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Dear Dr Buckley

### **Justice Legislation Amendment Bill 2018**

Law Society Northern Territory (the Society) welcomes the opportunity to comment on the amendments to the Justice Legislation Amendment Bill (Bill).

The Society represents approximately 600 legal practitioners in the Northern Territory including barristers, government and private practitioners. The mission of the Society is to enhance access to justice, improving the law and maintaining individual rights. Importantly the Society is charged with considering proposed changes in the law and aiding such amendments and reforms thereof that are likely to benefit the public.

The Society has consulted extensively with its members to develop this response.

The Bill seeks to increase the age of retirement to 72 years for a person appointed to the office of Director of Public Prosecutions, the office of the Solicitor-General of the Northern Territory, or as a Judge of the Local Court or a Judge or Associate Judge of the Supreme Court.

The Society notes that it previously wrote to the Chief Judge of the Local Court and the Attorney-General in response to a letter from the Chief Judge of the Local Court seeking the Society's views in May 2018. The Society advised at that time, and its position has not changed, that the profession did not support the proposal to increase the retirement age for judicial officers.

The Society is opposed to an increase to the retirement age from 70 years to 72 years. It is noted that the increase of the retirement age from 65 to 70 only occurred 5 years ago in April 2013.

In reaching this position the Society notes the uniqueness of this jurisdiction, in particular the size of the population, such that the risk of losing experienced jurists is not the same as in a large jurisdiction like New South Wales (NSW). NSW has over 272 judges and a higher number of appointments to make each year and a change of the retirement age in their jurisdiction may assist in managing that. However, the Northern Territory does not have a similar issue given we only have 20 Judges across two courts. If the Territory finds itself faced with a shortage of judicial officers, it has the ability to appoint acting judges including retired judicial officers under the age of 75.

In a jurisdiction such as the Northern Territory there is also the need to continue to increase diversity, refresh the workforce, and facilitate succession planning. Extending judges' working lives may be affecting the career paths of younger practitioners. The Society considers that the current retirement age is justified by the very low turnover, which may limit progression for other talented practitioners and ensuring a bench that is reflective of the community it serves. There is a concern that an increase to the age of retirement would inhibit this from continuing. This fact was confirmed by the information provided by the Attorney-General in an earlier response to the Society. That letter stated that if the proposed increase to the retirement age was to go ahead, six male judicial officers would benefit and it would only be in 2023 that it would be of benefit to a female judicial officer. On the other hand, if the Bill does not pass, there is potential for an appointment of female practitioner or other diverse character as early as March 2019 when the next Supreme Court judge reaches the current retirement age of 70.

A mandatory retirement age for permanently tenured positions is part of the justice system's checks and balances. Historically retirement from the bench was the end of a lawyer's working life. This is no longer the case with a trend toward retired judicial officers taking on other roles or returning to legal practice. Upon reaching retirement age judicial officers still have the opportunity to serve their communities as Acting Judges (and routinely do) or in other roles such as mediators and arbitrators, both of which are increasingly needed with the shift in focus toward alternative dispute resolution to improve access to justice. There are limited impediments to a retired judicial officer returning to practice, save for the particular requirements in the NTBA Bar Conduct Rules.

The Society has also noted with concern the stressful nature of the work of a judge and the contribution that stress can make to the manner in which some judges conduct themselves in court. An increased retirement age would lead to Judges sitting on the bench for longer, which would have an impact on levels of stress.

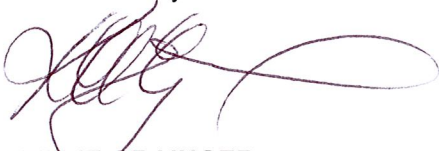
The Society has formed the view that the mandatory requirement age is still relevant to the judiciary given it is a tenured position. Other government positions where mandatory retirement ages have been removed have been replaced by fixed term contracts, some with no option of re-appointment.

The Society is of the view that the proposed amendments provide no genuine benefit to the justice system or the community.

If the Bill is passed, we do not support it operating retrospectively and the Society argues it should apply only to new judicial appointments made after the passage of the Bill.

Should you have any queries in relation to our response, please do not hesitate to contact me.

Yours faithfully



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