

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 33

Senator Ludwig asked the following question at the hearing on 14 February 2006:

Double jeopardy: There was a report dated March 2004 and a Model Criminal Code Chapter 2 which would issues estoppel, double jeopardy and prosecution appeals against acquittals.

- a) What progress has been made?
- b) What amount of resources have been committed by Criminal Justice Division?
- c) Has agreement been reached with the States and Territories?
- d) Is the March 2004 paper going to be updated?
- e) If the project has been stalled, what are the reasons for it stalling?

The answer to the honourable senator's question is as follows:

- (a) In April 2003, the Standing Committee of Attorneys-General referred the issue of double jeopardy reform to the Model Criminal Code Officers Committee (MCCOC) for its consideration. MCCOC produced a discussion paper in November 2003 (Chapter 2 Issue Estoppel, Double Jeopardy and Prosecution Appeals against Acquittals) and a brief to SCAG (March 2004), recommending significant legislative changes to the rule against double jeopardy. The March 2004 report also noted MCCOC's intention to produce a formal Final Report on this subject.

In March 2004, SCAG Ministers expressed their views on the recommendations of the MCCOC report. The issue was discussed again at the July 2004 SCAG meeting. At this meeting, Ministers thanked MCCOC for its work on this issue and agreed that any jurisdictions who wish to adopt exceptions to the double jeopardy rule will work to ensure national uniformity. As a result, MCCOC did not produce a Final Report on double jeopardy reform.

On 15 September 2005 the Minister for Justice and Customs wrote to the Prime Minister seeking approval to pursue the issue of double jeopardy reform with State and Territory jurisdictions to ensure a nationally consistent approach is adopted. The Prime Minister responded on 10 November supporting the Minister's proposal.

The Minister for Justice and Customs raised this issue on the main agenda of the November 2005 SCAG meeting. At that meeting, Ministers expressed their views on a nationally uniform approach to the reform of the rule against double jeopardy. A NSW Bill amending the rule against double jeopardy is currently being developed.

The Minister for Justice and Customs remains committed to pursuing this issue with States and Territories.

- (b) One Senior Legal Officer is responsible for the management of this issue.
- (c) No
- (d) No
- (e) The project has not stalled. It remains an issue on the SCAG agenda.