UTS:JUMBUNNA
INDIGENOUS HOUSE OF LEARNING

UNIVERSITY OF TECHNOLOGY SYDNEY

UTS:Jumbunna
Indigenous House of Learning

PO Box 123
Broadway NSW 2007

City Campus
Building 1, Level 17, Room 30
15 Broadway, Ultimo

T: +61 2 9514 1902
F: +61 2 9514 1894
jumbunna.admin@uts.edu.au
www.jumbunna.uts.edu.au

UTS CRICOS PROVIDER CODE 00099F

25 June 2012

Director, Criminal Law Review,
NSW Department of Attorney General and Justice
GPO Box 6
NSW 2001

By Post and **Email: ag_clrd@agd.nsw.gov.au**

Dear Director,

RE: STATUTORY REVIEW OF PART 8 OF THE *CRIMES (APPEAL AND REVIEW) ACT 2006* ("The Act").

We welcome the opportunity to comment on the NSW Law Reform Commission's Statutory Review upon Part 8 of the *Crimes (Appeal and Review) Act* 2006 in New South Wales (the "**Review**"). Whilst we have limited comments to make in relation to the substance of Part 8 and its application generally, we do want to raise the issue of the timing of the Review, and the perception that could result within a specific Aboriginal community located at Bowraville, NSW.

As you may be aware, Jumbunna Indigenous House of Learning, Research Unit ("**Jumbunna**") undertakes research and advocacy on Indigenous legal and policy issues of importance to Indigenous people, their families and their communities. Our current projects explore, inter alia, issues related to Indigenous people's contact with the criminal justice and legal system.

Currently, one of the projects that Jumbunna is engaged in is working with the Bowraville community, in relation to the deaths of three children, Colleen Ann Walker (16), Evelyn Clarice Greenup (4) and Clinton Thomas Speedy (16) (together "**the Victims**") who were killed, believed murdered by the same person, in Bowraville between September 1990 and February 1991 (the "**Murders**").

Jumbunna researchers have visited with the Bowraville community on a number of occasions, and we are acutely aware of a strong sense of injustice that exists within the community. The case has a significant history, with two separate Police investigations, two trials and coronial hearings.

There have been significant impediments to the investigations and judicial proceedings. These include:

(a) The failure of the initial Police investigation to obtain all relevant evidence. This investigation was conducted against a backdrop of strong distrust between the Aboriginal

and white community, and a distrust of the white police officers in particular. Bowraville has long been considered a town with strong racial prejudices, with serious racial segregation existing in the town in 1967, meaning that many of the current community grew up in that time. In addition, we are aware through our research that the relationship between Aboriginal people and Police is a complex one that is deeply impacted upon by historical circumstances. Police involvement in enacting policies of dispossession and child removal, and overtly racist incidents are not easily forgotten.

(b) The Cultural Differences that existed between Aboriginal witnesses and the NSW Police, and the Courts (with regard to the two trials that were conducted), impeded the effective obtaining of evidence.

(c) The perception within the community that the initial Police investigation was tainted by racist presumptions and/or indifference amongst the NSW Police officers responsible for the investigation. This perception resulted from not just the historical distrust of Police, but the behaviour of Police at the time, for instance, we understand the families were told, on reporting the Victims missing, that they "had probably just wandered off" or "had gone walkabout", even with regard to the disappearance of the four-year old Evelyn.

One of the most significant elements in the community's feelings of injustice has been that significant evidence regarding the Murders has never been presented to a Court, and that the suspect has never had to face that evidence.

Since the Murders, the community has been unending in its pursuit of justice, and, relevantly, has undertaken campaigning around legal reform to ensure that the fresh evidence is presented in Court. Indeed, the Community conducted significant advocacy between March 2006 and December 2006 in relation to the Act, and the case was specifically mentioned by both the Hon Rev. Fred Nile and the Hon. Catherine Cusak during the Act's second reading speech in the Legislative Assembly. This case was one of the reasons for the passage of the section in 2006.

We endorse the views of the then Member for Manly, Mr David Barr, MP, during the debate over the Act in the Legislative Assembly who noted that:

> *"People have confidence in the justice system if they can see that justice is, in fact, done. When it can be demonstrated that someone has got off a serious criminal rap, people do not have confidence in the justice system… Murder is final for the victims, their families and their loved ones. Once a person has been to trial and been acquitted, if there is evidence that was not adduced at trial or evidence is subsequently forthcoming that clearly indicates that the person was guilty, then finality must be seen in terms of the application of justice in those circumstances. If that does not happen, the average person in the street would*

consider that justice has not been done.196"

The effect of the failed investigations and trials has been catastrophic upon the families of the Children and the Bowraville community. Jumbunna researchers have visited the communities on a number of occasions now, and there is a deep sense of loss and anger, indeed, a sense of betrayal, at the way in which the community was treated initially, and the failure of the State to prosecute the man it is believed was responsible for the murder of the Children. Whilst the community's relationship with the Police has substantially benefited from the work of Homicide Detective Gary Jubelin, who has been available to, and provided support to, the family since his appointment to the case in 1997, there remains a deep and abiding sense of injustice over the fact that so much evidence about the Murders has never been tested.

The Victims' families have had to wait a long period of time for their matter to be considered. Their initial application had to be withdrawn and refiled due to a change of Government. Since the passage of the Act in 2006, both the Community and the NSW Police Strike Force ACUND have continued to agitate for an application to be made under the Act in relation to the case. Six years on, and a request is currently before the NSW Attorney-General to make an application under the Act.

Our concern in this matter is that the current position has been reached only after a continued struggle by the families of the Victims and the communities. The community has been patient, it has undertaken law reform efforts and has held out hope that the case for a retrial of the suspect will be heard by the Court of Criminal Appeal. The sensations of distrust and injustice that has marked this case since the time of the Murders has begun to give way to a renewed hope within the community that the justice system may, albeit belatedly, actually provide the community with justice, namely a criminal trial in which all of the relevant evidence is presented to a jury.

Our concern is that, should the Commission recommend, and the Government effect, the revocation of the section, then, by default, the current application being considered will become moot. In our view, should that occur, it is likely to result in a re-enlivenment of the community's negative views of the perception of the justice system to deliver justice to Aboriginal communities.

Yours sincerely,

Larissa Behrendt
Director
Jumbunna IHL, Research Unit.

Craig D. Longman
Snr Researcher
Jumbunna IHL, Research Unit.