Professor Hilary Astor
Commissioner
NSW Law Reform Commission
Department of Attorney General and Justice
GPO Box 5199
SYDNEY NSW 2001

By email submission: ani_luzung@agd.nsw.gov.au

D/2012/199915

Dear Professor Astor,

I refer to your email correspondence dated 30 November 2012, inviting comment on your *Question Paper Two: Fitness to plead guilty for people with cognitive and mental health impairments in the criminal justice system.*

The provisions discussed relate to trials and pleas in the District and Supreme Courts, which are jurisdictions in which NSW Police Force advocates do not appear. Accordingly, we defer to the Office of the Director of Public Prosecutions regarding the legal aspects of the Paper.
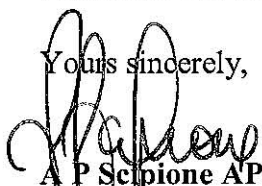
Question 4.1 (a) of the Question Paper asks *"if such a test for fitness to plead guilty was introduced, should a defendant who has pleaded guilty later be able to argue that they were unfit to do so?"* Should a test for fitness to plead guilty be introduced as per the 'draft test for fitness to plead guilty' at page three of the Paper, the proposition as per question 4.1 (a) is agreed to. The following is provided as suggested appropriate circumstances for this provision:

> *That the person is subsequently found to have been suffering a mental illness or disturbance at the time of entering such a plea, temporary or otherwise, or is subsequently found to have a previously undiagnosed cognitive impairment, which is understood to have impacted upon the person's capacity in such a way as to call into question their fitness for making a guilty plea.*

It is also noted that the *Mental Health (Forensic Provisions) Act 1900* (NSW) contains different legislative recognition, and service delivery, between mental illness and cognitive impairment and does not allow for pre-court diversion of people with cognitive impairments. It is suggested that this aspect is considered by the NSW Law Reform Commission during the review.

I trust that this information is of assistance.

Yours sincerely,

A P Scipione APM
Commissioner of Police
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