



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/EErg:1634278

25 January 2019

Mr Lloyd Babb SC
Director of Public Prosecutions
The Office of the Director of Public Prosecutions
DX 11525
SYDNEY DOWNTOWN

By email: Consultation@odpp.nsw.gov.au

Dear Mr Babb,

Prosecution guidelines for consultation

The Law Society welcomes the opportunity to comment on the consultation draft Prosecution Guidelines.

We make the following brief comments for your consideration.

Terminology

The two expressions “aboriginal and Torres Strait Islander people” and “Indigenous and Torres Strait Islander people” should be replaced by “Aboriginal and Torres Strait Islander peoples”.

The decision to prosecute

Some factors previously explicitly included for consideration have now been omitted, including whether a conviction would be unsafe and unsatisfactory; whether the consequences would be unduly harsh or oppressive, and the culture and language ability of the accused. We consider that these factors should be referred to in paragraph 1.2.6.

Elections

We query what is meant by the “greater deterrent effect” of proceeding on indictment, in paragraph 6.2.1(2). While there are many factors which make an election less favourable to a specific accused/offender, such as the length of the delays and the costs involved (for privately-funded defendants), none of these factors are relevant to deterrence, per se. Further, if the Local Court jurisdiction is sufficient to sentence an offender, then it does not appear to be appropriate to elect to proceed on indictment solely for deterrent purposes.

We suggest the reference to the general deterrent effect of an accused being deal with on indictment be removed from paragraph 6.2.1(2).

Mental Illness

We support the removal of the statement in the current guidelines that from “time to time” mental illness intersects with the criminal justice system. It may be appropriate to include a sentence in paragraph 8.1 that highlights the prevalence of people with a mental illness or cognitive impairment in the criminal justice system.

We also note that the prosecution now has a role in relation to fitness at the committal stage (see section 93 *Criminal Procedure Act 1986*), and we suggest that this should be explicitly referred to in section 8.

Thank you again for the opportunity to comment.

Yours sincerely,



Elizabeth Espinosa
President