



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: CLC/DHrg:1561010

9 July 2018

The Hon. Mark Speakman SC MP  
Attorney General  
GPO Box 5341  
Sydney NSW 2001

Dear Attorney General,

### **Increased diversion for people with cognitive and mental health impairments**

As you will be aware, people with cognitive and mental health impairments are over-represented throughout the criminal justice system.<sup>1</sup> The Law Society strongly supports increased diversion at all stages of the criminal justice system for people with cognitive and mental health impairments.

Effective diversion requires offenders to engage with appropriate and adequately resourced treatment and service providers.

Diversion can benefit both the offender and the wider community by addressing the causes of offending, and reducing offending behaviour, and may have costs benefits such as reducing the costs of imprisonment and hospital readmissions.

We note the recent Government announcement that it is implementing many of the recommendations of the NSW Law Reform Commission reports on people with cognitive and mental health impairment in the criminal justice system, and we look forward to taking part in the upcoming roundtable consultation. We understand and appreciate that the Government is committed to the swift implementation of these reforms and that the legislation will be introduced in the NSW Parliament by the end of the year.

However, we are concerned that the proposed reforms may not include making section 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) available in the District Court, and we wish to express our concerns directly to you prior to the release of the draft legislation. Section 32 is the main diversionary provision for people with cognitive and mental health impairments available to Magistrates in the Local Court and Children's Court. The NSW District Court currently has no diversion options for mentally ill and impaired people. As the options currently stand, the pathways for people with mental illness and cognitive impairments are:

1. To raise the mental illness defence.
2. Raising fitness.

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<sup>1</sup> New South Wales Law Reform Commission, *Report 135: People with cognitive and mental health impairments in the criminal justice system: Diversion*, 2012, pxvi.

3. Mental illness and cognitive impairment being taken into account on sentence, that is, being dealt with at law.

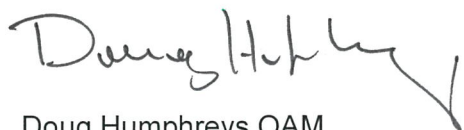
Points 1 and 2 above are reserved for the most serious of mental illnesses and impairments and only apply to a very small proportion of people charged with criminal offences.<sup>2</sup>

We further submit that broadening the application of section 32 to the District Court is crucial as a means of reducing the incarceration rate of Indigenous people given the over-representation of Indigenous people with mental health disorders and cognitive disabilities in the criminal justice system.<sup>3</sup>

We would be grateful if you could outline the Government's position in relation to implementing the Law Reform Commission recommendation that section 32 be extended to the District Court.<sup>4</sup>

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on (02) 9926 0310 or at [rachel.geare@lawsociety.com.au](mailto:rachel.geare@lawsociety.com.au).

Yours sincerely,



Doug Humphreys OAM  
**President**

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<sup>2</sup> Ibid, p277.

<sup>3</sup> Baldry, E., McCausland, R., Dowse, L. and McEntyre, E., UNSW, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, 2015, p9.

<sup>4</sup> New South Wales Law Reform Commission, *Report 135: People with cognitive and mental health impairments in the criminal justice system: Diversion*, 2012, Recommendation 13.2, pxxxiv.