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Minister for the Prevention of Domestic Violence

STATEMENT

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THE BOWRAVILLE MURDERS

Almost 30 years ago, three Aboriginal children, Colleen, Evelyn and Clinton, went missing in Bowraville. One person has been acquitted of the murders of Clinton and Evelyn in separate trials. Colleen's remains have never been recovered, and there has never been a prosecution in relation to her suspected murder.

The loss of the children, compounded by failings of the criminal justice system's initial response, has deeply affected the wider Bowraville community. I cannot begin to imagine what the children's families have endured and the grief they continue to feel.

In 2006, the NSW Parliament enacted [legislation](#) to enable the retrial of a person acquitted of an offence punishable by a period of life imprisonment, where the Court of Criminal Appeal is satisfied that there is fresh and compelling evidence against the acquitted person, and that it is in the interests of justice for the retrial order to be made. Only one retrial application may be made.

The reform was introduced to address, for example, developments in forensic technology, such as DNA testing, producing new evidence following an acquittal. All Australian states have since adopted equivalent reforms. The United Kingdom and New Zealand have comparable schemes.

In 2016, the then Attorney General commenced an application to retry a person, known as XX, for the murders of Clinton and Evelyn, jointly with a trial for the murder of Colleen. It was the first retrial application in Australia. The application was brought to ensure the transparent resolution of the matter before an independent court, after nearly a decade of advocacy.

In 2018, the application was [dismissed](#) by the Court of Criminal Appeal on the basis that the evidence relied on by the state was not 'fresh'. I sought special leave to appeal the decision to the High Court of Australia. Last year, the High Court [dismissed](#) my application.

The Legislative Council Standing Committee on Law and Justice recommended, in its 2019 [inquiry](#) into the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* introduced by Mr David Shoebridge MLC, that the NSW Government consider a reform model proposed by the Jumbunna Institute for Indigenous Education and Research. I thank the Committee and the Jumbunna Institute for their careful consideration and recommendations.

The Jumbunna model, if adopted, would:

- amend the test for evidence being 'fresh'; and
- allow the State to make unlimited retrial applications in relation to a particular acquittal, or alternatively allow the State to make multiple retrial applications in exceptional circumstances, but only allow a single retrial.

I have today spoken with the Bowraville families to inform them that, after careful consideration, the Government does not propose to implement the Jumbunna model, or to support the bill proposed by Mr Shoebridge.

The impact of the Government's [decision](#) on the Bowraville families has weighed heavily on me. The decision will bitterly disappoint them. For that, I am very sorry.

The double jeopardy rule is a fundamental principle of criminal justice systems around the world that prevents the retrial of a person following a valid acquittal. It prevents the use of criminal prosecutions as an instrument of oppression.

The Committee's report records some of the other reasons why the proposed reform should not be supported. Legislative reform in response to a specific case, together with reform to allow the State to bring multiple retrial applications in respect of a particular acquitted person, may bring the criminal justice system into disrepute. Allowing multiple retrial applications would be unprecedented in any jurisdiction that allows applications for the retrial of an acquitted person.

These concerns may seem trivial to some in comparison with the grief and trauma experienced by the families of the children, and their pursuit for justice. What happened in Bowraville almost 30 years ago casts a shadow on our criminal justice system. However, I believe that shadow would darken if fundamental legal principles were undermined to enable the executive government to pursue, repeatedly, the prosecution of an individual.

I have grappled with the likelihood of any future retrial application succeeding if the Government set aside the concerns outlined above and introduced legislative reform to enable the commencement of a further retrial application.

I expect that, on the current evidence, any retrial application would fail, regardless of the proposed reforms. This has confirmed my view that no reform should proceed. I do not wish to subject the children's families to false hope and more failed legal proceedings.

Taking all of this into account, I could not, in good conscience, introduce these proposed reforms to Parliament and commence a second retrial application, expecting that it would fail.

The suspected murders of the children remain the subject of a NSW Police investigation. To that end, the NSW Police Force today announced a \$1 million reward for information that leads to the arrest and conviction of the person or persons responsible for the deaths of the children.

If you know something, no matter how small or insignificant it may seem, please come forward.

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