



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CrimJErg:931282

10 February 2015

The Hon Brad Hazzard MP
Attorney General and Minister for Justice
Level 19
52 Martin Place
SYDNEY NSW 2000

By email: office@hazzard.minister.nsw.gov.au

Dear Attorney General,

Family response to the murders in Bowraville: Report recommendations

I write to you on behalf of the Criminal Law Committee of the Law Society of NSW ("Committee"). The Committee represents the Law Society on criminal law issues as they relate to the legal needs of people in NSW and includes experts drawn from the ranks of the Law Society's membership.

The Committee has had an interest in the NSW Parliament's inquiry into the murders in Bowraville, and notes that the NSW Parliament's Standing Committee on Law and Justice tabled its report on 6 November 2014. The Committee has asked me to write to you in relation to the recommendations involving police training and section 102 of the *Crimes (Appeal and Review) Act 2001*.

Recommendations 1 and 2 – police training

The Committee strongly supports Recommendation 1, which provides that:

the NSW Police Force review all of its policies, procedures and training programs that relate to Aboriginal people, and update them where necessary to ensure they are consistent with best cultural practice.

The Committee further supports Recommendation 2, which provides that:

the NSW Police Force develop a case study detailing the various lessons learned from the Bowraville investigation and incorporate it into the mandatory course content for Aboriginal cultural awareness training.

The Committee understands the NSW Police Force is considering these recommendations, and has also written to the Commissioner for Police in support of their adoption.

The Committee is aware that the NSW Police Force is developing a training video for investigators using the recent Bowraville investigation as a foundation. The Committee strongly supports this initiative.

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Recommendation 8 - Crimes (Appeal and Review) Act 2001

The Committee has concerns about Recommendation 8.

The families contend that there is 'fresh' and 'compelling' evidence sufficient to meet the criteria required for the Director of Public Prosecutions to make an application to the Court of Criminal Appeal for a retrial. However, the applications to both the Director of Public Prosecutions and Attorneys General have been unsuccessful.

In light of the unsuccessful applications, the Standing Committee made the following recommendation:

That the NSW Government review section 102 of the Crimes (Appeal and Review) Act 2001 to clarify the definition of 'adduced', and in doing so consider:

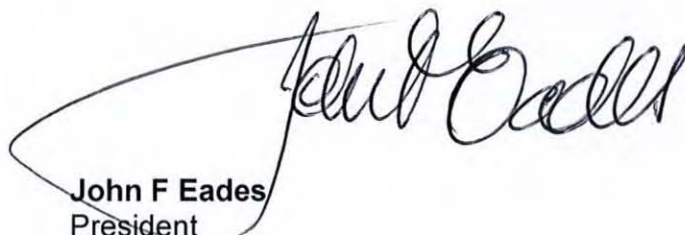
- the legal or other ramifications of defining adduced as 'admitted', particularly on the finality of prosecutions
- the matters considered by the English courts under the equivalent UK legislation
- the merit of replacing section 102 of the Crimes (Appeal and Review) Act 2001 with the provisions in section 461 of the Criminal Appeals Act 2004 (WA), and
- the merit of expressly broadening the scope of the provision to enable a retrial where a change in the law renders evidence admissible at a later date.

As you will be aware, a comprehensive consultation process (including the release of discussion papers and draft consultation bills) took place over many years prior to the introduction and passage of the legislation. In 2012, the then Legislation, Policy and Criminal Law Review Division of the Department of Attorney General and Justice conducted a statutory review of the provisions of Part 8 of the *Crimes (Appeal and Review) Act*. The review concluded that there was no evidence to suggest that the provisions do not continue to meet the policy objectives and terms of the Act, and therefore, no amendments to the provisions were recommended.

The Committee notes that legislative amendments introduced for what appears to be a narrow objective, can have serious ramifications across the criminal justice system. If the Government supports Recommendation 8, then given the highly complex nature of the issues involved, the Committee suggests that the review be conducted by the NSW Law Reform Commission to allow for a thorough, consultative process.

I trust these comments are of assistance.

Yours sincerely,



John F Eades
President