



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/PWrg:1400102

20 September 2017

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

Dear Attorney General,

Justice Legislation Amendment (No 2) Bill 2017

I write to you in relation to the Justice Legislation Amendment (No 2) Bill 2017 (the Bill), which was introduced into the Legislative Assembly on Friday 15 September 2017.

We understand that justice legislation amendment bills generally make amendments that are of a minor and non-controversial nature, and which are too inconsequential to warrant the introduction of a separate amending bill.

We are concerned about the inclusion of Schedule 1.11[3] in the Bill, which amends the *Drug Misuse and Trafficking Act 1985* (the Act), to retrospectively validate otherwise invalid regulations as follows:

Schedule 3 Savings and transitional provisions

Insert after clause 2:

3 Validation of amendments to Schedule 1

Any amendment made or purporting to have been made to Schedule 1 by a regulation made before the commencement of this clause is taken to be, and always to have been, validly made.

We consider that retrospectively amending invalid regulations is not a matter that should be addressed in the current Bill. We note that we were consulted on many of the provisions in the Bill, and query why we were not consulted on this substantive amendment.

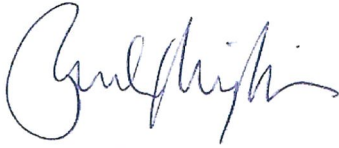
The Second Reading Speech refers to advice from the Parliamentary Counsel that seven regulations were likely outside of the regulation-making power in section 44 of the Act and were therefore invalidly made. We would appreciate further details as to the background on this issue.

We are aware that one of the invalid regulations, the *Drug Misuse and Trafficking Amendment (Methylamphetamine) Regulation 2015*, halved the amount of what is defined to be a "large commercial quantity" of the prohibited drug methylamphetamine from 1 kilogram to 500g. The offence carries a life sentence. We consider that the significance of the

consequences of such a change to Schedule 1 of the Act illustrates the importance of such matters being dealt with by amendment to the Act, not by regulation.

We would appreciate being consulted on proposed amendments to the Act in the future.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pauline Wright', written in a cursive style.

Pauline Wright
President