

## **Criminal Lawyers Association Northern Territory (CLANT)**

### **Submission regarding the Bill for an Act to amend the Director of Public Prosecutions Act 1990, the Law Officers Act 1978, the Local Court Act 2015 and the Supreme Court Act 1979**

The National Judicial College of Australia and the Australian National University are co-hosting a conference for 2019 titled '*Judges: Angry? Biased? Burned Out?*' This aptly summarises the basis for CLANT's objection to the proposed increase in the compulsory retirement age for Northern Territory judges and other senior legal office holders.

In Australia a legal practitioner will typically be appointed as a member of the judiciary after 15 years of practice and most of those appointed hold on to their office until statutory retirement age<sup>1</sup>. This has been true of the Northern Territory particularly with respect to the Local Court bench who tend to be appointed earlier in their careers. This means that judges are sitting in these positions for many years.

Whilst in the case of pensioned judges (Supreme Court judges) there may be an argument in favour of extending the age of retirement because appointment to these positions tends to occur later, and because they are tied to pensions these judges are expensive in retirement, the same argument does not apply to the Local Court judiciary.

Maintaining and not increasing the current retirement age, at least for Local Court judges, promotes good judging through reinvigoration and diversity on the bench.

#### **Angry and burned out**

At a time when the legal profession and even the judiciary themselves are recognising the damage that can be done as a result of prolonged exposure to (in particular) the criminal workload of the courts, the Northern Territory legislature are proposing to increase the compulsory retirement age of judges from 70-72.

Out of all the Australian jurisdictions, including at federal level, only NSW and Tasmania have seen fit to increase the sitting age of Local Court judges (known in other jurisdictions as magistrates) to age 72.

It is the lower court judges who appear to be most vulnerable to the stresses of the job and they are in the job longer. This is no doubt because their crime workload is higher volume and more repetitive and with a fast turnaround. There is a strong argument that for this reason there should be increased turnover for these judges. The current proposal will reduce turnover.

In this regard it is important to note 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.

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<sup>1</sup> Doyle J, Chief Justice of SA 'How do Judges Keep Up to Date?' paper delivered to LAWASIA DOWNUNDER QUEENSLAND, AUSTRALIA; 21 and 22 March 2005.

We have a wealth of talented legal practitioners with much to contribute in jurisprudence. Unlike in other jurisdictions where there may be upwards of 250 judicial officers, here in the Northern Territory we have only approximately 12 full time Local Court Judges and 6 Supreme Court Justices.

Thus opportunities for appointment are greatly reduced and a further increase to the retirement age of Local Court Judges, noting the increase from 65 to 70 years in 2013, may be seen as discriminatory to other worthy candidates, who have fresh perspective and passion to bring to the role.

### **Biased**

Changes to judicial tenure risks the appearance of interference with judicial independence if they apply to sitting judges<sup>2</sup>. The Bill in its current form does just that.

The community has not been provided with any justification for the increase in retirement age which is concerning. If the change has been endorsed or prompted by sitting members of the bench (or other affected incumbents) that reveals an inelegant blurring of the doctrine of separation of powers and responsible government.

If the purpose, or the underlying reason of the increase in age of retirement is to 'save money' by deferring costs associated with paying Supreme Court Justices their pension upon retirement, then such thinking is fundamentally flawed. A deferment of payment is not a saving, nor is there a guarantee those entitled to their pension will sit to the age of retirement. Nor does such thinking seek to address workloads or pressure of Court. The real solution is increasing the number of judges rather than the age to which they can sit.

To avoid this perception of bias any increase in the retirement age should only apply to future appointments and not to any current sitting judge. The same consideration must apply to independent statutory office holders such as the DPP and Solicitor General.

### **Conclusions**

The *Justice Legislation Amendment Bill 2018* **should not** be passed and **is not** supported by CLANT.

If the bill were to pass it should be amended such that:

- The increase in age is only applicable to Supreme Court Justices; and
- The increase in age is only applicable to future appointments

Marty Aust  
President  
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<sup>2</sup> Blackham A, 'Judges and Retirement Ages' Melbourne University Law Review 2016 Vol 39; 738 at 743.