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16 June 2014

Ms Jenelle Moore
Principal Council Officer
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000

By Hand

Dear Ms Moore

Responses to the Standing Committee on Law and Justice – Inquiry into the Family Response to the Murders in Bowraville

Thank you for the opportunity to appear on behalf of the Clinton Speedy-Duroux Association Inc. (***the Families***) before the Standing Committee on Law and Justice for the inquiry into the family responses to the murders in Bowraville.

During the hearing, we were asked to take a number of questions on notice. Our responses to those questions are set out below.

The Hon. David Clarke (Chair):

1 **Could you please speak to the manner in which you and the families were informed of this decision?**

Allens was informed of the former Attorney General's decision to decline to exercise his powers under sections 100 and 115 of the *Crimes (Appeal and Review) Act 2001* (NSW) (**the *Crimes Appeal and Review Act***) by letter dated 8 February 2013 (***the Decision***). We then communicated the Decision to the Families.

A copy of the Decision is at Schedule 4 of the written submissions we made to the Committee dated 6 March 2014 (the ***Committee Submissions***).

2 **Was any effort made to explain the reasons behind this decision to you or the families? If so, were these efforts adequate in your mind?**

The letter set out the Attorney General's reasons for the Decision which included that he had taken advice from the Crown Advocate, that upon consideration he had formed the view that the evidence submitted in the Families' submission as 'fresh evidence' did not constitute fresh evidence under the Crimes Appeal and Review Act and that other potential sources of 'fresh evidence' had been considered but dismissed on the basis that they were either not 'fresh' or not 'compelling'.

Prior to receiving the Decision, on 13 September 2013 Allens was invited to meet with the Crown Advocate, Ms Natalie Adams SC, and solicitors from the Crown Advocate's office who had been considering the Families' submission. During that meeting, the solicitors discussed what they considered to be difficulties with the submission, including issues in relation to the meaning of the term 'adduced' in the Crimes Appeal and Review Act, and whether allowing applications for retrials of acquitted persons on the basis of previously inadmissible evidence becoming admissible through a change in law would lead to a 'floodgates' issue. The Families were given the opportunity to respond to these concerns and Allens did so in a letter to the Crown Advocate dated 11 October 2014. A copy of the letter is at Schedule 3 of the Committee Submissions.

However, in our view the explanation provided in the Decision was sufficiently detailed to enable us to understand the basis for the Decision and, while we do not agree with some of the conclusions reached by the Attorney General on certain points of law, and on his ultimate conclusion, the letter was a comprehensive statement of the Decision and the reasoning behind it and, as such, adequate for the purpose.

We understand that representatives of the Families have subsequently met with the Attorney General in relation to the Decision, however, as we were not present at that meeting, we are unable to provide any evidence as to what was said, or what, if any, explanations were given during the meeting.

3 Could you please explain the impact this decision has had on the family members you have been working with?

The Families were extremely disappointed and frustrated by the Decision. In particular, the Families have been frustrated that, in circumstances where they successfully lobbied for the introduction of an exception to the double jeopardy principle and where it seems to be almost universally acknowledged that the accused has a significant case to answer and that the combined evidence in relation to the two murders is likely to have had a substantial impact on the outcome of those individual trials, legal technicalities continue to frustrate what they would regard as a just outcome in the matter.

We understand there have been wider impacts on the Families, including emotional and lifestyle impacts, and that the Committee has already received evidence on these issues from other sources, including from family members.

4 In your view, have the legal and other officers with whom you have had dealings demonstrated an adequate familiarity with the particulars of the case?

Allens had been assisting the families in relation to these matters since 2009. In that time, we have had dealings with two Attorneys General, the Crown Advocate, Natalie Adams SC, and legal officers in her team, and various members of the police force. From the contact we have had with these officers they have demonstrated an adequate familiarity with the salient features of the matter.

Detective Inspector Gary Jubelin from the New South Wales Police Force has demonstrated a comprehensive familiarity with every aspect of the case and, we respectively submit, has been a credit to the NSW Police force. The police officers we have met who have assisted Detective Inspector Jubelin have also demonstrated an excellent understanding of the facts of the case.

The Hon. Peter Primrose:

5 **Are there any actual references or legal citations [that provide support for the argument that "adduced" should be interpreted as "admitted" rather than "tendered"]?**

To our knowledge, no Australian court has considered the meaning of the term 'adduced' under s102 of the Crimes Appeal and Review Act. The English Court of Appeal considered the meaning of the term in the equivalent provision of the United Kingdom's *Criminal Justice Act 2003*, which is drafted in virtually identical terms to s102, in the decision *R v B* [2012] EWCA Crim 414. In that case, the court found that evidence which had been *tendered* at the original trial, but deemed inadmissible by the trial judge (and therefore not *admitted* into evidence), had not been relevantly *adduced* in those proceedings.

That authority, and our submission as to why the Committee should regard it as highly persuasive in this context, appears at page 5 of the Committee Submissions.

The Hon. David Shoebridge:

6 **Could I ask you about this idea of putting a clarification into the law...what was the exact form of words that you would propose to clarify it?**

There are two alternative means by which the legislation could be clarified:

1 s102(2)(a) of the Crimes Appeal and Review Act could be amended so that the word 'adduced' be replaced with the word 'admitted'; or

2 a definition could be added to Part 8 of the Crimes Appeal and Review Act at section 98(1), in the following terms:

> *In this Part:*
>
> *adduced means admitted into evidence in the proceedings in which the person was acquitted.*

Adding the definition to s98(1), means the definition would apply only to sections 99 -112 of the act. The word 'adduced' does not appear in any other section of the Crimes Appeal and Review Act but s102(2).

We would be happy to discuss these responses and recommendations in more detail with the Committee or give consideration to any other issues not addressed above should the Committee consider it of assistance.

Yours sincerely

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