



INQUIRY INTO JUDGE ALONE TRIALS UNDER S. 132 OF THE *CRIMINAL PROCEDURE ACT 1986*

TERMS OF REFERENCE

That the Standing Committee on Law and Justice inquire into and report on whether s.132 of the *Criminal Procedure Act 1986* should be amended so as to allow either party in criminal proceedings to apply to the court for trial by judge alone, without a requirement that the prosecution consents to the application, with the decision to be made by the court based on the interests of justice. In considering this issue, the Committee should compare how other Australian jurisdictions use judge alone trials with the situation in NSW and should consider the following possible model for any amendments:

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 Once consent to a judge only trial is given, it may not be withdrawn without leave of the court.

COMMITTEE MEMBERS

The Hon Christine Robertson MLC (<i>Chair</i>)	Australian Labor Party
The Hon David Clarke MLC (<i>Deputy Chair</i>)	Liberal Party
The Hon John Ajaka MLC	Liberal Party
The Hon Greg Donnelly MLC	Australian Labor Party
The Hon Lynda Voltz MLC	Australian Labor Party
Ms Sylvia Hale MLC	The Greens