



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/EErg:1732113

31 May 2019

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

Dear Attorney General,

Crimes (Administration of Sentences) Amendment (Inmate Behaviour) Bill 2019

We write to you in relation to the Crimes (Administration of Sentences) Amendment (Inmate Behaviour) Bill 2019, which seeks to amend the *Crimes (Administration of Sentences) Act 1999* in relation to behaviour management policies and withdrawable privileges provided to inmates. The Law Society is of the view that the proposed amendments should not progress.

The proposed amendments are in response to the recent decision of *Hamzy v R* [2019] NSWDC 7, in which it was held that Part 2, Division 6 of the *Crimes Administration of Sentences Act 1999* is the sole means by which an inmate may be deprived of a withdrawable privilege in response to conduct that may constitute a correctional centre offence.

We note His Honour's comments in *Hamzy* that "the Commissioner cannot create a parallel punishment system by giving it another name, in this case by calling it a 'behaviour management plan'". We support a review of the use of withdrawable privileges and the development of a legislative framework and appropriate underpinning policy. The review should be informed by the Supreme Court's consideration of the matter, which we understand will be heard later this year.

We appreciate that the decision limits the way in which Corrective Services can manage inmate behaviour. However, while this creates an issue in the interim, we disagree that the gap can be filled by simply legislating as proposed, given the issues raised in the District Court decision and the fact that the Supreme Court's consideration of the behaviour management plan is pending.

Yours sincerely,

Elizabeth Espinosa
President