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7 October 2011

Hon Adele Farina MLC
Chairman
Standing Committee on Uniform Legislation and Statutes Review
Parliament House,
PERTH WA 6000

Dear Minister

ENQUIRY INTO CRIMINAL APPEALS AMENDMENT (DOUBLE JEOPARDY) BILL 2001

I refer to your letter dated 13 September 2011 and thank you for the opportunity to comment on the proposed Bill.

It is acknowledged that the double jeopardy principal is a long held procedural safeguard that is now up against increased accessibility of forensic evidence and further that developments in forensic evidence means that a strict adherence to the rule can at times serve to pervert justice. However, the Bill it is noted does not circumvent entirely the current law but does in fact restrict the incidences in which an offender may be tried. Our only note of concern is the extent to which the possibility of a retrial is available.

Despite the COAG model restricting leave applications to serious offences such as murder, manslaughter and the most aggravated forms of sexual assault in circumstances of fresh and compelling evidence, this is not reflected in the Bill. In fact the definition of a serious offence (S4) picks up not only indictable offences where the statutory penalty is life imprisonment, but also extends to offences where imprisonment is for 14 years or more. Our comment is that there are a wide range of sentences allowed by the Bill between 14 years imprisonment and life imprisonment. Our preference would be for the original COAG model, to ensure that a much more limited list should apply to the fresh and compelling evidence route.

Yours faithfully

George Turnbull
DIRECTOR OF LEGAL AID

