



Our Ref: RBGMM1289161

Direct Line: 9926 0200

13 February 2009

Ms Catherine Allen
Policy Manager
Ministry for Police
PO Box A66
SYDNEY SOUTH NSW 1235

Dear Ms Allen,

Re: Caution and Summary of Part 9 of LEPR

Thank you for the opportunity to comment on the revised Caution and Summary of Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPR).

The Law Society's Criminal Law Committee (Committee) had reviewed the revised version and it does appear to be more comprehensible to many persons detained in custody. The Committee suggests that the document should also be made available in other languages.

The Committee has one proposed amendment. The Committee recommends that in Item 13 the word "cognitively" be inserted to replace the word "intellectually".

Firstly, this would be consistent with recommendations made in the *Crimes Amendment (Cognitive Impairment - Sexual Offence) Act 2008* that each person with a disability receives a service which is designed to meet his/her individual needs, in the least restrictive way, in addition to providing greater protection for cognitively impaired people in the criminal justice system.

The occurrences of the term "intellectual disability" in divisions 10 and 10A of Part 3 of the *Crimes Act 1900* have now been replaced with an updated definition that reflects a more contemporary understanding of the nature of such disabilities and impairments. The new definition provides greater protection to people with a cognitive impairment by addressing the gap between the former definition and a wide range of people who were vulnerable to exploitation but were not captured by the narrow definition of intellectual disability.

The amending legislation replaced the term "intellectual disability" with "cognitive impairment" and provides for an updated definition. A person has a cognitive impairment if a person has:

- (a) an intellectual disability; or
- (b) a developmental disorder (including autistic spectrum disorder); or
- (c) a neurological disorder; or



- (d) dementia; or
- (e) a severe mental illness; or
- (f) a brain injury,

that results in the person requiring supervision or social habilitation in connection with daily life activities.

Secondly, the words "intellectually impaired" are not consistent with the definition in LEPR (s 33(9)) which defines "impaired intellectual functioning" as:

- (a) total or partial loss of a person's mental functions, or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

Only (b) refers to an intellectual disability, (a) and (c) reflect mental illness.

As outlined above, the suggested amendment to the revised document would provide greater protection to people with a cognitive impairment than the use of the narrower term "intellectually impaired".

I trust these comments are of assistance.

Yours sincerely,



Joe Catanzariti
President