THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CrimDHrg1612564

16 November 2018

Mr David Shoebridge, MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: David.shoebridge@parliament.nsw.gov.au

Dear Mr Shoebridge,

Community Protection Legislation Amendment Bill 2018 – supply of drugs causing death

We refer to the Community Protection Legislation Amendment Bill 2018 (the Bill) introduced into Parliament on 13 November 2018. Our primary concern with the Bill relates to proposed section 25C of the *Crimes Act 1900*, supply of drugs causing death.

The Law Society strongly opposes the proposed offence, which we consider to be unnecessary and highly problematic.

In September 2018 the NSW Government established an Expert Panel to provide advice on how to keep people safe at music festivals. One of the Panel's recommendations was that the Government investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result. The Expert Panel highlighted the need for thorough consultation:

> To ensure that any new offence of supplying a drug causing death is effective in practice, detailed consultation and careful drafting will be required to address the issues in relation to causation and intent.[1]

We note that the Expert Panel's report was published on 23 October 2018, and the Bill introduced into Parliament on 13 November 2018.

The proposed offence, which purports to respond to a statistically small number of deaths that occur at music festivals, has a very broad effect. In our view, the offence will most likely be applied to some of the most disadvantaged in our community. It will impact and incarcerate low/street level dealers, many of whom may be addicts themselves, and will have a very low deterrent effect. Former Australian Federal Police Commissioner Mick Palmer referred to the recommendation as a "low-hanging fruit policy" that would see small players locked up instead of those steering illicit operations.[2]

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[1] Expert Panel Report, *Keeping People Safe at Music Festivals*, p13.
[2] https://www.smh.com.au/national/nsw/coroner-compares-drug-prohibition-laws-to-racism-20181104-p50dwj.html?csp=726b216674637c9a6e4d5d565e8daae2

We support the High Court position in *Burns v The Queen* [2012] HCA 35. The High Court held that drug dealers do not owe their clients a duty of care, and that simple supply is not inherently a dangerous act. It was held at [87] that:

> A foolish decision to take a prohibited drug not knowing its likely effects is nonetheless the drug taker's voluntary and informed decision.

There are many concerning aspects of the offence as drafted. Proposed section 25C(1)(c) provides that "the self-administration of the drug causes or substantially causes the death of that other person". While "causes" may be a suitable threshold, "substantially causes" is not.

The mens rea element is also problematic. Everyone knows (or "ought to know") that prohibited drugs can be cut with lethal substances, or that some people may use the drug incorrectly e.g. by overdosing or mixing it with alcohol. We do not consider that a person should be liable (as a point of knowledge) if the user mixes, uses an unexpected mode of administration or takes a dose that is foolishly high. We are concerned that this offence will create a liability for someone's death where the accused only had the intention to supply a prohibited drug.

We do not consider that the proposed offence will improve safety either at music festivals or in the wider community. We strongly oppose the proposed offence and submit that it be deleted from the Bill.

Questions at first instance may be directed to Ms Rachel Geare, Senior Policy Lawyer, on at rachel.geare@lawsociety.com.au or (02) 9926 0310.

Yours sincerely,

Doug Humphreys OAM
President