



Our Ref: RBGMM1293294

Direct Line: 9926 0216

10 June 2009

Mr Greg Smith SC MP
Shadow Attorney General
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Smith,

Re: Courts and Other Legislation Amendment Bill 2009

Thank you for inviting the Law Society to comment on the *Courts and Other Legislation Amendment Bill 2009* (the Bill).

The Law Society's Criminal Law and Juvenile Justice Committees (Committees) have reviewed the Bill and bring the following brief comments and suggested amendment to your attention.

Background

The Bill seeks to amend the *Crimes (Sentencing Procedure Act) 1999* (the Act) in relation to non-association and place restriction orders.

Section 100A(1) of the Act states that persons specified in a non-association order as persons with whom the offender must not associate may not include any member of the offender's close family. Section 100A(3) defines "close family" as:

- a) the offender's spouse, de facto or same-sex partner, and
- b) the offender's parents, step-parents and grandparents, and
- c) the offender's children, step-children and grandchildren, and
- d) the offender's brothers and sisters, and step-brothers and step-sisters, and
- e) the offender's guardians or carers.

Proposed section 100A(3)(f) provides:

"in the case of an offender who is an Aboriginal person or a Torres Strait Islander - persons who are or have been part of the extended family or kin of the offender according to the indigenous kinship system of the offender's culture."

The Committees support a wide reading of proposed section 100A(3)(f), which flows from a recommendation made in the NSW Ombudsman's Final Report on the 'Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*'. The Ombudsman recommended that the



definition of "close family" should be broadened to accommodate kinship ties, which extend beyond the immediate family. This followed on from observations made in the Report that for Indigenous people, kinship ties extend beyond the immediate family of mother, father, brother and sisters, to include aunts, uncles and cousins.

Suggested amendment

The Act and the Bill do not contain a definition of "Aboriginal" or "Torres Strait Islander". The Committees suggest that the Bill insert into the Act the definition of "Aboriginal person" and "Torres Strait Islander" contained in section 3 of the *Law Enforcement (Powers and Responsibilities) Act 2002* as follows:

"Aboriginal person" means a person who:

- (a) is a member of the Aboriginal race of Australia, and*
- (b) identifies as an Aboriginal person, and*
- (c) is accepted by the Aboriginal community as an Aboriginal person.*

"Torres Strait Islander" means a person who:

- (a) is a member of the Torres Strait Island race, and*
- (b) identifies as a Torres Strait Islander, and*
- (c) is accepted by the Torres Strait Island community as a Torres Strait Islander.*

Please contact me if you would like to discuss the proposed amendment further.

Yours sincerely,


bo- Joseph Catanzariti
President