

Supplementary  
Submission  
No 25a

**INQUIRY INTO CRIMES (APPEAL AND REVIEW)  
AMENDMENT (DOUBLE JEOPARDY) BILL 2019**

**Organisation:** Jumbunna Institute for Indigenous Education and Research

**Date Received:** 5 August 2019

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**Merrin Thompson**  
**Standing Committee on Law and Justice Committee**  
**Legislative Council**  
**NSW Parliament**  
**By Email: lawandjustice@parliament.nsw.gov.au**

5 August 2019

Dear Committee Members,

**RE: SUBMISSION TO THE INQUIRY INTO THE CRIMES (APPEAL AND REVIEW)  
AMENDMENT (DOUBLE JEOPARDY) BILL 2019 (THE BILL).**

Thank you for the invitation to give evidence in Sydney on 24 July 2019 during the Committee's Inquiry into the Bill (the **Hearing**). In addition to the answers to questions on notice forwarded separately, we wish to make one additional supplemental submission in relation to the issue of finality raised by members of the Committee during the Hearing.

**Finality**

1. Whilst it does not appear to have been explicitly recorded as a question on notice, we note the issue of finality raised by the Hon. Chair during the Hearing.
2. We acknowledge the concerns of the Committee in relation to the potential risks to finality of the model we proposed in our written submissions dated 22 July 2019 (the **Written Submissions**).
3. We note that, whilst our proposed model allowed multiple applications, it provided for a complete bar in circumstances where an accused had obtained a jury verdict on a retrial following a successful application.
4. On reflection, we propose that the Bill be amended to reflect the position which we understand to have been suggested in the evidence of Dr Hamer during the Hearing, namely that:
  - 4.1. The Bill's proposed limitation of a second application under Part 8 of the Act in exceptional circumstances be retained; and
  - 4.2. Our proposed complete bar on any subsequent trial that proceeds to verdict also be incorporated.
5. The practical reality of these amendments would be that;
  - 5.1. It would only be in exceptional circumstances that a second application could be made to set aside an acquittal under Division 2 of Part 8; and

- 5.2. an Accused could never face more than one retrial to verdict before a jury in relation to a specific acquittal.

Yours Sincerely,

Prof. Larissa Behrendt  
Director, Jumbunna IHL (Research)

Craig D. Longman  
Snr. Researcher, Jumbunna IHL (Research)