

1 April 2021

Dr Adam Tomison
Director-General
Department of Justice
GPO Box F317
PERTH WA 6841

Email: Subhan.dellar@justice.wa.gov.au

Dear Dr Tomison

**CONSULTATION ON UNIFORM EVIDENCE LAW (TENDENCY AND COINCIDENCE)
MODEL PROVISIONS BILL**

Thank you for the opportunity to provide a submission on the legislative options for tendency and coincidence evidence in a renewed Western Australian Evidence Act and for agreeing to an extension to the deadline for submissions.

The Law Society's Criminal Law Committee has considered this matter, noting previous submissions to the Department on WA evidence legislation made in 2018.

The Law Society generally prefers nationally consistent legislation, and the preference of the Law Society in this matter is for Option 3 in the discussion paper - adoption of the model Bill provisions.

The Society has not formed this view lightly.

The Society notes that there is 15 years of jurisprudence in respect to the section 31A,¹ it is well drafted and straightforward to apply. In contrast, the Society notes the Uniform Evidence provision has been subjected to conflicting interpretations in NSW and Victoria which have resulted in a number of High Court cases. The Society also notes recommendations 44 and 45 of the *Royal Commission into Institutional Responses to Child Sexual Abuse* are met by the Section.

However, following the High Court decisions in *McPhillamy*² and *Bauer*,³ and how these decisions have been applied by the Court of Criminal Appeal in Western Australia, the Society considers that it is timely to adopt the Model Bill provisions.

¹ A recent example being the high-profile decision of Hall J in *The State of Western Australia v Edwards* [No 7] [2020] WASC 339

² *McPhillamy v The Queen* [2018] HCA 52

³ *The Queen v Dennis Bauer (a pseudonym)* [2018] HCA 40

It is the Society's hope that any uncertainty occasioned by adopting the Model Bill provisions will be short lived, and in the long term nationally consistent legislation and national jurisprudence on tendency and coincidence evidence would be beneficial in Western Australia.

The Law Society considers that a hybrid approach suggested in option 2 is not desirable.

If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Boujos', with a large, stylized initial 'J'.

Jocelyne Boujos
President