

4 September 2019

GPO Box 2388  
Darwin NT 0801

Level 3, 9 Cavenagh Street  
Darwin NT 0800



Ms Julia Knight  
Committee Secretary  
Social Policy Scrutiny Committee  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

T (08) 8981 5104  
F (08) 8941 1623

lawsoc@lawsocietynt.asn.au  
www.lawsocietynt.asn.au

ABN 62 208 314 893

Email: [SPSC@nt.gov.au](mailto:SPSC@nt.gov.au)

Dear Ms Knight,

### **Statute Law Revision and Repeals Bill 2019**

The Law Society Northern Territory (the Society) welcomes the opportunity make a submission on the *Statute Law Revision and Repeals Bill 2019* (the Bill).

The Society seeks to make a submission only regarding Clause 57 of the Bill. This Clause has the effect of repealing the *Personal Injuries (Civil Claim) Act 2003* (the Act).

Although key sections of the Act have never been commenced, the Society suggests that at this juncture there is a benefit to retaining the Act.

The Act was passed by the Legislative Assembly at a time when all Australian jurisdictions were responding to public concern about increasing public liability and other insurance costs and the potential contribution of litigated claims to those increased costs. There was a key focus on facilitating resolution of claims before legal proceedings were filed, and on striking a balance in relation to the costs of proceedings. An example of these is in section 11 of the Act, which requires parties to engage in genuine negotiation attempts before filing a claim with the Courts.

The Society considers there are significant benefits to requirements for parties to attempt to resolve a matter before litigation becomes necessary. These benefits include freeing up the valuable time of our Courts and minimising the time and cost to litigants by providing a clear process which can assist in resolving claims without resorting to litigation.

Currently, the only pre-action scheme that exists in the Northern Territory is provided by the Supreme Court's Practice Direction 6 of 2009 (PD6). Notably, PD6 applies only to the Supreme Court – there is no equivalent process for claims in the Local Court. PD6 only requires that the parties exchange correspondence prior to litigating, and compliance with PD6 is not mandatory or enforceable (instead only indicating costs consequences at the

conclusion of litigation). Compared to the scheme provided by the Act, PD6 does not have the scope or ability to assist in true pre-action resolution.

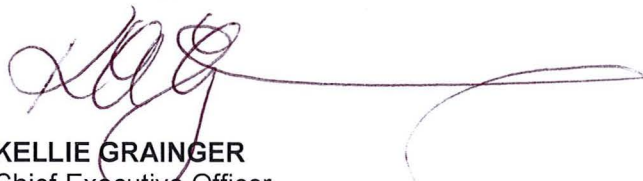
The Society has recently written to the Chief Justice to suggest consideration be given to a review of PD6 given it has now been 10 years since it was introduced. One issue that emerged during consultations by the Society about the current operation of PD6 raised the issue of whether or not PD6 should be elevated to the status of a Rule under the Supreme Court Rules. The future of PD6 may also be influenced by the Act, and whether further action can be taken to create a consistent, uniform process for personal injury claims across all Courts.

The failure of the Act to be commenced represents a missed opportunity to create a cohesive scheme for personal injury claims, which would serve to foster access to justice and to reduce the burden on our Court system. For the Northern Territory to repeal the Act would be a retrograde step; the Society would instead encourage the commencement of the Act and its implementation. The Society notes that this would require the Supreme and Local Court to make Rules pursuant to Part 2 Division 2 of the Act and is prepared to advocate further with the Courts to achieve this. This may be part of a broader reform of claims that includes PD6, the Act, and other modernisations (including the impending introduction of electronic court filing) which would deliver the Northern Territory a claim system that brings it into line with those currently in place around Australia.

For these reasons the Society submits the Scrutiny Committee should give consideration to recommending that the Bill be amended to omit Clause 57 before it is passed.

If you have any questions in relation to this submission, please don't hesitate to contact me.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Kellie Grainger', with a long horizontal flourish extending to the right.

**KELLIE GRAINGER**  
Chief Executive Officer  
[ceo@lawsocietynt.asn.au](mailto:ceo@lawsocietynt.asn.au)