



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1303984

Direct Line: 9926 0216

8 April 2010

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

Dear Attorney General,

Proposal to amend s 150 Criminal Procedure Act 1986 - Notice of alibi

Thank you for seeking the Law Society's comments on the Chief Magistrate's proposal to amend s 150 of the *Criminal Procedure Act 1986* (CPA) so that it will apply to defended hearings in the Local Court.

The Chief Magistrate's suggestion causes the Law Society some difficulty. The Law Society's Criminal Law Committee is opposed to the proposal for the following reasons:

1. Section 150 CPA imposes alibi notice requirements after committal i.e. long after the brief of evidence has been received and the defence has had time to serve a properly considered notice.
2. However s 183(3) CPA allows service of a brief of evidence in summary matters up to 14 days prior to hearing (and often in practice thereafter).
3. In addition in summary matters the defence have to deal with the issue of truncated briefs and in some matters no brief (s 187(5) CPA, clauses 24 and 24A *Criminal Procedure Regulation 2005*).
4. As a matter of practice in summary matters instructions are often received after the brief is received (read, considered etc.).
5. It would be very onerous to expect the defence to be in a position to provide an alibi notice in summary matters in light of the matters in 2, 3 and 4 above.
6. A major reason for alibi notices is the jury. A jury trial cannot be adjourned to permit legitimate inquiries to be made once an alibi is raised. That consideration has no application to summary trials.

Summary defended hearings occur in a context which is significantly different to trials. The statutory requirements for service of briefs, and the time periods for instructions to be taken and an alibi notice to be properly considered, would make compliance with the provision particularly onerous in summary defended hearings.

I trust these comments are of assistance.

Yours sincerely,

A handwritten signature in cursive script that reads "Mary Macken".

Mary Macken
President