

**CROWN LAW OFFICERS LEGISLATION AMENDMENT (RETIREMENT AGE)  
BILL 2011**

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**Bill introduced on motion by Mr Greg Smith.**

**Agreement in Principle**

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [10.02 a.m.]: I move:

That this bill be now agreed to in principle.

The object of the Crown Law Officers Legislation Amendment (Retirement Age) Bill 2011 is to increase the retirement age of the following statutory officers from 65 to 72: Deputy Directors of Public Prosecutions and Solicitor for Public Prosecutions, requiring amendment to the Director of Public Prosecutions Act 1986; Crown Prosecutors, Senior Crown Prosecutors and Deputy Senior Crown Prosecutors, requiring amendment to the Crown Prosecutors Act 1986); and Public Defenders, Senior Public Defenders and Deputy Senior Public Defenders, requiring amendment to the Public Defenders Act 1995.

The Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007, hereinafter referred to as the 2007 amending Act, introduced fixed term appointments and compulsory retirement for a range of statutory officers in New South Wales. These officers were the Director of Public Prosecutions, the Deputy Director of Public Prosecutions, the Solicitor for Public Prosecutions, Crown Prosecutors, Senior Crown Prosecutors, Deputy Senior Crown Prosecutors, Public Defenders, Senior Public Defenders, Deputy Senior Public Defenders, and the Solicitor General. However, the 2007 amending Act introduced different retirement ages for different offices, imposing a retirement age of 72 for the Director of Public Prosecutions and the Solicitor General, and 65 for the others affected.

While it is recognised that there is some value in ensuring that the statutory officers in question be required to retire at a particular age, it is considered that this should be 72, to ensure consistency across all officers, including judicial officers, with judges and magistrates also required to retire at 72. A number of transitional issues have been identified and they need to be addressed by appropriate savings and transitional provisions to ensure that those who were appointed with life tenure before 1 November 2007 are not forced to retire at any particular age. The date 1 November 2007 was the date on which a retirement age of 65 was imposed on the affected officers by the 2007 amending Act.

The increase in retirement age to 72 will apply to anyone appointed to any of the affected offices since 1 November 2007 who would currently be forced to retire at 65 years of age. People appointed to any of the affected offices since 1 November 2007 will either have a seven-year term or a term of less than seven years if they were within seven years of 65 years of age at the time of appointment. These people will now be able to seek reappointment until 72. If any of these people have been appointed for a term of less than seven years, so as to

ensure that their term did not extend beyond the date on which they reached 65, the amendments provide that they will now be taken to have been appointed for a full seven years.

The Director of Public Prosecutions was consulted on the proposed increase in compulsory retirement ages from 65 to 72, and supported the proposed amendments. An anomaly that was shown to have existed as a result of the passing of the 2007 amendment was that someone such as the Senior Public Defender, currently Mark Ierace, S.C., a very distinguished and committed officer and lawyer, can be the Senior Public Defender until he is 65, but then he has to leave that position. However, he can go back to his original position of Public Defender forever, as it were, because he has tenure. Some Acting Crown Prosecutors acted for some years and had the reasonable expectation of a permanent appointment as a Crown Prosecutor, as that had been the procedure, were affected by that. They had given up their practice at the bar, sold their chambers and found that they could not continue to practice for as long as they had intended. At that age they are at the peak of their abilities. Currently a Crown Prosecutor in his 70s is at the peak of his ability. Justices Gleeson, McHugh and Kirby in the High Court, for example, had to retire at 70 when they were also at the peak of their careers.

This earlier change reflected, probably unintentionally, a form of age discrimination because that had been abolished in public sector areas in the late 1980s for virtually everybody else but for some reason it was brought in for this legislation. I will not go into what I think were the reasons for that; perhaps at a later time. The Director of Public Prosecutions and Senior Public Defender support the proposed amendments, as I am sure will those affected officers. I commend the bill to the House.