

## Solovjev Anna

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**From:** Pavleka Andrea  
**Sent:** Thursday, 26 September 2019 9:57 AM  
**To:** McNaughton Sarah; West Lisa  
**Subject:** media enquiry [SEC=OFFICIAL]

**Categories:** ACT/AGD corro

### OFFICIAL

Dear Sarah and Lisa

I was thinking something like this – can you please consider.

*Thank you for your enquiry.*

*Attached are the two letters.*

*My correspondence examines whether the defence in s. 313.1 of the Criminal Code is applicable, and whether or not de-criminalising the relevant conduct would amount to an excuse or justification pursuant to s.313.1. There has not been detailed judicial consideration of this provision and its potential scope.*

*On 19 September 2019 a legal authority, on a provision similar to s.313.1, was brought to my office's attention by the Attorney-General's Department, which resulted in me giving further consideration to the issues and prompting my second letter to Mr Glenn.*

*The issue in question, is whether the requirement in the Criminal Code for the conduct to be justified or excused by or under a State or Territory law requires that law to positively authorise the relevant conduct.*

It may be that we don't include the last line.

Andrea

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