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**DIRECTOR'S CHAMBERS**



YOUR REFERENCE

DATE

17 December 2012

Professor Hilary Astor  
Commissioner  
NSW Law Reform Commission  
DX 1227  
Sydney

Dear Professor Astor

**People with cognitive and mental health impairments in the criminal justice system –  
Question paper 2: fitness to plead guilty**

Thank you for the opportunity to make a submission on the issues raised in question paper 2: Fitness to plead guilty. I have had the benefit of reading the submission by Mark Ierace SC dated 30 November 2012 on this issue, and I agree with the points that he has made.

In respect of whether or not there should be a separate test of fitness to plead guilty I agree that it would be unnecessarily confusing and burdensome to introduce a separate test. Moreover it could shift the focus of a fitness inquiry and confuse what the central issue should be namely, capacity. The question of fitness needs to be broadly focused and where relevant the assessment can take into account the particular circumstances of the matter such as whether it is likely to be a long trial or a short trial or sentence proceedings.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Lloyd Babb'.

**Lloyd Babb SC**  
**Director of Public Prosecutions**