



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: Criminal:REad826836

14 April 2014

The Hon Greg Smith SC MP
Attorney General/Minister for Justice
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
By email: office@smith.minister.nsw.gov.au

Dear Attorney General,

Response to Law Enforcement (Powers and Responsibilities) Act 2002 ("LEPRA") Review Report (Part 2) by Mr Andrew Tink and The Hon. Paul Whelan dated 12 December 2013 ("Report")

I write to you on behalf of the Criminal Law and Juvenile Justice Committees of the Law Society of NSW ("the Committees").

The Committees have read the Report dated 12 December 2013 and recommend that the changes to LEPRA as proposed in the Report (and any future changes to significant provisions of this legislation) be subject to a review process, such as referral to the Criminal Law Review Division to allow for proper consultation with stakeholders within the criminal justice system and meaningful consideration of the impact of the changes.

The Committees understand that the Bill relating to the provisions considered in the Report is not yet available. The Committees request that a copy of the draft Bill be forwarded to the Law Society of NSW for comment when it is available.

The Committees acknowledge that the Report proposes a significant number of amendments to LEPRA. The Committees have had the opportunity to read the response to the Report by the Shopfront Youth Legal Centre ("the Shopfront") which addresses the recommendations specifically. The Committees support the Shopfront's comments. At this stage, the Committees seek to express strong opposition in relation to recommendations that the initial investigation period in s 115 of LEPRA be extended from four to six hours.

- 1. Recommendation 5: The initial investigation period in s115 be extended from 4 hours to 6 hours. However, the overall investigation period will remain unchanged at 12 hours.**

The Committees strongly oppose this recommendation for the following reasons:

- A. A key justification the Report puts forward to support the extension of the initial period is on the basis that:

“Police advised that often the 4 hour limit is not long enough, and applying for an extension warrant is often a time consuming process”¹.

The Report proposes people be detained for longer when applying for an extension. The Committees note that on the same page, the Report states that police have indicated that four hours is generally sufficient in most cases.

The Committees submit that if there is an issue with regards to the time it is taking to have applications granted, the process for having applications heard and reviewed should be examined. There is no mention in the Report of any attempts to address this process. The Committees further submit that when one considers the significance of increasing the time period and the impact this will have on individual liberty, it should be incumbent upon the government to either increase resources or review the efficiency of processes relating to the time it is taking to hear and determine extension applications.

- B. The Report does not comment on the number of extension applications or the nature of the charges that require extension applications.

As noted at “A” above, the Report indicates that:

“Police we consulted advised us in the great majority of cases that 4 hours investigation time is sufficient”.²

The Committees submit that the consequence of this view is that there appears to be no meaningful justification for extending the initial timeframe generally as the proposal would be unnecessary for the majority of cases.

The Committees further submit that if the Report concedes that extensions are only required for a minority of cases, to extend the time generally to all persons detained should require a proper analysis of the number and types of cases requiring extensions to properly assess whether a general extension of time is warranted.

The Committees’ view is that while they do not support any extension of the initial period, if the time period is to be extended, it should only be extended for those charges which can be identified as routinely requiring extension applications to be made.

- C. It is uncertain how effective the proposed change would be in achieving its aim. The Report refers to the Gibbs report and Western Australian (“WA”) experience to presumably support the recommendation to extend the time to six hours. The Committees note that the Gibbs report is now 25 years old (1989) and with regards to the WA position, there is no

¹ Page 9 of Report

² Page 9 of Report


evidence or comments with regards to the effectiveness of their legislation. The Committees' view is that the Report in general lacks any credible analysis or significant number of case studies to substantiate the police views that more time is required.

- D. The impacts upon the liberty of accused persons who may experience longer periods in custody because of the extension of the initial period is of great concern, in particular, vulnerable persons who are detained by police. The Committees note the particular vulnerability of Aboriginal people and those who are mentally ill. The Committees submit that the recommendations of the Royal Commission into Aboriginal Deaths in Custody regarding the impacts of detention of Aboriginal people should be seriously considered.

The Committees also note that the impacts of Part 9 may have even more significance given the introduction of the new s 99 of LEPRA which broadens the police power to arrest and therefore has the potential to increase the number of people detained under Part 9 as a result.

The Committees look forward to receiving your response in relation to the issues raised. Should you wish to discuss any aspect of this letter please contact Policy Lawyer Mr Alex Dimos on 9926 0310 or by email: alex.dimos@lawsociety.com.au.

Yours sincerely,


Ros Everett
President