

## **SUBMISSION ON JUDICIAL RETIREMENT AGE**

### **“72 is time for judicial officers to go”**

It is said that getting new judges is difficult in Tasmania and that therefore the retirement age should be raised from 72 to 75. It appears that the first person to benefit from such a change would be the present Chief Justice.

Perhaps he initiated the idea, perhaps he didn't, but the starting problem with a discussion of such a proposal is that being heard or seen to publicly 'oppose it' is viewed as somehow improper, rather like being rude to one's elders.

The Government has announced its intention to go ahead with raising the age and thereafter allowed consultation. There's a problem with that approach: it suggests that the decision is done and dusted.

In the interests of promoting discussion based on more than objections fuelled by grudges, or support based on 'self-interest', here are some factors against accepting the proposal:

1. There is always an abundance of experienced, ethical and competent litigators – both as barristers and solicitors – who wish to become judicial officers.
2. If there is a dearth of available talent (real or imagined) in one jurisdiction it can be filled with Australians from another part of our nation. This is common in the ACT and in NT. Two of Tasmania's present 'acting judges' are from interstate.
3. Judges, any judges, develop their skills on the job and with the help of the 'new judge' training programs.
4. Those now in the job took the position knowing there was a fixed retirement age with good reason: judges, like the rest of us, get testy with age, find they are 'over it' ('it' for them being litigants, lawyers, hearing cases, and writing decisions), and often too comfortable in their 'power' both over others and with others.
5. All institutions need a steady 'turn over' of those at the top and courts are no exception.
6. The change in NSW to allow their CJ to stay until he was 75 was wrong in principle, and unnecessary. There is no doubt about his brilliance, but nor is there any doubt about the availability of similar, but younger, brilliance to replace him.

7. Allowing a brilliant judge to stay longer also means that rather less successful appointees can stay longer too, so be careful what you wish for.

8. Unfortunately those who should speak out against this regressive proposal are unlikely to do so lest: a. they later have to appear in front of a judge/s whose term of extension they opposed; and/or b. they are worried it will adversely affect their own soon or later hopes of appointment to 'Silk' or the bench (the old 'discretion is the better part of valour' mantra).

9. Retired judges with the wish and vigour can always be appointed as 'acting judges' to deal with temporary workload problems and paid a daily rate. This is done in Tasmania and elsewhere. It works.

10. Tasmania should look forward to a new Chief Justice so soon as the incumbent turns 72 (as I will too) very soon. For his part he can then choose or not to come back and act judicially part time for so long as his replacement chooses to have him.

11. There's much to be said for using the wisdom acquired by age, but it should be offered sparingly, and is best offered by those who are not obstacles to the progress of the young.

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