

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.

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