Double Jeopardy, Law Reform and the Bowraville Murders

This resource examines the case law and legislation about the legal debate on double jeopardy as it relates to the Bowraville Murders.

Tragically, the source of this legal debate arises from the unsolved murders of three Indigenous children in Bowraville, New South Wales in the early 1990s.

Due to a current court order, the person previously acquitted by the court must be identified as XX and will be named as such throughout this publication.

The resource is organised by headings to assist in differentiating the content.

- **Double Jeopardy** - explanation of the legal concept of double jeopardy
- **The Bowraville Cases** - details of the criminal trials of XX for the alleged murders of Clinton 'Speedy' Dureaux and Evelyn Greenup.
- **The 2018 Court of Criminal Appeal Decision** - is the summary of the NSW Court of Criminal Appeal **and** sets out the reasons why this appeal was not an exception to the Double Jeopardy Rule.
- **Resources** - contains links to sources of further information about the murders, the police investigation and the subsequent legal proceedings.
- **Activities** - are designed for use by secondary school teachers and students.
- Assessment

Double Jeopardy

What is double jeopardy

'Double jeopardy' is found in legal systems around the world, including in Australia, England and America.
The double jeopardy rule exists to prevent a person from being sent to trial again, if they have already been found not guilty on the facts of that case.

In 1994 XX was tried and found not guilty of murdering 15 year old Clinton Speedy-Duroux.

In 2006, XX was tried and found not guilty of the murder of 4 year old Evelyn Greenup.

Double Jeopardy and Law Reform

Protections against double jeopardy are important to the rule of law. Cases have arisen, however, where the rule has led to a perception that a person ought to have been tried again but could not be, due to the double jeopardy rule. This has usually occurred, because new factual information has come to light, suggesting that person's involvement in the crime.
In 2001 Lord Justice Robin Auld, summed up concerns about the double jeopardy rule in a report into a review of UK criminal courts, which included concerns about double jeopardy:

If there is compelling evidence… that an acquitted person is after all guilty of a serious offence, then, subject to stringent safeguards…, what basis in logic or justice can there be for preventing proof of that criminality? And what of the public confidence in a system that allows it to happen?

R v Carroll - Double Jeopardy in Queensland

In Australia, for more than a decade, various jurisdictions have unsuccessfully challenged the double jeopardy rule.
In the 2002 case of *R v Carroll* [2002] HCA 55 the High Court found that the Queensland Government's attempt to try Raymond Carroll for perjury was a breach of the rule against double jeopardy. Perjury is an offence that occurs when a person gives untruthful evidence in court.

The prosecution alleged in the perjury proceedings, that Mr Carroll's testimony in his previous murder trial, for which he had already been acquitted, was untruthful.

The Court found the perjury proceedings were "vexatious and oppressive". It found that they amounted to an attempt to try him again for that murder and were an infringement of the rule against double jeopardy.

In 2003, the NSW Government released the *Criminal Appeal Amendment (Double Jeopardy) Bill 2003* (NSW) which sought to change the rule on double jeopardy. This Bill was intended to amend the *Criminal Appeal Act 1912* (NSW) to allow a person to be retried for an offence if there was "fresh and compelling evidence of guilt." This change was in line with UK legislation that had been introduced earlier the same year. The government's Bill was debated in NSW Parliament committees, and discussed at federal level, but was ultimately not passed.

In 2006, the government tried again, by introducing the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006*, which was an attempt to amend the *Crimes (Appeal and Review) Act 2001* (NSW). These amendments were substantially the same as those floated back in 2003.

The *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006* was passed by Parliament, which amended the *Crimes (Appeal and Review) Act 2001*. The Bowraville murders were mentioned by a number of parliamentarians during the debate on amendments to that Act.

Principally, the amended *Crimes (Appeal and Review) Act 2001* ("CARA") now provides in section 100, that:
(1) The Court of Criminal Appeal may, on the application of the Director of Public Prosecutions, order an acquitted person to be retried for a life sentence offence if satisfied that:
(a) there is fresh and compelling evidence against the acquitted person in relation to the offence, and
(b) in all the circumstances it is in the interests of justice for the order to be made.

The meaning of the words "fresh" and "compelling" are defined in section 102 of the Act.

In 2015, the Honourable James Wood AO QC, former NSW Supreme Court justice and former chairman of the NSW Law Reform Commission, was asked to prepare a report on whether section 102 of the Act, which defines "fresh" and "compelling" evidence, should be amended. Mr Wood concluded that it should not be, because of concerns that the amendments would significantly undermine protections against double jeopardy.

After Mr Wood handed down his report, David Shoebridge, the Greens member of the NSW Legislative Council, introduced the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015*, which would have amended the *Crimes (Appeal and Review) Act 2001* to allow previously inadmissible, but now admissible, evidence to count as "fresh" evidence. This Bill failed to pass in the NSW Parliament.

This means that any cases the prosecution seeks to argue should be an exception to the double jeopardy rule, must still be dealt with under sections 100 and 102 of the *Crimes (Appeal and Review) Act 2001* (NSW).

The Bowraville Cases

In late 1990 and 1991 Colleen Walker, Evelyn Greenup and Clinton 'Speedy' Duroux disappeared from the town Bowraville, on the NSW Mid North Coast. XX was tried and acquitted of murdering 4-year-old Evelyn Greenup and 16-year-old Clinton Speedy-Duroux.
Under the rules of the *Evidence Act 1995* (NSW) at the time, the two trials were required to be heard separately.
No person has been tried for the murder of Colleen Walker.

The Application for a Retrial

The Aboriginal Community of Bowraviile has long pushed for XX to be re-tried for the murders of Evelyn Greenup and Clinton Speedy-Duroux and to be tried for the murder of Colleen Walker. The rule on double jeopardy has been a legal hurdle to these cases proceeding.
In 2016, in the wake of ongoing changes to the *Evidence Act 1995* (NSW) regarding the nature of evidence that is admissible at trial, NSW Attorney-General Gabrielle Upton announced she would make an application for retrial.
The application was for a retrial of XX for the murders of Clinton 'Speedy' Duroux and Evelyn Greenup as well as well as a trial of XX for the murder of Colleen Walker. The Attorney General applied to have all three trials heard together and for the evidence in one to be evidence in the others.
The application by the Attorney General was made on the basis that:

> *If the evidence in relation each of the three murders was considered by a jury at a single trial, that evidence, which allegedly showed that there were similarities in the circumstances of each murder, would indicate that each of the children was murdered by the respondent.* ***Attorney General for New South Wales v XX [2018] NSWCCA 198***
> ***[Headnote]***

The 2018 Court of Criminal Appeal Decision

On 13 September 2018, the NSW Court of Criminal Appeal handed down their decision in the application made by the Attorney General of NSW for a new trial of XX. That case was ***Attorney General for New South Wales v XX [2018] NSWCCA 198*** **("the Judgment").**

In the Judgment the Court considered the question of fresh and compelling evidence under s 102 *CARA*. This section reads:

> (2) Evidence is ***fresh*** if:
> (a) it was not adduced in the proceedings in which the person was acquitted, and
> (b) it could not have been adduced in those proceedings with the exercise of reasonable diligence.
> Section 102(3) of CARA provides that:
> (3) Evidence is *compelling* if:
> (a) it is reliable, and
> (b) it is substantial, and
> (c) in the context of the issues in dispute in the proceedings in which the person was acquitted, it is highly probative of the case against the acquitted person.
>
> *The most important evidence that the Attorney General alleged was **'fresh'** was in relation to the murder of Colleen Walker, most of which had not been admitted into evidence in either of the earlier trials. The Attorney General said this evidence was also 'compelling', because it established similarities between each of the murders in a way that would not have been possible with only the evidence from the two other murders. [Headnote]*

Specifically, the evidence put before the Court by the Attorney General as being **'fresh'** and **'compelling',** because it had not previously been admitted into evidence, was:

1. The alleged similarities in the factual circumstances between the death of Evelyn Greenup and Clinton Speedy-Duroux. This evidence was put before the Court by the prosecution in the 1994 trial of XX for the murder of Clinton Speedy-Duroux. However, those facts were not accepted as evidence in the 1994 trial, because of the rules regarding admissible evidence at that time.

2. Further "fresh" allegations the police had uncovered over the years, including:
   (a) evidence of two delivery drivers who claim they saw a white man, matching XXs description, standing over an Aboriginal teenager who was lying on the road outside Bowraville the morning Clinton disappeared.
   (b) evidence from the case of Colleen Walker, because it was not relied upon or admitted in either the Speedy or Greenup trials. It was compelling because it was evidence of coincidence.
   (c) evidence from four informers that XX had made admissions to them in relation to the offences.
   (d) evidence from other persons that the respondent had made admissions to them about possibly being involved in the murders and/or location of bodies.

In the Judgment, the Court considered whether it was appropriate for the above alleged facts to be allowed as **"fresh"** and **"compelling"** evidence in any retrial of XX for the murders of Clinton 'Speedy' Duroux and Evelyn Greenup, as well as well as a trial of XX for the murder of Colleen Walker, on the basis that the three trials would all be heard together.
The Court noted that it was required, under s 105(7) of CARA, to decide if there was fresh evidence in relation to each of the offences separately.

'Fresh' and 'Compelling' Evidence

In order for a retrial to be possible under s 100 CARA, the evidence must be "fresh" under s 102(2) of CARA and "compelling" under s 102(3) of CARA.

Meaning of Fresh Evidence - The 'Tests'

Adduced Test - Part 1

The first test of whether evidence is 'fresh' is whether it has been 'adduced'. Section 102 (2)(a) of CARA says that evidence is fresh if it was not 'adduced' in the proceedings, in which the person was acquitted. In his application, the Attorney General argued that, as specific factual information had not been admitted into evidence in the trial of XX for the murders of Evelyn Greenup and Clinton Speedy, it had not been adduced.

There is little guidance from previous cases on what the word 'adduced' means in section 102(2), and whether it includes evidence that has been put before the court (tendered) or evidence admitted in the trial.

How Evidence Becomes Part of the Facts in a Trial

There is usually a two-step process for evidence to become part of the facts of a trial.

1. The evidence (say a document or item) is tendered or produced in the court for the parties and the court to consider whether it can be part of the evidence of the trial. When documents are tendered or produced to court it maintains possession of them but they do not at that point in time become evidence in the case. The judge will not look at them at that stage[1] and the documents are often called 'marked for identification'.
2. If that evidence meets the rules of evidence, it is then admitted as part of the evidence in the trial. If a document is tendered and admitted, it is then called an 'exhibit'.

Due to the rules of evidence, when evidence is tendered, but not admitted, it is because there is a decision by the court (or by one or both of the parties) that the tendered evidence should not be included as part of the evidence of a particular criminal case.

[1] Justice Chesterman of the Queensland Supreme Court "*Trial Documents, Proving, Tendering and Cross-Examination*" at http://www5.austlii.edu.au/au/journals/QldJSchol/2001/44.pdf

After considering case law in Australia and England, the Second Reading speech in the NSW Parliament, as well as the report of the Honourable James Wood AO QC, the Court decided that the word 'adduced' meant tendered, not admitted into evidence [247]. The Court then considered the second test about whether the evidence could have been tendered in the previous proceedings, if reasonable diligence had been used [225].

Adduced Test - Part 2

The second test in 102(2)(b) CARA considers whether evidence could have been adduced but wasn't, due to a lack of reasonable diligence by prosecutors.

This means the prosecution cannot say that evidence is 'fresh', simply because of poor investigation or decisions made not to adduce that evidence in a previous case. The Court noted that evidence will not be considered fresh just because there is a change in the rules of evidence [225], [243] and [265]. To the same extent, if evidence had previously been inadmissible, it does not automatically mean it cannot now be fresh evidence. The test is whether it was available to be adduced.

In the end the Court found that the evidence from Colleen Walker's case had been available prior to the trial of XX for the murder of Evelyn Greenup. The evidence from informers and the other admissions had also been available [257]. None of this evidence was found to be 'fresh'. It therefore could not be used in any retrial [256]. The only evidence that had not been available prior to the trial of XX for Evelyn' Greenup's murder, was in relation to statement allegedly made by XX to a journalist in 2016. The Court found that this evidence was not 'highly probative' as required by s 102(3)(c), as it was a denial of guilt, and also could not be used on a retrial.

What is 'Compelling' Evidence

Section 102(3) looks at whether evidence is compelling. This requires the prosecution to prove that the 'fresh' evidence is 'reliable', 'substantial' and 'probative'.

The Court found that each element of s 102 must be proved, that is that the evidence is both fresh and compelling [171] and [176]. That meant that if either of those elements could not be proved, the application would fail. The court found that the evidence was not fresh and that was sufficient under s 102 for the application to fail, without need for detailed consideration of whether the evidence was 'compelling'.

Application to hear all the cases as a single trial

The Attorney-General applied to the Court of Appeal for XX to be tried for all three murders in the same trial [262].

"*The argument focussed critically on the unique strength of a case in which all three cases would be considered together, with evidence in relation to each murder being admissible as coincidence evidence in relation to each other murder*" [264].
The Attorney General summarised the evidence as showing that;

> *each of the children were murdered; they were murdered by the same person; and that person was XX*

The Attorney General identified a number of pieces of evidence that they argued could be considered 'fresh.' The fresh evidence used as part of the application was found mostly from the murder of Colleen Walker. In the Attorney General's view, once this evidence was included with that of the other two murders the 'evidentiary matrix' was altered [37]

This evidence allegedly included:

- XX knew Colleen Walker [39]
- Witnesses that say Colleen Walker said that XX was harassing her and she was seen talking to him [40-41]
- Other detailed evidence related to the night Colleen Walker went missing [42-46]
- Multiple sightings of Colleen Walker in a white Commodore on the night she went missing [51]
- Witnesses that he heard XX make sexual references to Colleen Walker [48, 53]
- 'Informer' and 'other admissions' evidence [60-67]

The Court's Decision

The court found that the applicant needed to show that their evidence was fresh in relation to the offence, for which the person had previously been acquitted. It found it could not consider the evidence together as a whole. That evidence had to be fresh in relation to each one of the two acquittals [265]

The Court found that the evidence from the Colleen Walker matter was available prior to the trial for the murder of Evelyn Greenup. It was therefore not fresh and thus failed the test under s 102(2) of CARA [256]. The Court refused the application for a retrial in the Evelyn Greenup matter [261].

In relation to the application for a retrial for the murder of Clinton Speedy, the court found that the Attorney General did not sufficiently argue that case [267]. There were no submissions made by either party as to whether the 'fresh' evidence was sufficient for a retrial of XX for the murder of Clinton Speedy, without a retrial for the murder of Evelyn Greenup. As the argument had not been put by the Attorney General, the Court could not decide on it.

XX has been charged with the murder of Colleen Walker. However, as the Attorney General has announced that he is appealing the decision of the Court of Criminal Appeal to the High Court, there will not be a trial until the application to try all three cases together is determined by the High Court.

Resources

Double Jeopardy a 2003 NSW Parliamentary Library Research Service briefing paper
https://www.parliament.nsw.gov.au/researchpapers/Documents/double-jeopardy/16-03.pdf

'Review of section 102 of the Crimes (Appeal and Review) Act', 2015 report by Mr Wood
https://www.justice.nsw.gov.au/justicepolicy/Documents/review-section-102-crimes-act-wood-september-2015.pdf

'Bowraville Murders', in-depth investigation and summary by The Australian newspaper
https://www.theaustralian.com.au/in-depth/bowraville

'Bowraville murders: Landmark retrial ruled out in NSW Court of Criminal Appeal', 2018 online article, ABC News
https://www.abc.net.au/news/2018-09-13/bowraville-murders-retrial-ruled-out-by-nsw-court/10240954

How the law failed the victims of the Bowraville murder case
https://sydney.edu.au/news-opinion/news/2018/09/20/how-the-law-failed-the-victims-of-the-bowraville-murder-case.html

Double Jeopardy and the Bowraville Decision: Where to now?
https://www.abc.net.au/news/2018-09-14/bowraville-double-jeopardy-colleen-walker-clinton-speedy-duroux/10243750

International Law - What is Double Jeopardy?
https://www.open.edu/openlearn/society-politics-law/law/what-double-jeopardy

Acquitted man could be retried for 1980s murder under Queensland's double jeopardy laws
https://www.abc.net.au/news/2018-07-20/first-double-jeopardy-laws-used-in-queensland-1980s-murder/10016972

Activities

Activity 1 - Law Reform Statements

Evaluate the below statements offered by the following leading figures in the Double Jeopardy law reform debate:

a The President of the Law Society of NSW, Robert Benjamin, launched the Law Society's Law and Order Policy Statement on 20 February 2003. One of the Statement's recommendations was:

As to the Double Jeopardy Rule, it should be noted that it preserves finality of justice for people acquitted of crimes, ensures that the best possible case is prepared by police and prosecution, and avoids continued persecution of individuals. It should not be changed without proper debate and consultation, outside of the heat of an election campaign…

b Prime Minister Howard said the following:

... justice was not served by "demented, dogmatic adherence" to legal principles simply because those principles had been around a long time…"I am very much in favour of changing things that don't work, and this rule doesn't work. I'm not in favour of totally throwing it out…but it does seem to me that this particular case [R v Carroll] is just horrific…

C Dr Mirko Bagaric, School of Law, Deakin University evaluated the arguments for and against the double jeopardy principle and concluded it is necessary to recognise exceptions to it*:*

…like all rights or protections which are properly enjoyed by citizens it [the double jeopardy rule] has its limits. It is fanciful to think that any right is so paramount that there cannot be circumstances in which it should yield to other interests. This is particularly so in relation to merely procedural rights. There are strong countervailing interests which weigh against the principle of double jeopardy. In relation to nearly all circumstances in which this rule applies a contrary good is punishing wrongdoers…[I]n some instances other countervailing interests also weigh against the application of the principle. An example is the principle that no person should benefit from his or her own wrongdoing.

Activity 2 - Double Jeopardy and Law Reform Program for the 2019 Qld Legal Studies Syllabus

Unit	Teacher/Student activity	Resources
	Unit 1 Topic 3 2.5 - Beyond Reasonable Doubt - Double Jeopardy; Criminal Court experience, **Unit 3 Topic 2** 4.2 - 4.4 Law Reform **Unit 4 Topic 3** 5.5 Human Rights in the Australian Context **Suggested time 4 hours approx**	Chapter 11 - I*nvestigating Legal Studies for QLD* 2nd Edition Cambridge
4.2 Obj 1	Background information about law reform in QLD	Powerpoint of main elements of law reform
4.2 Obj 1	**Discussion Questions** What is law reform? Why do we have law reform? What triggers a law reform matter? What are the processes of law reform? How does law reform shape future laws? What is double jeopardy? What is the principle of double jeopardy? Who would be interested in law reform around double jeopardy? Why?	

4.2 Obj 2	Discuss the facts of *R v Carroll case* in regard to law reform around double jeopardy and what happened as a result of the case. Numerous issues arise when considering whether to allow the reopening of acquittals, including: ● What offences should be affected? ● What type of evidence should be required to make an application? ● What criteria should be met before quashing an acquittal? ● What safeguards and restrictions should be imposed upon a retrial? ● Should there be a statute of limitations?	I*nvestigating Legal Studies for QLD* 2nd Edition Cambridge p 300 *https://doublejeopardy-aus.weebly.com/* *https://guides.sl.nsw.gov.au/c.php?g=671792&p=4729467*
4.2 Obj 3	Read and analyse **The 2018 Court of Criminal Appeal Decision** Discuss the facts and legal arguments of the Bowraville cases. ● How do you balance the rights of the defendant and the administration of justice? ● How has the state used its power? ● What has been the impact on the families of the victims? ● What was the role of police in the case? ● How does the presumption of innocence impact on a double jeopardy case? ● Evaluate the court's decision using legal thinking? ● Do you think that there needs to be further law reform of the Double Jeopardy laws.	Discussion - Think Puzzle Explore *http://www.visiblethinkingpz.org/VisibleThinking_html_files/03_ThinkingRoutines/03d_UnderstandingRoutines/ThinkPuzzleExplore/ThinkPuzzleExplore_Routine.html*
4.2 Obj 4	Review law reform matter - using the table provided provide a response to the issues raised	**Bowraville Case Scaffold** **Elderly Drivers Scaffold** https://www.qld.gov.au/seniors/transport/senior-drivers/safe-driving
4.2 Obj 5	Write a submission on a law reform issue	https://www.alrc.gov.au/ https://www.qlrc.qld.gov.au/

Activity 3 - Elements of Law Reform - Bowraville case scaffold

Choose one or more law reform elements and analyse a law reform issue using the scaffold.

Law Reform Elements	Arguments For Law Reform	Arguments Against Law Reform
Political Influences - **Use of power of by the state** - **Role of Media**	Sensationalising serious legal matters for political gain undermines rule of law Accurate reporting	- Power of the state to use money and resources to keep chasing an alleged accused in this case 3 times - there needs to be finality - Sensationalising a matter out of perspective - Exposing innocent people to trial by media
Social Influences - **Changing social norms** - **Discrimination**	Discriminatory treatment of Aboriginal people by police and community	
Cultural Influences - **Indigenous Rights** - **Multiculturalism**	Discriminatory practices against Aborigines	
Role of law enforcement agencies	Incompetent investigations into 3 murders creating poor evidence due to racism and incompetent policing practices Police attitude to Aboriginal people in the 1990s	
Moral Influences - **Parents** - **Religious beliefs** - **Cultural heritage** - **Education** - **Peers**	Cultural attitude of people to Aboriginal people in the 1990s	
Economic Influences	Cost to the state for retrials	Cost for the defendant to pay for

		continuous retrials
Role of Technology		
Legal principles - **Rule of Law Principles**	If a person commits a crime they need to be brought to justice Rights of Victims Judicial discretion can mitigate any problems with law reform	Erosion Presumption of Innocence Emotional and psychological damage to defendant Right to a fair trial Equality under the law Rights of Accused
How will Law Reform address the issues above?		
Legal Considerations - **Retrospective Legislation** - **Rights of Victims v Rights of Defendants** - **Presumption of Innocence** - **Safeguards** - **Scope for offences to be created** - **Codifying Common Law into legislation** - **Complementary Legislation** - **Consolidating Legislation** - **Safeguards**	There needs to be clear legislation that outlines the circumstances to apply for retrial - a clear test ie fresh and compelling evidence so that superfluous matters don't keep being brought to court also to protect the presumption of innocence, costs of litigation The legislation should be incorporated into the Crimes Act Only scope for the most serious offences ie murder, manslaughter Should only be retrospective for a certain time or open to any time Doesn't create new offences	

Activity 4 - Elements of Law Reform - Law Reform Inquiry scaffold

Choose one or more law reform elements and analyse a law reform issue using the scaffold with the goal of writing a submission to a Law Reform Inquiry

Law Reform Inquiry Terms of Reference:

1. **Motor vehicle licencing of drivers over 70 years of age**
2. **Assessment of capacity of Elderly Drivers to operate motor vehicles**
3. **Proposal to remove motor vehicle licence from people at a fixed age 70 years**

Law Reform Elements	Arguments For Law Reform	Arguments Against Law Reform
Moral Influences - **Parents/family** - **Religious beliefs** - **Cultural heritage** - **Education** - **Peers**	Old people dangerous on roads Drive slowly, rising statistics causing serious accidents and death Licence many years ago have not kept driving skills current Emotional cost - suffering	Not all old people are a risk at 70 years People need independence particularly in country areas Grandparents are often carers Respect for the autonomy of elderly
Social/Cultural Influences - **Changing Social norms** - **Discrimination** - **Indigenous Rights** - **Multiculturalism**	Increased accidents Increased dementia may limit capacity for safe driving Medical assessment of driving skill not always adequate	Age discrimination Living longer/healthier life spans Indigenous elderly live in remote areas Accessing health care
Role of Law enforcement - **Investigations** - **Discretion**	Accidents Stats Reluctance to charge - legislation inadequate to cope with potential accidents	
Political Influences - **Use of power by the State ro change law** - **Role of Media** - **Policy Change**	Large lobby groups Licencing mobility scooter drivers	
Economic Influences	Insurance companies paying out for accidents	Penalising good drivers

- **Business** - **Lobby Groups**	Higher premiums not effective in reducing accidents by old people	Buy cars Effects 'caring' economy
Role of Technology	Inbuilt safety features are still not adequate to reduce self and other harm	Movement towards driverless cars with safety features
Legal Principles - **Current legislation review** https://www.legislation.qld.gov.au/view/pdf/inforce/2018-11-30/sl-2010-0206 - **Rule of Law Principles**	Current law has provisions for elderly drivers - Licence holder 75 years or older (1) The holder of a Queensland driver licence who is 75 years or older must not drive a motor vehicle, on a road, unless the holder is— (a) carrying a valid medical certificate in the approved form; and (b) driving the vehicle in accordance with the certificate. Maximum penalty—20 penalty units	
How do you think Law Reform should address the issues above?		
	Review the current legislative protections and mechanisms and everyone over the age of 70 years direct broad independent test of competence With appeal rights	

Activity 5 - Formative or Summative Assessment Scaffold

1. Complete a Law Reform Inquiry scaffold for a current law reform issue being examined by an Australian Law Reform Commission
2. Write a short submission to the Law Reform Commission using the 'How to Write a Submission Guide' -- Teacher to determine length of submission - Suggested length 1-2 pages
3. Submit the submission to the Commission and track its progress

HOW TO WRITE A SUBMISSION

WHAT PREPARATION DO I NEED TO DO?

- Read up on any available information about the new or existing government policy. Government agencies will usually provide a consultation or discussion paper when announcing a proposed policy or law reform initiative, which will often contain useful links to other reference materials for you to read up on.
- Research the law reform issues that are being addressed in your submission.
- Take the time to map out your response and be clear about those aspects of the government's policy/law/proposed law that you agree or disagree with, and any recommendations that you may have.

TIPS FOR WRITING AN EFFECTIVE SUBMISSION

- An effective submission has the following:
    - An introduction about yourself name and details, education, expertise
    - Name of the Enquiry
    - Relevant Terms of Reference - these can can used as headings in your submission
    - Whether you want your submission made public
    - Your submission should be concise and clear. It is helpful to number paragraphs
    - Keep your sentences short and to the point and your language professional, polite, and as objective as possible.This will ensure that your submission retains credibility, and that your audience treats your submission seriously.

WHAT SHOULD I INCLUDE IN MY SUBMISSION?

- An opening paragraph that establishes why this enquiry is relevant to you (ie I am a young person and this law reform with affect me in the following ways … and relates to the TOR)
- Use headings to ensure that your submission is structured and flows logically, as well as to assist the reader in following your argument. It may be effective if the structure of your headings follows the terms of reference.
- Properly reference all materials that you use to support your argument.
- State your key concerns, why these issues affect you or why you otherwise feel passionately about them.
- Provide legal recommendations on the law reform proposal. Recommendations can include changing the law or keeping it the same
- Back up your argument with examples including research where applicable. The more support materials you use, the stronger and more persuasive your argument will be.

WHAT SHOULD YOU NOT INCLUDE IN YOUR SUBMISSION?

- It is not necessary to write an essay.
- Do not delve into information that you do not know about. It is perfectly acceptable for you to leave out any points, or terms of reference that you are not comfortable addressing.
- Be sure to maintain a professional and moderate tone.

Activity 6 - Blank Law Reform Scaffold

Name of Inquiry:

Terms of Reference:

Law Reform Elements	Arguments For Law Reform	Arguments Against Law Reform
Moral Influences - **Parents/family** - **Religious beliefs** - **Cultural heritage** - **Education** - **Peers**		
Social/Cultural Influences - **Changing Social norms** - **Discrimination** - **Indigenous Rights** - **Multiculturalism**		
Role of Law enforcement - **Investigations** - **Discretion**		

Political Influences - **Use of power by the State ro change law** - **Role of Media** - **Policy Change**		
Economic Influences - **Business** - **Lobby Groups**		
Role of Technology		
Legal Principles - **Current legislation** - **Rule of Law Principles**		
How do you think Law Reform should address the issues above?		
