

Submission to Senate Inquiry into Australia's Judicial System and the Role of Judges

1. Recommendation: Increase in number of justices in the High Court of Australia to nine

As part of the recognition of Australia's international independent sovereign status it is probably time to align our highest court with the same number of justices as that on the US Supreme Court and the Canadian Supreme Court. Whilst the case load burden on the High Court of Australia has been extremely efficiently handled, with the filters of special leave applications, there would inevitably be an increased international impact if the numerical power of the justices on the High Court of Australia was to be enhanced from seven to nine justices. I note historically in the High Court premises in Canberra have been constructed to accommodate this number of nine justices- completed now some 29 years ago. Whilst there are many arguments that might be advanced as to what is an optimum number and the reciprocal burdens of increased judicial output, the Constitutional balance for the people united in the Commonwealth of Australia can ultimately only be enhanced by increasing the number of justices to nine.

2. Recommendation: referendum to increase the retiring age of Chapter III judges to 75 years

The retiring age for federal judges in Canada is 75. The judicial expertise and talent of those who have served upon the federal courts is being prematurely wasted by the current retirement age of 70 years for Chapter III justices that exists in s72 of the Constitution as a result of the 1977 Referendum. It is now more than 30 years since that amendment and it is clear that the age of retirement is too young, creates a significant loss of most valuable judicial resources and was an overreaction to the octogenarians serving out life appointments.

3. Recommendation: referendum to permit written participation in the delivery of reasons for judgments and written participation in the making of orders on full courts, heard prior reaching the retirement age, within 6 months after reaching retirement age (hopefully to be increased to 75)

Although our federal courts are run with a high degree of efficiency there is little doubt that permitting a retiring judge the opportunity of participating in the delivery of joint judgments for a period up to 6 months after reaching the retiring age would be a productive and beneficial reform. Most joint judgments are now delivered in written form with the orders already formulated and the physical presence of each member of the full court that heard the matter appears unnecessary. The only issue is perhaps one of independence given the retirement from sitting however this concern is highly theoretical as there is a protection already flowing from the other judicial members of the full court and there is every reason to believe the same fierce independence required for judicial office will not have vanished upon reaching the retirement age. Equally this reform would remove inefficiencies and disruptions that might otherwise arise from pending retirements and would provide a full stream of judicial resources for the benefit of the people of this great nation.

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Dated 28 April 2009