

Our ref: CLC/EErg:1742775

19 June 2019

Crime Commission Review
Justice Policy and Strategy
NSW Department of Justice
GPO Box 91
SYDNEY NSW 2001

By email: crimecommission@justice.nsw.gov.au

Dear Sir/Madam,

Statutory Review of the Crime Commission Act 2012 - Supplementary Consultation Paper

Thank you for consulting with the Law Society in relation to the specific questions raised in the course of the Statutory Review that are now detailed in the Supplementary Consultation Paper.

The Law Society makes the following comments for your consideration.

1. Divulging or unauthorised communication of information.

Should section 80 of the Act be amended to remove the words “to any person” with respect to unauthorised disclosure of information?

The Law Society does not disagree in principle with the proposed amendments. However, we strongly urge the Department of Justice to seek further advice and to consider carefully the ramifications of this proposal. If amendments are made to draw a distinction between disclosure to a person, and disclosure to a website or similar electronic entity as an intermediary to a person, it will likely have ramifications across a raft of legislation.

In our view disclosure using a website is intended to be disclosure to a person by an intermediary, see *Director of Public Prosecutions (NSW) v Best* [2016] NSWSC 261.

2. Extension of secrecy provisions to police involved in joint investigations with the NSWCC but not part of a formal task force.

Should section 80 of the Act be extended to officers of other investigative agencies who have been involved in NSWCC investigations other than by way of a s.58 task force?

It would appear logical to do so and avoid any potential lacuna.

3. Timeframe for commencing proceedings for breaches of secrecy provisions.

Should section 80 of the Act be amended to provide that proceedings for breaches of the Act be commenced within three years of the alleged offending?

The Law Society has concerns about supporting an extension of the period of limitation from six months to three years without further information, such as the average duration of the Crime Commission's enquiries. Allowing the commencement of proceedings to be extended to within three years of the alleged offending would remove the incentive to urgently investigate such serious matters.

While we acknowledge that under section 180 of the *Law Enforcement Conduct Commission Act 2016* proceedings can be commenced within three years of the offending, we also note the two-year limitation under section 179A(3)(b) of the *Criminal Procedure Act 1986*, which would also maintain a level of consistency if the time period is to be extended.

4. Stay of proceedings under the *Criminal Assets Recovery Act 1990*.

Should section 63 of the Criminal Assets Recovery Act 1990 be amended to reflect amendments made to section 319 of the Proceeds of Crime Act 2002 (Cth) following the High Court decision in the matter of Zhao?

We do not support amending section 63 of the *Criminal Assets Recovery Act 1990* to reflect the amendments made to section 319 of the *Proceeds of Crime Act 2002* (Cth).

While the Crime Commission states that the amendment would guide the court's discretion, we consider that section 319 is too prescriptive and that grounds for staying proceedings should develop through the common law.

5. Disclosure of information and giving of evidence to the Ombudsman.

Section 80A was inserted into the Act to deal with a particular event, Operation Prospect. Given Operation Prospect has now concluded, should any or all of section 80A be amended or removed?

We defer to the view of the NSW Ombudsman in relation to whether there is any utility in retaining section 80A, in whole or in part, following the conclusion of Operation Prospect.

The contact person for this matter is Ms Rachel Geare, Senior Policy Lawyer, who is available on (02) 9926 0310 or at rachel.geare@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President