

# COMMUNITY LEGAL CENTRES TASMANIA

29 July 2024

Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001

via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

To the Department of Justice,  
**Re: *Judicial Commissions Bill 2024***

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Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Judicial Commissions Bill 2024* ('the Bill'). We support the Government's intention to establish a judicial council which will act as the key complaints handling body in relation to judicial officers in Tasmania.<sup>1</sup>

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

It is essential that Tasmania have a strong, independent and transparent judiciary. As Appleby and Le Mire have noted "while problematic judicial conduct is rare, failing to acknowledge and address it can damage the integrity of the courts and undermine their ability to fulfil the judicial function".<sup>2</sup> The establishment of a judicial council will assist in maintaining public confidence in the judiciary by providing a mechanism to fairly and expeditiously address complaints directed against judicial officers. However, with independent judicial complaints bodies having already been established in Victoria, New South Wales, South Australia, the Northern Territory and the Australian Capital Territory, there are reforms that should be considered to strengthen the Bill. In particular, we note that we have read the detailed submission of Professor Gabrielle Appleby and her colleagues and endorse the recommendations made.

## **Procedural fairness**

Clause 21 of the Bill expressly provides that in carrying out its functions, neither the council or commission are bound by the rules of evidence, and do whatever is necessary or expedient for the fair and expeditious examination of the complaint. These procedural rules are similar to other investigative bodies in Tasmania including the Integrity Commission. However, the

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<sup>1</sup> CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

<sup>2</sup> Gabrielle Appleby and Suzanne Le Mire, *Judicial Conduct: Crafting a System that Enhances Institutional Integrity* (2014) 38(1) *Melbourne University Law Review* 1 at 3.



*Integrity Commission Act 2009* (Tas) goes further in expressly providing that any investigation or inquiry “must observe the rules of procedural fairness”.<sup>3</sup> Similarly, in the investigation of lawyers, the Legal Profession Board is required to recognise that “the rules of procedural fairness... apply in relation to the investigation of complaints...”.<sup>4</sup>

In the same way that other investigative bodies in Tasmania are required to afford procedural fairness, we strongly believe that the Bill should explicitly recognise adherence to procedural fairness. A good model that could be adopted is found in South Australia which requires that both the Judicial Conduct Commissioner and judicial conduct panels “must act in accordance with the principles of procedural fairness” in the carrying out of its investigations and hearings.<sup>5</sup>

### **Judicial Education**

The Bill establishes that the functions of the judicial council are to receive, examine and refer complaints about judicial officers. Whilst these functions are supported, an additional function that should be included is ongoing judicial training and development (‘judicial education’). As one former United States Chief Justice has recognised, “[w]hen lawyers don black robes to become judges, they do not magically acquire all the knowledge, experience, and skills necessary to become excellent judges”.<sup>6</sup>

Architects, lawyers, real estate agents and teachers are just some of the Tasmanian professions that are required to undertake continuing professional development as part of their employment.<sup>7</sup> We do not believe that there is any good reason why judicial officers should not also be included. Indeed, as the Australian Law Reform Commission has noted:<sup>8</sup>

*Much of the impetus to secure judicial education has come from judges and magistrates themselves ... in response to the changing roles and responsibilities of judges and decisionmakers, and the increased public demands, expectations and scrutiny of the justice system.*

In New South Wales, judicial education is recognised as a function of the Judicial Commission<sup>9</sup> and we strongly recommend that it is included as a function of Tasmania’s judicial council.

### **Membership of Judicial Council**

As the Bill is currently drafted, membership of the judicial council consists of the Chief Justice, the Chief Magistrate, a legal practitioner and a person nominated by the Minister. There is no requirement that the legal practitioner have practiced for a minimum number of years although it is required that the legal practitioner be jointly appointed by the Law Society and the Tasmanian Bar. Other statutes in Tasmania provide for legal practitioners to have between 5-7

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<sup>3</sup> Sections 46(1)(c) and 69(1)(b) of the *Integrity Commission Act 2009* (Tas). See also section 5(3)(b)(iii) of the *Commissions of Inquiry Act 1995* (Tas) and section 10(4)(a) of the *State Service Act 2000* (Tas).

<sup>4</sup> Section 460 of the *Legal Profession Act 2007* (Tas).

<sup>5</sup> Sections 13(2) and 23(3) of the *Judicial Conduct Commissioner Act 2015* (SA).

<sup>6</sup> Mary Russell, Toward a New Paradigm of Judicial Education (2015)(1) *Journal of Dispute Resolution* 79 at 79. As found in Gabrielle Appleby, Jessica Kerr, Suzanne Le Mire, Andrew Lynch and Brian Opeskin, *Judicial education in Australia: A contemporary overview* (December 2021) at 10.

<sup>7</sup> Section 20G of the *Architects Act 1929* (Tas); section 56(3)(a)(i) of the *Legal Profession Act 2007* (Tas); section 20A of the *Property Agents and Land Transactions Act 2016* (Tas); section 6A(g) of the *Teachers Registration Act 2000* (Tas).

<sup>8</sup> Australian Law Reform Commission, *Managing Justice: Review of the Federal Civil Justice System*, 2000, Report 89, para 2.150.

<sup>9</sup> Section 9 of the *Judicial Officers Act 1986* (NSW).



years' experience before appointment to Boards and other review bodies<sup>10</sup> and we believe for consistency a minimum 5-7 years' experience should be required for a legal practitioner's membership of the judicial council.

We also note that the person nominated by the Minister must have "in the Minister's opinion, qualifications and experience to assist the council in the performance of its functions, or the exercise of its powers".<sup>11</sup> We believe that a list of appropriate qualifications would provide both guidance to the Minister and confidence to the broader community in the independence of the council. A useful model that could be considered is Tasmania's Parole Board where membership includes a person "experienced in matters associated with sociology, criminology, penology or medicine".<sup>12</sup>

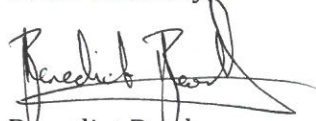
### **Annual Report**

The overarching purpose of an annual report is to inform the public about an organisation's achievements, performance and financial position. Expressed in another way, an annual report is an important transparency mechanism. Given that the focus of Tasmania's judicial council will be on investigating complaints against judicial officers it is crucial that the public has confidence that complaints are being appropriately investigated and proactive steps are being taken to ensure that complaints against judicial officers are minimised.

We strongly believe that clause 14 of the Bill should include both the number of complaints received, dismissed and substantiated and information of the subject-matter of the complaint. A model that could be considered is the Legal Profession Board of Tasmania which is required to provide an annual report containing "the number and nature of complaints received and matters subject to investigation or hearing".<sup>13</sup> Subject matter examples listed in the Legal Profession Board of Tasmania's most recent report include allegations of abusive, rude and threatening behaviour, delay and overcharging.<sup>14</sup>

South Australia's Judicial Conduct Commissioner is required to provide "the number and general nature of any complaints" received, dismissed and substantiated<sup>15</sup> and this should also be explicitly set out in the Bill.

Yours faithfully



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

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<sup>10</sup> Section 62(2) of the *Corrections Act 1997* (Tas); section 15(4) of the *Integrity Commission Act 2009* (Tas); section 8(1) of the *Magistrates Court Act 1987* (Tas).

<sup>11</sup> Clause 2(d)(iii) of the *Judicial Commissions Bill 2024* (Tas).

<sup>12</sup> Section 62(2)(c)(ii) of the *Corrections Act 1997* (Tas).

<sup>13</sup> Section 601(2)(b) of the *Legal Profession Act 2007* (Tas).

<sup>14</sup> Legal Profession Board of Tasmania, *Annual Report 2022-23* (August 2023) at 26.

<sup>15</sup> Section 27 of the *Judicial Conduct Commissioner Act 2015* (SA).