

## Manslaughter or Dangerous Driving Causing Death

### Terms of Reference

In 1969, the Committee was asked to examine and report upon the law relating to the criminal culpability of a person who by reason of unreasonable conduct in the driving of a motor vehicle, was responsible for the death of another.

### Background of Reference

The reference arose as a result of concerns expressed by the Chief Justice about the Crown's policy of preferring manslaughter charges in prosecutions over fatal road accidents instead of using the alternative charge of negligent driving causing death under section 219A of the *Criminal Code 1913* (WA) ("the *Criminal Code*").

Section 291A was introduced in 1945 to create an intermediate offence that would involve a lesser degree of proof and a shorter term of imprisonment. However, judicial interpretation<sup>1</sup> determined that the degree of negligence required to establish guilt for either offence was the same. Consequently, the Crown left it to the jury to decide under which of these headings they would convict instead of exercising discretion between cases and indicting accordingly.

The Committee issued a working paper in June 1970, which outlined areas of concern with the existing law and invited comment.

### Nature and Extent of Consultation

The Committee had the benefit of detailed responses to the working paper from experts in the area, including, judicial officers of the Supreme and District Courts, the Chief Crown Prosecutor, the Commissioner of Police and the Law Society. After consideration of submissions and examination of the law in other Australian jurisdictions, the Committee delivered its final report in August 1970.<sup>2</sup>

### Recommendations

The Committee recommended that the relevant provisions of the *Criminal Code*<sup>3</sup> remain unaltered except for minor drafting amendments.

### Legislative or Other Action Undertaken

The *Criminal Code Amendment Act 1972* (WA) implemented the recommendations of the Committee by effecting the minor drafting amendments. The *Road Traffic Act 1974* (WA) later repealed s 291A of the *Criminal Code*<sup>4</sup> and provided for an offence of negligent driving causing death which could be dealt with either summarily or by way of indictment.<sup>5</sup>

<sup>1</sup> *Callaghan v The Queen* (1952) 87 CLR 115.

<sup>2</sup> Law Reform Committee of Western Australia, *Manslaughter or Dangerous Driving Causing Death*, Project No 17 (1970).

<sup>3</sup> *Criminal Code Act 1913* (WA) ss 291A, 595, 277.

<sup>4</sup> It also repealed and replaced the *Traffic Act 1919* (WA).

<sup>5</sup> *Road Traffic Act 1974* (WA) s 59.