Tribunal Act 2014* arguably gives to its President wide administrative powers over the members of the

Tribunal, neither the *Supreme Court Act 1979* nor the *Local Court Act 2015* give similar powers to the Chief Justice of the Chief Judge respectively.

The Explanatory Statement to the Bill makes reference to the section 34 of the *Supreme Court Act 1979* as providing that the Chief Justice is responsible for “ensuring the orderly and expeditious discharge of the business of the Court”. It then refers to section 20 of the *Local Court Act 2015* as providing a similar “power” to the Chief Judge. It is by no means clear that either provision confers any disciplinary power over members of jurisdiction. Indeed, Chief Judge Morris in a letter to Criminal Lawyers Association of the NT dated 26 November 2019 expressed the view that

“under the current processes and statutory framework the Chief Judge has no power to impose any sanction in relation to a complaint.”

For there to be any utility to the provision of recommendations, governing legislation of the various jurisdictions should be amended to make clear the nature and extent of the disciplinary powers of the heads of jurisdiction.

Yours sincerely



MILES CRAWLEY SC
President