



15 January 2009

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Peter Hallahan
Committee Secretary
Standing Committee on Legal & Constitutional Affairs

By email to: Legcon.sen@aph.gov.au

Dear Mr Hallahan

Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008

I refer to your letter of 10 December 2008. The Law Institute of Victoria ("LIV") welcomes the opportunity to comment on the provisions of the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 referred to the Standing Committee on Legal and Constitutional Affairs.

The LIV notes however that due to the timing in which submissions are requested to be made, the LIV can only offer preliminary comments on some provisions of the Bill as noted below. The LIV would appreciate the opportunity for further consultation on these and other aspects of the Bill, and would seek to make a supplementary submission at a time when the Bill has been further developed.

Committals

The LIV notes that the Bill does not grant power to hear committals in the Federal Court. Persons who are committed for trial for a commonwealth indictable offence can be committed for trial or a plea of guilty in either the state superior court or the Federal Court

The LIV understands that the state court committing the person for trial or for a plea of guilty for an indictable offence against the Commonwealth law must:

1. Invite the CDPP to suggest the court in which the person should be tried (whether or not the CDPP is a party to the committal proceeding);
2. Consider the court suggested by the CDPP;
3. Nominate the court in which the person is to be tried or plead guilty (s.68A).

The LIV is concerned that that there is no formal acknowledgement of any role for Defence in determining whether a matter goes to the Federal Court or Supreme Court. There are often serious cost consequences depending on which jurisdiction is used.

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Pre Trial Disclosure

The LIV notes with concern that the consequences of not complying with disclosure requirements may lead to the court allowing statements to be tendered by the prosecution as evidence of the contents where it was not challenged prior to the commencement of the trial, or that the accused might be prevented from challenging a fact, matter or circumstance during the trial which was not challenged during a pre trial hearing (s 23CM).

Juries

The LIV understands that lawyers with practising certificates, parliamentarians and persons connected with the investigation, prosecution or punishment of offenders are to be disqualified as jurors (s 23DJ). The LIV seeks further clarification on the provision relating to the discharge of a jury immediately after empanelment if the exercise of challenges has resulted in 'a jury composition which might appear to be unfair' (s 23EL).

Other

The LIV understands that the court may admit committal evidence in whole or in part if the witness is dead or overseas, or if there are "other valid reasons for doing so" (s.23FC). The LIV seeks further clarification regarding this provision.

If you would like to discuss any of the matters raised in this letter, please contact Ann Graham on (03) 9607 9374 or by email agraham@liv.asn.au.

Yours sincerely



Danny Barlow
President
Law Institute of Victoria