

Submission
No 7

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

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Date received: 30/06/2010



The Secretary,
Law and Justice Committee
Parliament House
Macquarie St
SYDNEY NSW 2000

I refer to your inquiry into the provisions of Section 132 of the Criminal Procedure Act, 1986 relating to Judge alone trials and wish to make the following submission.

I do not intend to reiterate the law in this matter but suffice to say that when the Criminal Procedure Act was amended to deal with Judge alone trials, the ODPP developed a guideline, (originally guideline 8 but now guideline 24) to assist senior Crowns in determining when it was appropriate to seek a Judge Alone trial and that guideline made specific provision for the welfare of the Victim/s of the offence. In our experience, this consideration to Victims is one in which the ODPP places great stock.

There are however a number of other matters which need to be considered in relation to the need for specific directions to be made as to when a jury trial is the more preferable and changing the current approach is one with which we could not agree.

Because of the nature of the provisions of Sentencing Discounts, defendants will often enter early pleas of guilty to lesser charges, in the hope that should the plea not be accepted, in the event of a full trial and subsequent conviction, they will receive a more favourable outcome. Often there is an incentive for the Crown to accept the early plea and without the ability to put the more serious charges to a Jury, we can see an eroding of the Criminal process, which could lead to a lack of confidence in the prosecution process, not just by the Public, but by Crowns.

We have noted particularly in the last five years an increase in the number of matters where there is a dispute as to the level of seriousness of a crime. Matters which spring immediately to mind are those that involve the difference between Manslaughter and Murder, Aggravated Dangerous Driving Occasioning Grievous Bodily Harm and Dangerous driving occasioning GBH and Assault Occasioning GBH with Intent and Assault Occasioning GBH. Such differentiations also occur in a number of matters under Section 61 of the Crimes Sentencing Procedure Act, 1999, when determining which section to apply.

We are of the view that the most appropriate fora for determining such distinctions are matters which should rightly be made by a properly constituted and instructed Jury and not a Judge sitting alone. We are not attempting to impute the ability of Judges sitting in their capacity as Judge and Jury, as clearly this is not the case, but our view is based on the general concept of "Confidence in the Administration of Justice", wherein the precept of being judged by a panel of one's peers is the cornerstone of our Legal System (whether this is in fact a true reflection of the role of juries is a completely different matter which may well be best addressed by a similar inquiry)

I appreciate that there is a view within the Legal Profession of defence practitioners that Jury trials are traditionally lengthier than those of Judge alone and at first glance this may well be true but it should also be noted that a Judge alone trial is no guarantee of a quicker resolution of the matter before the court. In our experience a matter being heard by a Judge alone may take fewer trial days but the period of time which passes between the commencement of a trial and it's conclusion is not necessarily any shorter and often is far longer. We have seen time and time again where a Judge sitting alone makes a direction with which the defence disagrees, the matter being stood over whilst the defence seeks direction from a higher authority or insists on going into "voir dire" in order to challenge such directions.

If the intent of changing the rules relating to Judge alone trials is being argued on a cost basis, which I suspect it is, I would pass the following comments. In the first instance I think the cost savings would be minimal in the overall costs to the Criminal Legal System, especially when one considers the majority of Criminal matters are settled in the Local Court, where this discussion does not apply.

The second argument is I feel far more probative. There is a cost of living in a civilised society and that cost is that we deal with those who have offended against that community in a civilised manner. We should not, at any time, attempt to place a ceiling on costs associated with the delivery of Justice in this state.

Our organisation has never been seen as being great supporters of the ODPP, and although this is not true, as in fact we often write to the Director to congratulate him on the work of his staff, we feel that this inquiry puts in question the integrity of the ODPP as " gatekeepers" for the process of Judge Alone trials. I am aware of the submission by the director and although we do not always agree with his views, on this matter, we concur and would recommend against any changes to the current regime.

Yours faithfully

Howard W Brown

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Vice President

Victims of Crime Assistance League

29th June,2010.