



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1306826

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21 June 2010

Ms Rachel Callinan
Director
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Callinan,

Inquiry into Judge alone trials under s 132 of the Criminal Procedure Act 1986

I refer to the inquiry into judge alone trials under s 132 of the *Criminal Procedure Act 1986*. Section 132(3) of the *Criminal Procedure Act 1986* provides that an election to be tried by a judge alone requires the consent of the Director of Public Prosecutions.

The Law Society's Criminal Law Committee (Committee) is of the view that there is not a strong justification for vesting the decision on whether a trial will be held before a judge alone on the prosecution.

The Committee has reviewed the proposed model for amendments to s 132 as set out in the terms of reference:

1. Either party may apply for a judge only trial.
2. Applications to be made not less than 28 days before the commencement of the trial.
3. Applications may be made later than 28 days before the trial, but only with the leave of the court.
4. If the parties are in agreement, the court must order that the trial proceeds before a judge sitting alone.
5. If the prosecution applies and the accused does not consent, then the matter must proceed to trial with a jury, subject to the jury tampering exception as set out at 6.
6. If one of the parties applies and the court finds there is a risk of jury tampering, then the court must order that the matter proceed before a judge sitting alone.
7. If the accused applies and the prosecution does not consent, then the court must determine whether or not the matter should proceed without a jury based on an 'interests of justice' test.
8. When considering the 'interests of justice', the court may refuse to make an order where the trial will involve a factual issue that requires the application of objective community standards such as an issue of reasonableness, negligence, indecency, obscenity or dangerousness.

9. If there are multiple accused and not all agree to a trial by judge alone, the trial must proceed before a jury, again subject to the jury tampering exception as set out at 6.
10. Once consent to a judge only trial is given, it may not be withdrawn without leave of the court.

The Committee supports the proposal and suggests the following amendments:

Points 2 and 3

It would be more appropriate if applications could be made not less than 14 days before the commencement of the trial, rather than 28 days, to cater for matters that are assigned close to the trial date.

Point 6

Insert the word "identifiable" before "risk", so that an "identifiable risk" of jury tampering is required.

The Law Society would also appreciate the opportunity for a representative to appear before the public hearing scheduled for September 2010.

Thank you for the opportunity to comment.

Yours sincerely,


Mary Macken
President