



MEDIA RELEASE

Hon. John Hatzistergos MLC
Attorney General
Minister for Citizenship
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NEW LAWS TO TARGET SERIOUS CRIME COMMITTED IN GROUPS

The NSW Government has given in principle support to codifying complicity laws, which has been recommended by the NSW Law Reform Commission (LRC) following a three-year investigation.

“We support significant law reform to better enable our courts and our police to prosecute criminals who break the law in groups,” NSW Attorney General John Hatzistergos said.

“Legislation that clearly defines what behaviour makes a person complicit in a crime would help to improve consistency and transparency in this complex area of law.

“This major area of law reform will have application to a whole range of criminal matters that are heard in NSW courts on a daily basis.”

Currently, courts are guided by the decisions made by judges in past cases involving complicity – that is, the common law. These cases are often highly complex and the LRC noted that the common law in this area is inconsistent, uncertain and unsatisfactory.

Mr Hatzistergos said stakeholders, including victims groups, police, the judiciary and the legal profession, will be consulted on the development of complicity legislation.

“There are difficult judgments involved in assigning criminal responsibility to a person who helps another person commit an offence, but does not commit the actual offence themselves,” he said.

“It is vital that we clarify this complex area of law to ensure we provide the right tools to our police and our courts to empower them to bring to justice criminals who commit their crimes *in company*.”

“Reform in this area of law has enormous potential to assist in the prosecution of major crime syndicates involved in organised crime and drug trafficking.”

The LRC, chaired by former Supreme Court justice James Wood AO, has recommended the codification of complicity law be implemented in stages, due to the substantial amount of work required.

The report recommends the following laws on complicity be codified:

- constructive murder (a killing committed by a person in the course of carrying out another very serious crime such as aggravated armed robbery);
- conspiracy;
- incitement;
- accessorial liability; and,
- joint criminal enterprises.

The prosecution of participants in gang fights, where it may be difficult to identify which participants were responsible for particular injuries or deaths, and where proof of common intention is required, illustrates the difficulties and complexities of the current common law.

“Codifying complicity laws has the potential to increase the efficiency of the court system and reduce uncertainty for judges, jurors and the legal profession,” Mr Hatzistergos said.

The LRC recommends a staged codification of complicity, commencing with offences under the Crimes Act, then offences under other criminal statutes such as the Drug Misuse and Trafficking Act, Firearms Act and the Weapons Prohibition Act.

The report is the culmination of a three year investigation of this highly complex area of law by the LRC.

Mr Hatzistergos said one of the reasons a significant analysis of this area of law was necessary was because of the difficulties in prosecuting the Taufahema brothers, who were part of a group of offenders present when Senior Constable Glenn McEnallay was shot and killed at Mascot in 2002.

Both men were charged and convicted of murder pursuant to a joint criminal enterprise but had their convictions overturned on appeal, which shed light on the difficulties relating to the law of complicity. Both men subsequently pleaded guilty to manslaughter.

Mr Hatzistergos said the NSW Government will begin drafting complicity legislation following careful consideration of the LRC’s recommendations. The final draft legislation will also depend on the outcome of the case of (Vera) Momcilovic v. The Queen and Ors currently before the High Court of Australia.

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James Wood AO 8061 9270 (c/o Law Reform Commission) will be available for media interviews between 9am to 10am and 1pm to 4pm.

The full report is available at <http://www.lawlink.nsw.gov.au/lrc>