

MEDIA RELEASE

INCREASED JUDICIAL RETIREMENT AGE WILL IMPROVE THE ADMINISTRATION OF JUSTICE

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The New South Wales Bar Association has welcomed the NSW Government's commitment today to raise the maximum statutory judicial retirement age from 72 to 75.

'The Association initiated this reform because it formed the view that there were compelling reasons in favour of increasing the retirement age for judicial officers serving in NSW,' the Association's President, Mr Moses SC, said.

'We support judges and magistrates being able to serve on the bench of NSW courts until the age of 75 and await further details of the proposed legislation with interest.

'The current compulsory retirement age of 72 has consistently resulted in the loss of experienced jurists who would otherwise have had the capacity to continue to make significant contributions to the administration of justice and the development of law in this state.

'Increasing the compulsory retirement age to 75 will ensure that the skills and expertise of the state's experienced judicial officers can be made available for longer, and is appropriate in light of Australia's increased life expectancy,' Mr Moses SC said.

The Attorney General announced today that new legislation to change the judicial retirement age will be introduced into Parliament in the coming weeks. The Attorney General also announced that under the changes proposed, judges appointed after the new legislation commences will be able to access their pension at the age of 65, rather than 60.

'The Association recommended increasing the pension age to 65 in order to better align the judicial pension with the pension schemes of other members of the Australian community. This increase will also ensure the judicial pension scheme remains sustainable and realise significant cost savings for the Justice portfolio, which could fund other policy areas that have been ignored and are in need of resourcing, including legal aid.

'While the Association welcomes these changes in principle, any legislative reform in this space must be prospective, not retrospective, to maintain the independence of the bench, including the appearance of the independence of the judiciary which is fundamental to the rule of law,' Mr Moses SC said.

'Retrospective legislation of any kind creates uncertainty, inconsistency and may also impact upon the appearance of the independence of the judiciary. Varying the retirement age of judges retrospectively inevitably impacts upon the appearance of judicial independence because there may be some judges who benefit from the changes who have a personal desire to remain in office longer or access additional benefits which they were not entitled to at the time of their appointment.

‘The Association also opposes retrospectivity because it may set a dangerous precedent for any future government to attempt to alter the conditions of appointment of judges to their detriment in a retrospective manner. While any such step may be unconstitutional, the Association would not wish to see any precedent set that may encourage any future governments to do this. We must be careful to learn from the recent attempt by the Polish Government to reduce the retirement age of judges in an attempt to purge the judiciary. Increasing the retirement age with retrospective effect may operate to preserve the composition of a judiciary, the diversity of which lags well behind community expectations.

‘Another reason why the Bar is of the view that the amendments need to be prospective is to facilitate the bench better reflecting the community it serves. It has only been in recent times because of the changing demographics of the legal profession that as a result of retirements more women have been appointed to the NSW Supreme Court. I would like to see that trend continue, as well as appointments of lawyers from diverse backgrounds. The risk in making these changes retrospective is that the current demographic of the bench is preserved for many more years and renewal of the composition of the judiciary is unacceptably delayed. A judiciary that reflects the community it serves better enhances public confidence in the administration of justice including respect for the rule of law.

‘The Association remains committed to working with the Government, the judiciary and the courts to implement this important reform and promote the best outcomes for the justice system in NSW,’ Mr Moses SC said.

Media contact: Elizabeth Pearson, 02 9229 1717 / 0425 268 123