

Submissions on Retaining Committals Based on Experience of System that Abolished Committals

Impact on Ability of Courts to Achieve Just Outcomes

I have experience of practising within systems with and without traditional committals. Having been at the Victorian Bar for approximately 2 years, I previously practised in England, having been called to the Bar of England and Wales in 2000. In England, where the system has over recent years moved away from a number of the traditional safeguards, there have not been committals with cross-examination of witnesses for many years.

One of the key differences to strike me on moving from the present English criminal justice system was how much better able Victorian trials are to identify the truth and thereby achieve just outcomes. By recognising committals to be essential, and to lie at the heart of the criminal trial process, Victoria currently retains a traditional process which compares favourably to a 'streamlined' approach in terms of being better able to undertake fact finding. The system is therefore superior and safer.

With the removal or fettering of committals, the ability of the trial process properly to test the evidence of witnesses is greatly reduced. In the absence of proper exploratory cross-examination undertaken at committal, experienced counsel tend to feel compelled to adopt an extremely restricted approach to conducting cross-examination at trial. The removal of cross-examination at committal takes away the opportunity to seek essential clarifications, elucidation and exposition of what is apparent on the face of the statement. Misunderstandings may never be picked up on. To a significant degree, having just a bare statement to rely on leaves both prosecution and defence counsel attempting to carry out their respective functions in the dark.

Impact on Witnesses

The most significant advantage of abolishing cross-examination at committal may be that witnesses would give evidence only once. However, this may not necessarily be the unalloyed good for witnesses that might be presumed. Providing witnesses the opportunity to give evidence prior to being confronted with the ordeal of giving evidence at trial may be significant. By the time of having to give evidence at trial, they have been allowed to gain experience in relation to giving evidence and facing cross-examination. The Magistrates' Court provides a less formal, less intimidating setting for their introduction to the process. The committal is usually somewhat less pressured than the trial hearing which is conclusive of the matter. It can provide witnesses and victims a much needed opportunity to gain some composure and 'find their feet'. For many witnesses, this will make the period spent waiting to give their evidence at trial less stressful. More importantly, allowing witnesses a prior opportunity to become familiar and more comfortable with the process of giving evidence may be a key factor in whether or not they are able to give their best evidence and secure justice. This issue may be of increased importance where the witness has given evidence via Video Audio Recording of Evidence (VARE). In this case they may be subjected to cross-examination without even having the opportunity of undergoing examination in chief in the traditional manner beforehand.

Impact on Resources

Removing any part of the trial process, on the face of it, represents a saving of resources. However, in Victoria the Court of Appeal rigorously ensures that trials have been safe and satisfactory. In the absence of properly clarifying and exploring the real issues with witnesses prior to trial, more issues will emerge only during the trial itself (if at all). There is likely to be a significant increase in trials having to be aborted or appealed.

In the absence of committals, more cases can be expected to proceed to trial where the Accused should have pleaded guilty at an earlier stage. Conversely, more cases will reach trial where the allegations would have been revealed to lack foundation at committal. In addition to the impact on justice, there will be resource implications for the Courts and the prison estate.

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