

Deputy Premier John Rau

Attorney-General
Minister for Justice Reform

Friday, 12 December, 2014

Sentencing Advisory Council report released

The Sentencing Advisory Council has released its first report which reviews the functions of the mental impairment defence and how it is applied in South Australia.

Attorney General John Rau said the report contains a detailed analysis of the law and practice relating to the defence of mental incompetence in our criminal justice system.

“Insanity or mental incompetence as it is now known is a contentious defence and laws are in place to protect those who are genuinely not of sound mind,” he said.

“The Council has undertaken extensive work to identify the relevant issues and examine the approach taken in other jurisdictions.

“The report recommends minor changes to the legislation, some of which are aimed at improving the efficiency and clarity of this area of the law.”

It addresses the operation of Part 8A of the *Criminal Law Consolidation Act*, which provides that a person, who is mentally incompetent to commit an offence, cannot be sentenced to imprisonment although they can be detained. Recommendations focus on:

- the definition of mental incompetence
- the test for the defence of mental incompetence
- the supervision of released defendants, including the need for additional options and the period of time they are subject to supervision.

“The report includes a thorough consideration of public submissions received, following the release of a discussion paper in July last year,” Mr Rau said.

“The need for such a review is not unique to South Australia.

“Other states including Victoria, Western Australia, New South Wales, as well as New Zealand and Scotland have recently considered their mental impairment laws.

“The Sentencing Advisory Council was established in January 2012 and is comprised of members from diverse backgrounds and experience within the criminal justice system, along with representatives from the community.

“I would like to thank the Hon. Kevin Duggan AM QC, the Chair of the Sentencing Advisory Council, and the members of the Council for their work in considering a very complex issue.

“In due course I will be considering the report and the recommendations.”