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Mr Timothy Watling
Legal and Constitutional Affairs References Committee
The Senate
Parliament House
CANBERRA ACT

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Dear Mr Watling,

Inquiry into the Law of Contempt

I refer to your letter of 12 September 2017.

The Legal Services Commission of South Australia (LSC) is the largest provider of legal assistance services in this State, providing legal assistance in criminal, family and civil law areas as well as community legal education.

The LSC acknowledges that the common law of contempt has developed in a somewhat ad hoc manner over the centuries and agrees that the law would benefit from codification thereby allowing greater clarity for defendants and greater consistency in judicially imposed sanctions. It also seems appropriate that the law of contempt be consolidated solely in the criminal law jurisdiction to relieve the burden on civil plaintiffs from pursuing a matter through the courts. If the law of contempt is to be fully codified and the common law abolished, the LSC supports the recommendation of the New Zealand Law Commission that a catch all provision be included in the definition of contempt to ensure unforeseen incidents of contempt are not excluded.¹

As recommended by the Australian Law Reform Commission (ALRC) in its 1987 report, contempt in the Family Courts needs to take account of the unique role of that jurisdiction, and the operation of the law of contempt should be specifically tailored to its priorities, such as the welfare of children.² The review of the family law system, recently announced by the

¹ <http://ip36.publications.lawcom.govt.nz/Chapter+8+-+Replacing+common+law+contempt+with+statutory+offences/Codification+in+New+Zealand>

² <https://www.alrc.gov.au/inquiries/contempt>

Commonwealth Attorney-General, could provide the most appropriate context for examining the law of contempt in those courts.³

If contempt is to be dealt with entirely in the criminal courts, the LSC supports the ALRC recommendation that the matters no longer be dealt with summarily and that the defendant have the right to request the matter be heard by a different judicial officer.

The LSC is aware that some in the community regard the law of contempt as a curb on free speech or a tool for disgruntled judges. The law of contempt protects equality before the law and fairness in the judicial process by ensuring that trials are balanced and our legal system receives the respect it appropriately deserves.

Thank you for the opportunity to provide feedback to the Inquiry.

Yours sincerely,

Gabrielle Z Canny
Director

³ <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/ThirdQuarter/First-comprehensive-review-of-the-family-law-act-27-September-2017.aspx>