

29 September 2011

Hon Adele Farina MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review

By email: rjewell@parliament.wa.gov.au

Dear Ms Farina *adble*

**INQUIRY INTO CRIMINAL APPEALS AMENDMENT (DOUBLE JEOPARDY) BILL
2011**

I refer to your letter dated 13 September 2011 to the Law Society of Western Australia inviting written submission on the *Criminal Appeals Amendment (Double Jeopardy) Bill 2011*.

The Society's policy is to support the implementation of the law reform model adopted by the COAG for offences where the maximum penalty is 20 years or more imprisonment, but subject to section 24(2)(da) of the *Criminal Appeals Act 2004* (WA) being repealed.

I enclose a copy of a letter dated 11 August 2009 from the Society's Executive Director to the Ms Cheryl Gwilliam, Director General, Department of the Attorney General. The Society's policy has not since changed.

Yours sincerely



Hylton Quail
President

11 August 2009

Ms Cheryl Gwilliam
Director General
Department of Attorney General
Government of Western Australia
GPO Box F317
PERTH WA 6841

Dear Cheryl

DOUBLE JEOPARDY LAW REFORM

Thank you for your letter of June 2009. The proposals for double jeopardy law reform contained in your letter were discussed at the Law Society of Western Australia's Council meeting on 3 August 2009.

Council resolved to support the full implementation of the law reform model adopted by COAG for offences where the maximum penalty is more than 20 years imprisonment, but subject to Section 24(2)(da) of the Criminal Appeals Act 2004 (WA) being repealed.

The Society considers the COAG model, if implemented by all States and Territories of Australia, will result in a consistent but acceptable change to the rule against double jeopardy (the rule) which will appropriately deal with factual situations such as those identified in R v Carroll [2002] HCA 55.

You will be aware that the Society opposed the amendment to the Criminal Appeals Act 2004 (WA), now contained in Section 24(2)(da), on the basis that right given to the prosecution to appeal an acquittal was too wide and a much more significant encroachment on the rule against double jeopardy than proposed in the COAG model.

If the amendments are made to the rule by fully implementing the COAG model, the result, coupled with the existing prosecutor's rights now contained in Section 24(2)(da) will mean that Western Australia has eroded the long standing rule for serious criminal cases significantly more than any other Australian jurisdiction. The Society is of the view that the rule should be maintained to preserve finality in criminal proceedings and in particular, where an accused person would incur a significant cost for appeals and retrials.

Recognising the reasons why COAG has submitted that all Australian jurisdictions follow its model, the Society takes the view that an appropriate counter balance for preserving the rule in appropriate cases under the COAG model would be to repeal Section 24(2)(da) of the Criminal Appeals Act 2004 (WA).

Yours sincerely,


David Price
EXECUTIVE DIRECTOR

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