



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: RBGMM1303155

Direct Line: 9926 0216

8 March 2010

The Hon. John Hatzistergos, MLC  
Attorney General for NSW  
Level 33, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney General,

**Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010**

The Criminal Law Committee has previously expressed its concerns about the trial scheme implemented by the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007* (correspondence attached).

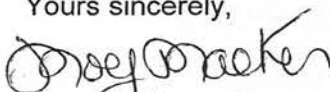
The Committee reiterates its concerns and notes that the duration of the trial scheme, originally set for one year (between 12 November 2007 and finishing on 11 November 2008), has been extended twice and will now conclude on 1 July 2011.

To facilitate the evaluation of the trial scheme the *Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010* reinstates the rules relating to the service of briefs of evidence prior to the commencement of the Local Court Process Reforms at the Local Court sitting at Manly only, and for proceedings which are commenced on or after 1 July 2010 and before 1 October 2010.

The Committee stresses the importance of a robust and comprehensive evaluation of the trial scheme. The Committee is concerned that the Regulation only provides for one comparison Court, and this may not allow for a proper comparison of the current Local Court Process Reforms with previous procedures. The Committee strongly suggests that in addition to Manly Local Court a regional or rural Local Court and a larger metropolitan Local Court should be included as comparison courts for the evaluation.

I look forward to hearing from you at your earliest convenience.

Yours sincerely,

  
Mary Macken  
President



The Law Society  
of New South Wales

ACN 000 000 699

COPY

Our Ref: RBGMM1267113

Direct Line: 9926 0200

15 June 2007

The Hon. John Hatzistergos, MLC  
Attorney General for NSW  
Level 33, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney General,

**Re: Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007**

I refer to the above Bill, introduced into Parliament on 6 June 2007, which proposes amendments to the *Criminal Procedure Act 1986* and *Criminal Procedure Regulation 2005* in relation to the service of briefs of evidence by prosecutors in criminal matters dealt with in the Local Court.

This letter brings to your attention the specific comments and concerns of the Law Society's Criminal Law Committee ("the Committee").

**Law Society position**

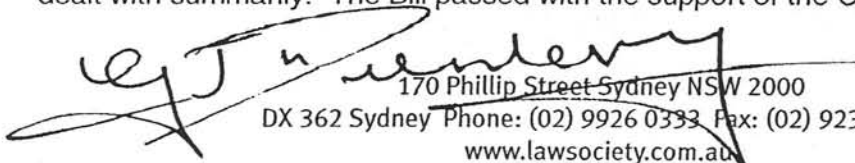
The Committee is completely opposed to the proposed legislative amendments.

The proposed legislative amendments will:

- Lead to an increase in the number of defended hearings in the Local Court.
- Not result in any decrease in the requirement to prepare briefs of evidence for Table 1 matters.
- Lead to an increase in court time set aside for defended hearings.
- Lead to the requirements for police and witnesses to attend court to give evidence.
- Lead to an increase in the number of pleas of guilty on the hearing date.

**The need for the service of briefs of evidence**

In 1997 the Government introduced the *Justices Amendment (Briefs of Evidence) Bill 1997* to provide for the service of copies of briefs of evidence in proceedings for offences dealt with summarily. The Bill passed with the support of the Opposition.

  
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The Government stated that it could no longer be regarded sufficient to meet the requirements of fairness that the defendant be advised simply of the offence that is charged and the alleged facts that constitute the offence. The amendments were passed to provide fairer hearings as defendants would become apprised in advance of the prosecution case.

Former Attorney General the Hon J.W. Shaw outlined the benefits of the reforms in the Second Reading Speech as follows:

- Summary hearings would become more focused on relevant issues and would therefore be disposed of more quickly.
- Shorter more focused hearings would save both time and money for all parties involved in criminal proceedings.
- The provisions of a brief would assist defendants in providing instruction to their lawyers.
- Police officers would spend less time at court waiting to give evidence and more time on the beat.
- The initiative would likely result in an increase in guilty pleas.

The former Attorney General concluded that "[t]his is a reform that will provide clear benefits to every person who comes before the Local Court. It will simplify and clarify defended hearings. It will encourage pleas of guilty in appropriate cases. In short it will contribute significantly to the Government's quest to ensure that the courts are responsive to the needs of the people of this State."

The rationale behind the introduction of the 1997 reforms remains equally valid today. If the Government proceeds with implementing the proposal the criminal justice system will lose many of the benefits of the 1997 reforms.

#### **Rationale for the proposed abolition of briefs**

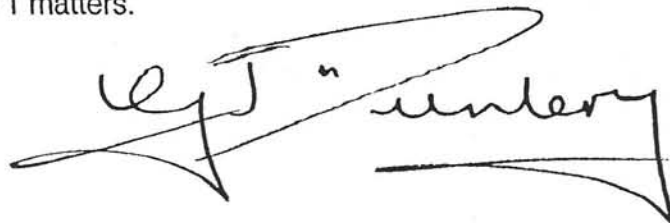
The amendments are clearly driven by the Police as a perceived cost saving measure. Police complain that the preparation of briefs is a waste of time given the number of briefs prepared compared to the number of cases that go to trial.

The reality for the criminal justice system is that the service of briefs results in a plea or a shorter hearing. The previous system of "trial by surprise" added to the length of hearings. The preparation of briefs has resulted in better police practice, and the amendments do not promote best police practice.

As set out below, the proposed amendments will not actually result in savings to police. In fact, they will result in an increase in court time set aside for defended hearings.

#### **Proposed amendment to s 265 Criminal Procedure Act 1986**

The proposed amendment removes the requirement to serve a brief prior to election (and plea) in Table 1 matters.

A handwritten signature in black ink, appearing to read 'J.W. Shaw', with a large, sweeping flourish extending from the end of the signature.

The Committee is totally opposed to the proposal whereby a person charged with a Table 1 offence is unable to receive the brief of evidence unless they have entered a plea of not guilty. Table 1 offences are serious offences. An accused has the right to know the charge against him or her and to be provided with the particulars of it. It would be entirely inappropriate for any lawyer to advise an accused person to enter a plea of guilty without seeing all of the relevant evidence.

In the Committee's view the proposal will result in:

- a marked increase in pleas of not guilty being entered – as that will be the only way an accused person will be able to ascertain the strength of the prosecution case against him or her; and
- a marked increase in the number of defended hearings in the Local Court.

#### **Proposed amendment to clause 24 Criminal Procedure Regulation 2005**

The summary offences in which a brief will no longer have to be served, such as offensive conduct, can involve complex matters of fact and law. The service of a brief saves court time and resources by ensuring that all parties know in advance of the hearing what the relevant issues are, how many witnesses are required, how long the hearing is likely to last and whether the matter is still to be defended at all.

The Committee is concerned that these reforms signal a move towards abolishing the service of briefs in summary matters altogether. In the Agreement in Principle speech the Minister for Police commented that the evaluation of the 12-month trial will also consider "whether there should be further reforms to increase efficiency" and that "[t]he trial as proposed by the Attorney will extend the scheme to other specific summary matters".

#### **Standardised statements of facts and annexing original evidence to fact sheets**

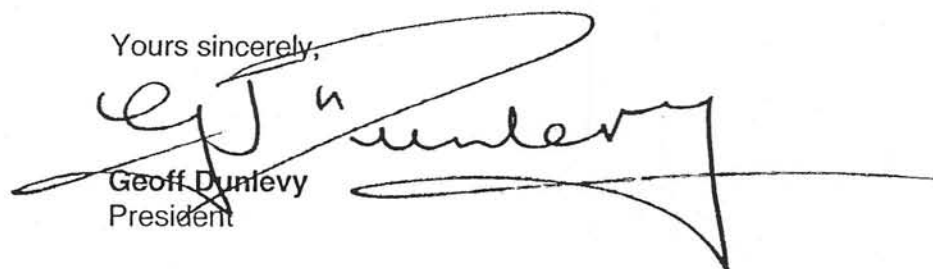
In the Agreement in Principle speech the Minister for Police states that NSW Police will:

- develop comprehensive template fact sheets that address the essential proofs of each offence alleged; and
- annex copies of original police evidence such as witness statements or CCTV footage available at the time of charging to fact sheets.

The Bill makes no reference to these requirements at all. If the proposed amendments are to go ahead these requirements should be contained in the legislation.

The Committee queries the efficacy of these measures, noting that in many matters the original evidence will not be available at the time of charging and therefore the defendant will not receive the evidence.

Yours sincerely,



Geoff Dunlevy  
President