COMMITTAL PROCEEDINGS

MAGISTRATES' COURT OF VICTORIA'S RESPONSE TO THE VICTORIAN LAW REFORM COMMISSION COMMITTALS ISSUES PAPER

Preamble

The Magistrates' Court of Victoria ('the Court') is firmly of the view that the current committal system be maintained.

The existing legislation, together with the Court's Practice Directions, empower magistrates to address any issues of delay, minimise trauma to witnesses and confine cross-examination to narrow live issues properly identified.

Over a number of years, the Court, with a proactive bench, has developed a rigorous culture in the committal stream. Foreseeable delay is addressed at filing hearing, where the parties are urged to engage in resolution discussions prior to committal mention and defence must properly justify any cross-examination of a witness.

The current available statistical data of both the Magistrates' Court and superior courts attest to the tangible benefits of the existing committal system provides to the administration of justice in Victoria. The data that exists in other jurisdictions reflects favourably on Victoria.

Causes of delay such as forensic analysis will not disappear merely by transferring committals to a different jurisdiction. The Tasmanian Director of Public Prosecutions Annual Report[1] as well as comments by Chief Judge Antoinette Kennedy in Western Australia[2] following the abolition of committals in those states, noted that all that was achieved was to transfer delays from the magistrates' court to the higher court.

Given the substantial benefits currently provided by the committal system it would be incumbent upon any proposal for significant change to provide convincing evidence of how the system would be thereby improved.

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[1] Tasmania, Director of Public Prosecutions, Annual Report 2007 – 2008 (2008) 1 http://www.crownlaw.tas.gov.au/data/assets/pdf_file/0018-111636/ar2007-08.pdf

[2] Kennedy A, Getting Serious about the Causes of Delay and Expense in Criminal Justice, presented at the 24th AIJA Conference (Adelaide, 15-17 September 2006), http://www.aija.org.au/ac06/Kennedy.pdf

Questions posed by the VLRC in the Issues Paper

Question 1: What purposes can or should committal proceedings serve?

1. The purposes of a committal proceeding are set out in s97 of the *Criminal Procedure Act 2009* ('CPA').
2. The current committal system viewed as a whole is in fact, to varying degrees, achieving these objectives through a variety of procedures:
   a. A rigorous approach to granting leave to cross-examine witnesses on identified issues with the subsequent restriction of cross-examination. This case management process is vital to ensuring committals are not wasted by unnecessary cross-examination and compels the defence to articulate exactly what is in issue. This is also conducive to reducing trauma to witnesses as any cross-examination would be limited.

   b. Through directions to the prosecution at filing hearings, such as the direction to lodge exhibits for analysis as soon as possible; direction for the formatting of CCTV, directions to Forensic Services Department to treat a matter as a contested committal rather than waiting for it to in fact be listed as such before commencing analysis, to name but a few. These directions at the first court event in the committal stream commence the process of addressing delay.

   c. A proactive bench at committal mention is a valuable asset to ensure that issues are addressed by the parties at an early stage. Therefore, being familiar with the brief, the magistrate is positioned to require parties to take a stance on matters such as applications for compulsory procedure under s103 of the CPA or DNA samples under 464T of the *Crimes Act 1958* ('Crimes Act'). Late consideration of such matters by the prosecution unfortunately often leads to delay of a contested committal.

   d. Disclosure is always an issue, especially in complex matters. The Court is constantly encouraging practitioners to use subpoenas if disclosure is not provided through the Form 32 request. Disclosure issues in the higher jurisdictions are frequently commented upon as an expensive cause of delay. Experience in other jurisdictions where committals have been abolished shows that no matter the legislative requirements for disclosure, the lack of it is a major cause of trial delay and length. What police investigators consider as relevant or coming within the terms of a disclosure request is too often capable of interpretation. (see *Le v The Queen* [2018] WADC 57, Royal Commission into the Management of Police Informants)

   e. In regard to reducing the trauma to witnesses, the Court has available remote witness facilities, audio visual link ('AVL') equipment and Child Witness Services. When giving evidence in this manner, the accused is seated in such a position that they are not visible to the witness. The legislation gives discretion to a magistrate to direct evidence be given in such a manner even if the witness does not come within the definition of 'protected witness'. Further legislation (s41 of the *Evidence Act 2008* ('Evidence Act')) also grants a magistrate the power to ensure that cross-examination is not harassing, offensive, oppressive, belittling or insulting amongst other forms of improper questioning.

   f. Apart from the legislation which has been in place for some years, there is now also a cultural change initiated by the bench and reluctantly accepted by the bar table, that committal mentions will not be adjourned on request and leave to cross-examine, even if unopposed by the prosecution will not automatically be granted without justification. In other words, strict compliance with the legislation is increasingly demanded by the Court.

g. All this goes significantly towards enhancing the efficiency of the administration of criminal justice, reducing delay, shortening committals, reducing trauma to witnesses, encouraging early resolution and facilitating the efficient use of court time.

3. A contested committal also allows for the independent scrutiny of the evidence before an accused faces trial. It is often overlooked that the trial process with lengthy delays has a serious impact on complainants and accused alike. If a matter can be resolved in one form or another at an early stage, it benefits all.

   a. In the recent murder committal of the *DPP v Ashman* heard 6 August 2019 at Melbourne Magistrates' Court, the case resolved to a plea to manslaughter after hearing the evidence of only one witness. The evidence did not signal a major departure from the statement but rather a clarification. Leave had been granted to cross-examine 16 witnesses including a child and a cognitively impaired person. They were all spared giving evidence.

   b. In the high-profile case of *DPP v Ristevski* (Ruling No 1) [2019] VSC 165 (15 March 2019), after being committed for trial, the charge of murder resolved to a plea to manslaughter before the commencement of the trial, based on the evidence adduced at committal.

   c. In the case of *CDPP v Brady v Ors* [2016] VSC 334 ('Securrency Case') many charges relating to alleged bribery in various countries were discharged at committal. Moreover, the magistrate permitted cross-examination for the purpose of adducing evidence of abuse by the Australian Federal Police and the Australian Crime Commission. This evidence then formed the basis of a submission for a permanent stay of prosecution which could only be made at trial in the Supreme Court. That stay was granted by Justice Hollingsworth, overturned by the Court of Appeal and ultimately upheld by the High Court. Had the magistrate not permitted that evidence to be adduced through cross-examination at committal it would have been the subject of a lengthy and costly voir dire in the Supreme Court and would have delayed the determination of the case.

   d. These are but some examples of the benefit produced by our current committal system which may not be reflected in the statistics.

Question 2: What, if any, measures should be introduced to:

(a) reduce the difference between charges that are initially filed and those ultimately prosecuted?

(b) ensure appropriate charges are filed at the earliest possible stage in a case?

4. No doubt there may be times when more serious charges than are warranted are laid as a form of negotiation. However, the Court appreciates that charges are often laid at the time of an accused's arrest, when police may have little evidence in admissible form available to them. As more evidence becomes disclosed and witnesses identified and questioned, it is appropriate for charges to be reviewed, and only those charges that could be supported by evidence pursued. Prosecution should be encouraged to review and negotiate charges as investigation and disclosure progresses.

5. Where a decision is made to amend charges, it is important that the reasons be properly explained to complainants in order to minimise their trauma. This is a matter for prosecution and informants and is indeed the subject of reform under the Victims and Other Legislation Amendment Act 2018.

Question 3: Should the OPP be involved in determining appropriate indictable charges at an earlier stage? If so, how?

6. The Court supports the proposition that the Office of Public Prosecutions ('OPP') be involved at the earliest possible stage of decision making in relation to the charges. As to when this process should occur would be a matter for consultation with the OPP. In the Court's view, the process could easily commence with the service of the HUB, or as early as the filing hearing. We note that, in Melbourne Magistrates' Court, filing hearings are prosecuted by the OPP and the directions made by magistrates at that stage are communicated by the OPP to the informants.

Question 4: What measures can be introduced to improve disclosure in indictable matters:

(a) between investigating agencies and the DPP?

(b) between prosecutors and the defence?

7. Disclosure issues between police and the OPP obviously exist, as evidenced by the Royal Commission into the Management of Police Informants.
8. It is not an issue that is unique to Victoria. The Court notes the WA District Court case of *R - v- Le* [2018] WADC 57 (11 May 2018), extensively discussed in Question 7, in which a trial had to be aborted due to late disclosure issues. The case had been extensively case managed by the trial court and disclosure in WA is strongly mandated. Nonetheless, disclosure issues arose. The case demonstrates the limitation of a system that relies solely on police disclosure, without any opportunities for pre-trial cross-examination of witnesses.
9. The importance of cross-examination to timely and proper disclosure is detailed in Question 7 below.
10. In the main we do not see an issue with disclosure issues between the OPP and defence.

Question 5: To what extent do committal proceedings play a necessary role in ensuring proper and timely disclosure?

11. Committal proceedings play a fundamental role in ensuring proper and timely disclosure. Serious indictable matters should not be proceeding directly from a charge to a lengthy, costly jury trial without concerted attempts having been made to facilitate disclosure and resolution.
12. With the combined effect of CPA sections 97 (purposes of committals), 110 (disclosure), 118 (case direction notice), 124 (cross-examination of witnesses and vulnerable witnesses), committal proceedings aim to facilitate timely disclosure, early resolution of matters and the narrowing of issues for trial.
13. The initiatives of the Magistrates' Court over a number of years help to ensure that the intentions of the CPA are fulfilled as much as possible.
14. At filing hearings, magistrates make various directions, on a case by case basis, relating to the lodgement of forensic and digital evidence for analysis, categorisation of child pornography, request of expert reports (in a summarised format if appropriate to facilitate earlier disclosure) and the lodgement of intercepts for transcriptions. The OPP is required to complete a Filing Hearing checklist identifying issues relevant to the conduct of proceedings,

including any related intervention order hearings, the need for interpreters, and matters capable of being heard in the summary jurisdiction. The Filing Hearing directions and checklist serve the purpose of identifying and rectifying issues that may cause delay well before the committal mention.

15. Chief Magistrate's Practice Direction 6 of 2013 emphasises the expectation of legislation that "during the period from filing hearing to first committal mention, the parties would either resolve the charges and proceed by way of summary hearing or straight hand-up brief, or alternatively, identify the issues and witnesses for cross examination." The Practice Direction requires defence and prosecution to engage in meaningful discussions at least 14 days prior to committal mention. Informally, the OPP were advised that the expectation of the Court is that during this process the prosecution's 'bottom line' is to be communicated to commence the process toward resolution. This aims to facilitate the joint filing of case direction notice at least 7 days prior to committal mention, in accordance with section 118.
16. At committal mentions, magistrates actively case manage matters, question the Crown in relation to disclosure, inquire about any delays, and clarify issues in dispute. With this public scrutiny, OPP prosecutors are able to convey to informants the importance of any outstanding material, and investigators are able to consider avenues for further enquiry. Defence practitioners are able to better advise their clients of the strength of the case against them or the validity of their arguments in defence, thus facilitating plea offers and clarification of issues for trial.
17. Practice Direction 7 of 2013 introduced a 2pm list of committal case conferences to Melbourne Magistrates' Court for charges involving offences against the person as well as armed robbery and aggravated burglary. There is a requirement that both parties be represented by practitioners with authority to conduct resolution discussions.
18. Committal proceedings have the potential to ensure timely disclosure by making parties accountable for the conduct of their matters in open court. Given their importance, committal proceedings should be enhanced, rather than abolished.

Question 6: Could appropriate and timely disclosure occur within a pre-trial procedure that does not include committal proceedings?

19. Abolishing committal proceedings would move all pre-trial disclosure to the trial court, with disclosure occurring closer to the trial itself, which would not allow the parties adequate time to prepare for trial, or to negotiate a resolution that would deliver any utilitarian benefits of a plea.
20. In Western Australia, where committal proceedings were effectively abolished in 2007, many examples have arisen of non-disclosure issues resulting in convictions being overturned and trials being adjourned or aborted.
21. Recent examples include the case of the *State of Western Australia v Edwards*[3] involving a charge of wilful murder. In that case, the accused was committed for trial on 25 July 2018, with the trial set down for 9 months, to commence on 22 July 2019. Due to late disclosure of DNA evidence, the trial had to be adjourned on 6 June 2019. A new trial date of 9 months commencing 18 November 2019 has been set.
22. Another example is the case of *R v Le* [2018] WADC 57, where a trial in WA's District Court was aborted after 7 months due to repeated non-disclosure issues. The case, where the jury

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[3] *State of Western Australia v Edwards* [2019] WASC 199

was sworn in for a 10-week trial, ended up running for more than 7 months. Judge Stephen Scott remarked that the trial had 'gone off the rails'.[4] On 3 May 2018, an application by all accused to discharge the jury from delivering verdicts on all counts was heard. The grounds of the application were that because of:

a. the late disclosure by the prosecution; and

b. the significant fragmentation in the hearing of the evidence during the trial caused by late disclosure;

there was a real risk that that the accused could not be afforded a fair trial.[5]

23. The Judge's criticism was levelled at prosecution, as 'there were many occasions during the trial when the prosecution made further disclosure, amounting to a significant volume of material' and causing repeated disruptions to the trial. This was contrary to the court's expectation that disclosure would have been completed by the commencement of the trial.

24. The functions of committal proceedings are to facilitate disclosure and narrow the issues for trial. The remarks of the judge in *R v Le* should serve as a reminder as to why Victoria should promote and enhance our committal proceedings.

Question 7: To what extent, if at all, is the ability to cross-examine witnesses during a committal hearing necessary to ensuring adequate and timely disclosure of the prosecution case?

25. Adequate and timely disclosure is key to resolution of cases and identification of appropriate early guilty pleas.

Brief of evidence not enough

26. Prior to committal hearing, in most instances, the prosecution discloses its case in written form. This is expeditious, but it may not accurately reflect the evidence likely to be relied upon in trial. Inadequate provision of disclosure material sometimes arise from police miscalculation about the scope of the requested material, and error in judgment about what defence should be entitled to receive. Indeed, police disclosure is one issue currently under examination in the Royal Commission into Management of Police Informants.

27. Furthermore, the taking of a statement is not merely the recording of events as detailed in a narrative form by a complainant or witness. It is a process that evolves through question and answer as well as discussion between the police officer and the witness. To that extent there is a subjective element introduced by the police officer. It is therefore not unusual for a witness to give differing accounts under cross-examination which may in fact constitute a minimal departure from their statements, but which are significant in terms of making out the elements of the offence charged.

28. For example, on 6 August 2019 the committal of DPP v Ashman was listed for 5 days on a charge of murder with 16 witnesses listed for cross-examination. After hearing the evidence of the first witness, the case was resolved to a plea for manslaughter obviating the need for further witnesses, especially the next witness who was a child and a further witness who

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[4] ABC News, 'Trial aborted four years after market garden raids led to allegations of illegal foreign workers,' updated 8 May 2018 https://www.abc.net.au/news/2018-05-07/market-gardeners-on-trial-for-using-illegal-foreign-work/9727068

[5] *R v Le* [2018] WADC 57 at para 2

was cognitively impaired. There was no significant departure by the first witness from her statement but rather a clarification of the incident. Court time and stress to witnesses were avoided.

Cross-examination leads to resolution

29. The above case shows that if the quality of evidence at committal is highly probative, this often leads to resolution, obviating the need for trial and minimising trauma for potential witnesses.

30. In some family violence cases, the complainant's attendance at court would be enough to trigger an offer to plead from an accused, who had been otherwise convinced that the complainant would never give evidence against them. The same is true of related parties where the witness may have criminal associations of their own or may merely be in fear of an accused.

31. Furthermore, cross examination allows issues taken on instructions from the accused to be raised to witnesses. Such information may not have otherwise been available to the prosecution and may be essential to a full and proper assessment of the strength of the Crown case. As DPP John Coldrey QC remarked[6] "a preliminary hearing…allows both the prosecution and the defence an opportunity to discover and remedy any weaknesses in their cases." It is therefore not uncommon for parties to successfully negotiate a resolution as the committal hearing proceeds.

Compare – England, WA and Tasmania

32. In England and Wales, committal proceedings for indictable-only offences were abolished in 2001 and replaced with a system that sent such matters automatically to the Crown Court.[7] Statistics published by the UK Ministry of Justice in the year following the abolition of committal proceedings increased the workload of the Crown Court.[8] Available statistics from January to December 2017 shows that of the 114,000 cases the Crown Court received:
    a. 38% (43,320) were for trials for triable-either way offences;
    b. 25% (28,250) were for trials for indictable offences;
    c. 29% (33,060) were cases appearing for sentencing; and
    d. 9% (10,260) were cases of appeals against decisions in the Magistrates' Court.[9]

33. As the 9% has nothing to do with indictable matters and resolution, it should be removed from the 114,000 cases. That leaves 103,740 cases and revises the statistics to:
    a. 69% cases for trials
    b. 31% cases for sentencing.

34. Due to lack of available data, it is not possible to draw a direct comparison to the resolution rate of the County Court of Victoria. However, we note that as a result of committal proceedings, the cases committed to higher jurisdictions from the Magistrates' Court in the

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[6] John Coldrey QC, 'Committal Proceedings: the Victorian Perspective' (Conference Paper, Australian Institute of Criminology, The Future of Committals, 1-2 May 1990) 4
[7] Crime and Disorder Act 1998 (UK) s 51-52
[8] UK, Ministry of Justice, Court Statistics Quarterly, April to June 2014 (2014) 27.
[9] Sturge G, Court Statistics for England and Wales Briefing Paper, House of Commons Library, 27 November 2018, 6

2016 – 2017 financial year comprised of:

a. 46% of matters for trials and

b. 54% of matters for sentencing.

35. In the year following the changes to the pre-trial process in Tasmania, the Supreme Court trial list expanded from 501 to 683 persons being committed for trial.[10] Accordingly, the delays that had existed in the lower court were simply shifted to the later stage in the criminal justice process.

36. In discussing this spike, the Office of the Director of Public Prosecutions Annual Report stated that the committing of accused persons to the superior court without disclosure or testing of the evidence, provided no expectation that the time from arrest to trial will shorten, nor that pleas of guilty will be entered significantly earlier than they have been in the past.[11]

37. Furthermore, the Tasmanian DPP considered that on the whole the reforms had "not proven an outstanding success." The reforms were based on an expectation that a completed police brief would be provided to the ODPP and disclosure made to the defence prior to the first appearance in the Supreme Court. However, this 'almost never' happened, meaning that accused persons were committed to the Supreme Court without disclosure of the case against them.

38. A comparable outcome was identified by Western Australia Chief Judge Antoinette Kennedy four years post the state's abolition of committal hearings, where in discussing the prominent delays that still permeated the court system, she explained:

"Progressing matters from the Magistrates' Court into the District Court is not the answer to delays if all it means is that there is then a bottle-neck in the District Court and the District Court cannot deal with the matters in a timely way or the matters are not ready to be dealt with once they get to the District Court."[12]

39. Her Honour remarked in a separate correspondence:

"One of the unintended consequences of abolishing the committal hearing has been the inadvertent elimination of opportunities for discussion and negotiation between the prosecution and defence. This has led to the need for more intensive judicial supervision in the District Court before there is a plea or trial."[13]

40. Furthermore, the experience in WA following the abolition of committals was that trial counsel did not become involved until after the matter was committed to the District Court, and as such the proper decisions as to the key evidence in issue were still not being made at an early stage.[14]

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[10] Tasmanian Office of Director of Public Prosecutions, Annual Report 2007 – 08 at 5

[11] Id

[12] Kennedy A, Getting Serious about the Cuases of Delay and Expense in Criminal Justice, Presented at the 24th AIJA Conference (Adelaide, 15 – 17 September 2006)), http://www.aija.org.au/ac06/Kennedy.pdf.

[13] Personal communication of Chief Judge Antoinette Kennedy District Court Western Australia 26 August 2008 cited in Moynihan QC, Review of the civil and criminal justice system in Queensland, December 2008.

[14] Kennedy A, Getting Serious about the Cuases of Delay and Expense in Criminal Justice, Presented at the 24th AIJA Conference (Adelaide, 15 – 17 September 2006)), http://www.aija.org.au/ac06/Kennedy.pdf.

Question 8: Should some or all of the existing pre-trial opportunities to cross-examine complainants and witnesses be retained? If so, why?

41. Existing pre-trial opportunities to cross-examine complainants and witnesses should remain, as explained in question 7.

42. The Court notes that there are restrictions already in place in relation to the granting of leave for witnesses to be cross-examined.

43. First of all, the culture of the committal mention court has changed over the years and practitioners are expected to engage in resolution discussions well before the first committal mention. Failing resolution discussions, the parties are required, in accordance with s124 of the CPA, to identify the relevant issues and justification for obtaining leave to cross-examine witnesses. Once leave is granted, cross-examination is limited to the issues for which leave was granted (s132 CPA).

44. Unlike a number of other jurisdictions, leave is not automatically granted if the prosecution consents. In this respect, our committal system provides a higher degree of judicial oversight.

Questions 9 & 10: Should cross-examination at a committal hearing be further restricted or abolished? If so, why? And how should this occur?

45. The Court confirms its position that cross-examination at a committal hearing should not be abolished. As already stated, leave to cross-examine witnesses is only granted in relation to specific identifiable issues. The subsequent cross-examination at committal is then restricted to those issues. The prosecution, as well as the magistrate, have a role to play at committal to ensure this is adhered to by defence.

46. Any further restrictions on cross-examination should be thoroughly considered. In March 2019, committal hearings for sexual offence matters involving cognitively impaired and child complainants were abolished.[15] It is too early to assess whether this change has assisted to reduce trauma for complainants, promote resolution or avoid delay (especially delay related to disclosure). There should be identifiable benefits if pre-trial opportunities to scrutinise evidence and engage in resolution discussions are to be further removed.

47. The Court, however, recognises that there are issues relating to accused's compliance with legislation which unacceptably causes delay in proceedings. The Court would like to offer the below suggestion which encourages compliance with existing legislation and minimises any adverse impact on witnesses by the actions of the accused.

Proposal

48. The Court proposes that if the accused fails to attend Committal Hearing, they would forfeit their right to cross-examine witnesses. Upon their arrest, they should be brought before the Court and committed for trial, unless they can show the court why their non-attendance was due to reasons beyond their control. This does not include prisoners in custody who are unable to appear due to transportation issues but does include prisoners who simply refuse to get on the prison transfer bus to attend court.

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[15] *Justice Legislation Miscellaneous Amendment Act 2018*

Question 11: Are there any additional classes of complainants or witnesses who should not be cross-examined pre-trial? If so, who?

49. The considerations in the above questions 9 & 10 in relation to further restrictions on cross-examination are relevant here. The Court does not propose that any other classes of witnesses be **exempt** from pre-trial cross-examination.

Proposal

50. The Court proposes that additional considerations for vulnerable witnesses under section 124(5) CPA be expanded to cover all cognitively impaired witnesses as well as complainants in sexual and family violence offences.
51. The Court recognises that court proceedings are sometimes deliberately protracted by the accused as a way of further intimidating, punishing, or standing over the complainant, especially in family violence matters. The justification and relevance of cross-examining complainants in family violence circumstances are therefore subject to extensive scrutiny by magistrates, and the issues for cross-examination strictly narrowed if leave is granted.
52. By adding complainants in family violence and sexual offence matters, and cognitively impaired witnesses, to section 124(5), the vulnerability of certain witnesses are properly recognised, and the accused' right to fair trial preserved.
53. The Court intensively case manages offences in these specialist areas. MCV conducts specialist sex offence lists at Melbourne, Ballarat, Bendigo, Geelong, Latrobe Valley and Shepparton. Specialist Family Violence Divisions operate in indictable matters at Ballarat and Shepparton and are supported by family violence support workers.
54. MCV is concerned that the reforms in the family violence area comply with the recommendations of the RCFV. Limiting or reducing the role of committals is at odds with the development of providing a "one stop shop" court response to reduce the risk to families experiencing family violence.
55. Committal proceedings play a pivotal role in revealing the strengths and weaknesses of the case which inform the further negotiations between the parties. If the matter resolves after a committal hearing, the complainant's time in the witness box is shortened as they do not have to give evidence in chief. (See statistical data for this occurrence)
56. Case management of family violence and sexual offences enables committal proceedings, where appropriate, to resolve in the summary jurisdiction. This allows complainants to have related family violence intervention orders or victims of crime applications to be dealt with by the same magistrate. This process would be undermined if committal proceedings were removed.

Question 12: What additional measures could be introduced to reduce trauma for complainants or other vulnerable witnesses when giving evidence or being cross-examined at a committal or pre-trial hearing?

57. The Court notes the extensive protections of witnesses under the CPA, including section 133 for sex offences, and s132 which restricts questions to issues for which leave to cross-examine was granted. The Court further notes section 41 of the *Evidence Act* in relation to improper questions, and the introduction of Ground Rules Hearings and intermediaries.

Questions 13 & 14: Should the current test for committal be retained? And what purposes can or should committal proceedings serve?

58. The suggestion by the DPP that magistrates not be authorised to discharge at committal is completely without merit. This is evidenced by the small number of direct presentments following discharge and by the existence of the power itself to directly present. There is no downside to allowing the evidence to be the subject of independent scrutiny by a judicial officer when safety net, if needed, exists in the form of a direct presentment.

59. Anecdotally, the view of practitioners and barristers is that the DPP is reluctant to exercise its power to discontinue prosecutions on an assessment of the likely prospects of conviction but rather tends to let matters go to trial. What does influence the DPP is the prospect that a matter may be discharged at committal with consequent cost orders. Thus, at contested committal the DPP may often propose the withdrawal of charges but invariably with an attached condition that defence do not apply for costs. Consultation with barristers from both sides of the bar table will confirm this.

60. The case of the *DPP v Setka and Reardon* ('the CFMEU case') is a prime example of not only this approach of the DPP but also the benefit of committals generally. After cross-examination of two witness (leave had been granted to cross-examine 27 witnesses) the DPP proposed to withdraw the charges provided there was no application for costs. This was a case the facts of which had been the subject of a Royal Commission and civil proceedings in State Supreme Courts.

61. The current test for committing for trial is sufficient, though one could readily argue that the test should mirror that of the DPP. As stated above the DPP tends towards having matters go for trial and leaving the decision to the jury rather than assessing the likely prospect of conviction. This does not further the interests of witnesses or accused if the prosecution persevere with charges that are later abandoned or which result in a verdict of acquittal at trial. Nor does it enhance the expeditious and timely administration of the criminal justice system.

62. In the 2008 Magistrates' Court case of the *DPP v Corcoris* which alleged a multi million dollar fraud against the Commonwealth via income tax and GST, the hand up brief consisted of 278 lever arch folders. After a number of adjournments due to deficiencies in the E- brief the committal commenced with the prime witness from the ATO. After 2 days of evidence from this witness the case resolved with the withdrawal of all charges and a plea to a new charge of a single count of filing an incorrect tax return without any suggestion of loss to the Commonwealth. This was dealt with summarily and a non-conviction bond was ordered. It would be pure speculation how long this trial would have taken in the County Court much less the cost to the system.

Question 15: Is there an appropriate alternative process for committing an accused person to stand trial?

63. For reasons previously explained in Questions 5 to 7, the Court does not believe that there is an alternative process for committing an accused person to stand trial. The Court also refers to its critique of the proposed OPP model in Question 21.

64. It is unclear how alternative processes in other jurisdictions or the DPP proposal would address identifiable causes of delay in Question 18 or offer the benefits of early resolution and issue identification that are available in our committal system.

65. We can however see some scope for exploring alternative ways of including forensic evidence in the hand-up brief short of a full evidentiary report. The Court has in the past, in relation to DNA, come to an arrangement with FSD to provide a report that will not have an accurate statistical analysis but will indicate whether an accused can be included or excluded as a donor of the source sample. It may be possible to achieve something similar in relation to drug analysis, but this will require something more than merely spot-testing. These are issues that would need to be subject of discussion with FSD.

Question 16: How effectively do committal proceedings ensure-

(a) appropriate early resolution of cases

66. The Court points to relevant data in relation to resolution of cases as discussed in Question 18. Comparable trial rates in England, also discussed in Question 18, should also be considered.

67. Reasons why committal proceedings are essential to early disclosure and resolution discussions are discussed in Questions 5 to 7 above.

(b) efficient use of court time

68. As discussed in Questions 5 to 7 and 18, committal proceedings and committal hearings ensure efficient use of time in both the Magistrates' Court and the trial court. The examples below further demonstrate this point.

69. In the Magistrates' Court case of DPP v Ashman, as discussed in Questions 1 and 7, the cross-examination of one key witness in committal proceedings led to the resolution of what was originally a 5-day committal with 16 witnesses, and a predictably longer trial for murder.

70. As discussed in Question 1, in the case of *CDPP v Brady & Ors* [2016] VSC, the Victorian Supreme Court stayed the prosecution against the remaining accused on the basis of evidence of abuse of process adduced through cross-examination at committal hearing. If not for such evidence, the case would have proceeded through a lengthy and costly voir dire in the Supreme Court.

71. Lastly, the Court refers to the paragraph 5.82 of the Issues Paper, which paraphrases Legal Aid Queensland's views that: "sometimes the evidence at the cross-examination at committal may steer the defendant towards a guilty plea if, for instance, the defendant has resisted [entering a guilty plea] because of a belief that a key prosecution witness may be unreliable or hostile. The cross-examination of that witness at the committal may indicate that there is little prospect of the defendant being able to defend the charge."

(c) parties are adequately prepared for trial

72. Committal proceedings require parties to identify material for disclosure and issues in dispute at trial. The following steps in committal proceedings are particularly relevant:

    a. Filing hearing – directions of magistrates for prompt lodgement of exhibits and analysis of electronic material.

    b. Practice direction 6 of 2013 - requires parties to engage in resolution discussions 14 days before committal mention, during which parties are expected to outline issues in dispute.

    c. Case direction notice – section 119 of the CPA requires parties to identify issues for which leave to cross-examine witnesses is sought, why the witness' evidence is relevant

to the issue and reasons why cross-examination on the issue is justified. In the preparation of the case direction notice, parties are also expected to state whether plea offers have been made and on which charges.

d. Evidence adduced at committal hearing can be extremely relevant to pre-trial negotiation and pre-trial arguments. For example, in the matter of *DPP v Ristevski* (Ruling No 1) [2019] VSC 165 (15 March 2019), evidence adduced at committal hearing (and their limitations) led to pre-trial arguments in the Supreme Court, the ruling of which resolved the charge from murder to manslaughter.

Question 17: Are there other pre-trial procedures that could equally or more effectively ensure:

(a) appropriate early resolution of cases

73. The Magistrates' Court has been addressing these issues over a number of years and continues to do so. The initiatives introduced by the court have already been referred to.

74. The Court notes the unavailability of relevant data from other jurisdictions which may assist in properly conducting a comparison.

(b) efficient use of court time and (c) parties are adequately prepared for trial?

75. Again, without comparable data on the length of trials in other states, this question is difficult to answer. However, the Court refers to the WA matter of R v Le[16], as an example of a trial where no committal hearings were held, which then led to the trial being aborted due to ongoing disclosure issues.

Question 18: How should concerns that committal proceedings contribute to inappropriate delay be addressed?

Data re timeframe

76. The benefits to the administration of justice produced by the committal system were summarised in Questions 1, 5, 6 and 7.

77. Committal proceedings contribute directly to the early resolution of charges and the identification and narrowing of trial issues. Any reform which seeks to displace such proven benefits should be evidence based. As far as we are aware, there is no valid data showing that other states' committal and pre-trial proceedings are more efficient than Victoria's, or produce better rates of pre-trial resolution.

78. Indeed, in terms of efficiency, available statistics of Victorian indictable criminal proceedings compare favourably against states like New South Wales.

79. Table 14 on page 43 of the Issues Paper shows that 41.8% of NSW Supreme Court matters finalise within 12 months. The equivalent percentage for Victorian Supreme Court is 69.5%.[17]

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[16] *R v Le* [2018] WADC 57

[17] Australian Productivity Commission, *Report on Government Services* (2019), Part C, Chapter 7, Table 7A.19, page 2.

80. In the County/District Court, the contrast is stark. Only 22.1% of matters in NSW District Court finalised within 12 months, compared to 82.1% of matters in Victorian County Court.[18]

Data re resolution

81. In terms of resolution, the following statistics highlight the benefits produced by the Victorian committal proceedings:

    2016 to 2017:

    - Total number of matters in the committal stream 3182
    - Of those, 929 matters resolved summarily (29%)
    - 2253 matters were committed to higher jurisdiction
    - Of those, 54% (1217 matters) resolved to pleas of guilty following committal proceedings.
    - Put another way, as a result of committal proceedings, out of 3182 matters, 2146 matters resolved pre-committal and 1036 matters were committed to trial on a not guilty basis. That puts the committal proceedings resolution rate at 67%.

    2017 to 2018

    - Total number of matters in committal stream 3426
    - Of those, 994 matters resolved summarily (29%)
    - 2432 of matters were committed to higher jurisdiction.
    - Of those, 45.8% (1114 matters) resolved to plea of guilty from committal proceedings.
    - Put another way, as a result of committal proceedings, out of 3426 matters, 2108 matters resolved pre committal and 1318 matters were committed to trial on a not guilty basis. That puts our committal proceedings resolution rate at 61.5%.

82. Nor do they include matters that resolve post committal but pre-trial. Available statistics show that for the 2016-2017 year, 58.2% of matters in the general trial list and 58% of matters in the sex offences trial list resolved to a guilty plea in the County Court.[19] These figures demonstrate that parties continue to negotiate on the assessment of evidence from cross-examination in committal proceedings or disclosed as a result of committal proceedings. This resolution rate is significant in any evaluation of the benefits of the committal system.

83. Before we accept proposals that emulate the reformed NSW committal system, we must be convinced that our system would be improved by the reform, both in terms of efficiency and financial viability.

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[18] Australian Productivity Commission, *Report on Government Services* (2019), Part C, Chapter 7, Table 7A.19, page 5

[19] County Court Annual Report 2016-2017

Delay

84. Any improvements to the efficiency in the committal system should be aimed at effectively targeting identifiable issues that cause delay.
85. Much of the ‘delay’ in committal proceedings will not be effectively addressed by the elimination of committal hearings. Without properly addressing the real causes of delay it will continue, no matter how, where or if at all pre-trial examination is conducted.
86. Rather than a change of law, the issues highlighted below show that addressing delay involves a more stringent compliance with legislation, a change of practice and an increase in resources.
87. In practice, adjournments are the primary causes of delay, both from committal mention to further committal mention, and from committal hearing to further committal hearing.

Committal mention to further committal mention

88. <u>Delayed negotiations</u>
    a. Practice Directions 6 of 2013 makes clear the expectations of the Court and confirms that the “underlying philosophy of [the Criminal Procedure Act 2009] is that during the period from filing hearing to first committal mention, the parties would either resolve the charges and proceed by way of summary hearing or straight hand-up brief; or alternatively identify the issues in the case and the witnesses requested for cross-examination at the committal hearing”.
    b. The Practice Direction requires parties to engage in resolution discussion at least 14 days prior to the committal mention date. Furthermore, section 118 of the CPA requires parties to file a case direction notice at least 7 days prior to committal mention.
    c. Notwithstanding the legislative requirements and the Practice Direction, magistrates observe that parties, both defence and the Crown, frequently commence discussion close to the date of the committal mention, when those negotiations should have commenced weeks before the hearing date.
    d. Magistrates are frustrated by the lack of accountability on part of both defence and the OPP in this process. Delayed brief analysis by defence leads to delayed request for further disclosure material and delayed negotiation. Meanwhile, OPP solicitors wait on defence to communicate their position, rather than proactively communicating the bottom line, which magistrates frequently encourage them to do.
    e. In order to push for a change of practice, magistrates would frequently question parties seeking adjournments about the date of commencement of negotiation. Rarely would magistrates find that Practice Direction 6 of 2013 had been fully complied with.
89. <u>Delayed disclosure</u>
    a. The standard period for service of hand up briefs is 6 weeks. However, the following types of evidence are rarely produced within that time frame. The delay in their production result in adjournments and/or delayed committal mentions and contested committals.

b. Delay in drug and forensic analysis provided by Victoria Police Forensic Services Department ('FSD') is the single greatest cause of delay in this jurisdiction. FSD's published backlog for July 2019[20] stipulates the following turnaround time-

   i. DNA and forensic - In sex offences, case summary reports are generally completed within 10 weeks. The court notes that this exceeds the period usually assigned for service of hand up briefs (6 weeks). For sexual offences involving child or cognitively impaired complainant, the period is 6 weeks.

   ii. Clandestine laboratory analysis takes 5 to 8 months "depending on case complexity".

   iii. Drug analysis takes 4 months. This is often necessary to determine not only the nature of the drug but also the purity, to establish if it supports a charge of trafficking in a commercial quantity. This in turn determines whether the matter is capable of being heard summarily.

   iv. Cannabis yield statements, which goes to determine commercial quantity in relation to a trafficking charge, take 6 weeks if the matter is going "to committal".

c. In relation to the above FSD turnaround time, the Court notes as follows:

   - Recent legislative changes reducing the quantities of drugs necessary to constitute a commercial quantity (eg methylamphetamine and heroin) have strained further the resources of FSD and the Court.

   - Unless a specific direction is made in certain cases no drug analysis is commenced prior to the matter being listed for a contested committal. The timelines referred to above are often optimistic and should be seen as a minimum requirement often dependent on other investigations requiring analysis. This is also a cause of adjournment of committals as the drug analysis has not been completed.

   - Magistrates note that there is no such delay in Commonwealth matters where forensic testing is conducted at the National Measurement Institute. More resources should be invested at the state level to proactively address the current backlog in FSD.

d. VIFM/ Pathology –

   i. Reports on full toxicology testing take 8 to 12 weeks to be generated.

   ii. An autopsy report requires 12 weeks to produce, with 18 – 20 weeks being a safer estimate for cases involving complex medical issues (eg head injuries, paediatric cases, multiple drug toxicity).[21]

e. E Crime - A standard request for e-crime analysis takes 24 months. Where the matter is urgent, involving victims at risk (eg. child grooming, contact offences), outstanding offences against the person (eg. rape, armed robbery), high community impact/ media

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[20] FSD Turnaround times and backlogs for Forensic Units - https://content.police.vic.gov.au/sites/default/files/2019-07/TAT%20and%20backlogs%202019%20July.pdf#_ga=2.56230316.664912592.1565666318-287380984.1562126649

[21] Letter N Woodford to Judge P Lauritsen – Service dates for briefs involving autopsy report, 27 May 2019

attention matters, and judicial orders, the analysis will take 8 months. For very urgent matters involving imminent loss of evidence or threat to life, a shorter period could be discussed on a case by case basis.[22]

f. Delay in transcription and translation. Large scale commercial drug trafficking and importation matters would often involve extensive telephone intercepts in foreign languages, requiring not only transcription but translation. Many languages lack qualified translators, and the production of translated transcripts could take months. Proper remuneration and investment in the qualification of translators are required to address this issue.

90. Interpreters

a. Lack of availability of interpreters is a common issue faced by the court. For example, in one case in 2018, a matter was adjourned 3 times due to lack of available Portuguese interpreters. The matter eventually resolved to a summary jurisdiction plea with the accused released on a good behaviour bond.

b. Addressing this issue does not require legislative change. Rather it requires a targeted effort by government to invest in qualified professional interpreters.

91. Preparation required for extensive briefs

a. The matter of Gargasoulas[23] brought the issue of delay in committal proceedings to light, triggering a review of committal proceedings by the Supreme Court and prompting an alternative proposal from the OPP. Yet the exorbitant delay in that case was due to the request by the OPP for a period of 10 months to prepare the brief of evidence. (Indeed, the matter did not even proceed to a committal hearing.)

b. An extended period for service of the HUB is often required for certain charges, eg. murder. However, this should be considered on a case-by-case basis, be properly justified, and not become a standard for any category of offending. It is often quite realistic for an incomplete brief to be served within the 6-week period with the remainder served prior to committal mention.

92. Crown inability to negotiate new plea offers at Court

a. Committal mentions are court events at which parties are expected to make concerted efforts to resolve matters. However, the OPP duty advocate structure means that advocates who appear in committal mentions are not the solicitors with carriage of the files. The advocates are bound by the instructions or lack of instructions from the solicitors with carriage who do not attend court, and are therefore not available to productively negotiate with defence. Notwithstanding magistrates' efforts to case manage and facilitate resolution on defence plea offers, matters are still needlessly adjourned for instructions to be obtained. If greater authority to resolve matters were granted to OPP advocates appearing at committal mention, delay would be significantly reduced.

b. It is also a common complaint from defence practitioners that they have difficulty determining who at the OPP has conduct of a particular file and commence disclosure or resolution discussions at an early stage.

[22] Personal communication from [redacted], [redacted], [redacted], [redacted]', sent [redacted]

[23] *DPP v Gargasoulas* [2019] VSC 87

93. Other causes of delay include

a. Last minute change of legal representation by accused (often because they cannot afford to pay privately, or because they do not accept advice from their current lawyers)

b. Delay in legal aid funding approval (often because of delay in the provision of proof of means by the accused)

c. Lack of instructions from accused in prisons. Recent reforms to bail and sentencing laws mean more accused in the committal stream are in custody, placing more demands on a prison's AVL facilities. This also impairs defence practitioners' ability to obtain last minute instructions to resolve matters through the Jabber conferencing system.

Committal hearing to further committal hearing

94. On the whole we note that majority of committals are listed for half a day to a day. This allows the committals to be listed in a relatively short time. However, when they are adjourned, the adjournments are due to a variety of reasons.

a. Lack of Magistrates' Court resources both in magistrates and custody court rooms. More magistrates are required to be available to hear committal hearings. More court rooms are also required. Even with the Court's lease of 2 court rooms in the County Court building, there is still a shortage of custody courts in the Melbourne Magistrates' Court building.

b. The crisis in prisoner transportation continues. An accused is often not brought to the Melbourne Magistrates' Court due to the numbers kept in the Melbourne Custody Centre which preclude their reception there. This results in committal hearings being adjourned. This is particular unfortunate in cases with several accused, when one is not brought to court and the entire committal has to be adjourned.

c. An accused on bail failing to appear or a necessary witness failing to appear. We refer to the Court's proposal in Question 10 in relation to this issue.

d. The Court's listing practice requires matters to be booked in for a specified period. Should further time be required the matter would have to be adjourned to a future date when time was available in the Court's diary. Committals are frequently stood down at 10am at the request of the parties who wish to 'talk'; to give defence time to peruse disclosure items only produced on the morning of the committal; or to give the prosecution time to go through a statement with the witness. This impacts on the ability to determine the committal within the allocated time and often necessitates an adjournment with the magistrate being part-heard.

Question 19: How should concerns that other pre-trial processes contribute to inappropriate delay be addressed?

95. Delay in disclosure and other pre-trial processes are canvassed in our response to question 18 above.

Question 20: Do committal proceedings contribute to inappropriate delay in the Children's Court?

96. This is a question for the Children's Court. The Magistrates' Court does not propose to respond to this.

Question 21: What are the resource implications of any proposed reforms to committal or pre-trial proceedings?

1) The DPP proposal

97. The Director of Public Prosecutions Victoria's proposed reforms to committal proceedings ('the DPP proposal') have the following key aspects:

    a. Abolishes the culture of cross-examining prosecution witnesses twice during a criminal proceeding;

    b. Removes the magistrates' committal decision;

    c. Requires the prosecution to give an indication at the 'Case Management Hearing' of which charges it considers have reasonable prospects of conviction (and are likely to appear on an indictment), to ensure the parties are properly engaging with issues in dispute;

    d. Requires police to provide a more complete brief of evidence which will contain content normally sought to be disclosed to "facilitate earlier pleas of guilty";

    e. Provides for the fast tracking of certain criminal cases into the trial courts.

No committal hearings (and 'fast tracking')

98. The proposed reform

    a. The Director of Public Prosecutions Victoria's proposed reforms to committal proceedings ('the DPP proposal') seeks to 'abolish the culture of cross-examination prosecution witnesses twice during a criminal proceeding – a culture which does not exist in other jurisdiction.'

    b. That assertion is inaccurate. All other jurisdiction except Western Australia have procedures in place for pre-trial cross-examination of witnesses, albeit in the higher jurisdiction. Even Western Australia allows cross-examination if the witness had refused to make a statement to police.

    c. In any event, the DPP proposal seeks to eliminate cross examination of child and cognitively impaired complainants, and complainants in sexual or family violence offences. The DPP model also seeks to 'fast track' certain matters to the trial court. The examples of matters that would be fast tracked are sexual offences involving child or cognitively impaired complainants and matters involving questions of fitness or mental impairment. We note that, due to recent reforms, there is to be no committal hearings in sexual offences involving cognitively impaired or child complainants. In relation to fitness or mental impairment matters, the Court already uplifts these matters when the questions are raised at committal mention.

    d. The DPP model also seeks to make the test for cross-examination of witnesses stricter, such that there must be "substantial reasons why, in the interests of justice," cross-examination should take place. The Court regards the current legislation be to

sufficiently stringent and notes the interests of justice is already included as one of the factors in section 124(4).

More trials

a. Cross-examination of witnesses is necessary to ensure adequate and timely disclosure (see question 7) and is effective to achieve early resolution of matters and identification of issues for trial (see question 16).

b. Justice Martin Moynihan's Review of the Civil and Criminal Justice System in Queensland (2008) noted that Western Australia has effectively abolished committal proceedings, resulting in 'the inadvertent elimination of opportunities for discussion and negotiation between the prosecution and defence' at an earlier stage.

c. In England and Wales, where pre-trial cross examination has been abolished, 66% of matters in the trial court (the Crown Court) resolve to a plea of guilty. In comparison, 80.4% of Victorian OPP prosecutions are finalised as a guilty plea, with 79.4% of those pleas achieved at committal proceedings (Issues Paper p.21). The difference in resolution rate is a telling indicator of the success of our committal process.

Financial implications

a. The financial implications of having more trials running should not be underestimated. The Issues Paper notes the difference in cost of proceedings between the Magistrates' Court and superior courts, both in terms of costs to the court, and costs to the Victorian Government through its funding of Victoria Legal Aid and the OPP. For example, the Victorian Government funds VLA $20,000 for an average County Court trial, and $34,000 for an average Supreme Court trial. In contrast, a plea of guilty costs $1,724 in the County Court, and $2,353 in the Supreme Court. (Issues Paper p.59)24

b. More trials listed without committal cross-examination would inevitably result in more pre-trial cross-examination under section 198B CPA (which codified Basha hearings), causing more disruption to trials, further lengthening the trial process and increasing costs overall.

c. The DPP proposal suggests that the reform will reduce public expenses, however, there is nothing put forward to support this.

Further delay

a. The DPP proposal seeks to 'minimise trauma to complainants' by purporting to eliminate delays involved in committal proceedings. What the proposal fails to take into account is the ability of committal proceedings to achieve earlier resolution of matters and eliminate the need for trials, thus 'minimising trauma' for complainants and witnesses. Automatically uplifting matters to the trial court, and unnecessarily subjecting witnesses to long waiting periods for trials and the prospect of giving evidence before a jury, exacerbates the trauma that could have been avoided had the matter been given the proper opportunity to resolve at the committal stage.

b. Increasing the work of the trial courts would also necessitate more resources to trial courts, especially in regional areas where trial courts do not sit all the time. In contrast, the Magistrates' Court sits on a daily basis, is more accessible, and has more capacity to hear and determine matters earlier.

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[24] Issues paper p59

Removal of committal decision

99. The Magistrates' Court is strongly against the proposal to remove magistrates' committal decision. This is explained in question 13 and 14 above.

100. Removing the committal decision would also remove the prosecution's accountability in the committal process. A magistrate's committal decision comes with the power to discharge with costs against the OPP. Removing the risk of costs would likely remove the Crown's willingness to earnestly review the evidence and compromise on charges, resulting in decreased resolution and more costly trials.

Indication of charges at Case Management Hearing

101. The DPP proposal involves a requirement that the prosecution indicate charges 'it considers have reasonable prospects of conviction and likely to appear on a trial indictment' before the Case Management Hearing.

102. One would have thought that the OPP would already be discharging this responsibility under the current system, especially at committal case conferences. The identification of charges and consideration of evidence should occur upon receipt of the hand up brief, with the bottom line communicated to the accused before the first committal mention (or the 'issues hearing' as the OPP proposes to call it). Magistrates in the committal mentions and committal case conference court frequently have to ask the Crown whether the bottom line has been communicated to defence.

103. A shift in practice and attitude is indeed required, and early identification of charges should already be occurring in the committal process we currently have.

104. The Court notes that this is a puzzling proposal as one would expect that charges without a reasonable prospect of conviction would not be pursued by the Crown in any event.

More 'complete hand-up brief'

105. The DPP proposal seeks to offer a 'more complete hand-up brief' to defence so that criminal proceedings would be more efficient by 'encouraging better disclosure'. However, there is nothing in the proposal that seeks to address the causes of delay in disclosure identified in question 18. A more 'complete hand-up brief' that is missing essential DNA evidence and drug test result is still an incomplete brief, and the delay that is currently occurring would continue to occur unless resources are better allocated.

106. Furthermore, the we refer to the importance of cross-examination in relation to disclosure as discussed in Question 7.

Conclusion

107. In conclusion, the Court believes the DPP proposal would not facilitate earlier resolution of matters and would in fact result in lengthier and more costly trials. The resource implications of the proposal must be better explored and understood, based on evidence and examples from other jurisdiction, instead of speculation. The Court notes that the DPP proposal is not supported by any statistical data.

108. The proposal to 'fast track' certain matters, without exactly identifying the types of matters, their volume and their nature, is problematic, making an accurate assessment of resource implications impossible.

109. Furthermore, the investment the DPP proposes to make in better disclosure and better communication with defence to facilitate earlier resolution should already be happening in the current committal system.

2) The Supreme Court Proposal

110. The Court is unable to see any value in the Supreme Court's proposal to case manage matters with minimal changes to the existing legislative framework.

111. Delay in disclosure and negotiation would remain the same.

112. Issues with adjournments are likely to continue. Committal hearings are likely to still be held in the Magistrates' Court.

113. No change is proposed to cross-examination. Judicial registrars would have conduct of committal proceedings, instead of trial judges, and there is no basis to the assertion that there would be better 'case management' in the Supreme Court.

114. Furthermore, the costs of proceedings in the higher court must be taken into account, not only in Legal Aid and OPP briefing fees, but in the costs of judiciary and the court. The Supreme Court would also require additional resources if it is to conduct a higher volume of committal proceedings. These include additional remote witness facilities, video link facilities, audio visual link facilities, cells for remanded accused, and additional court rooms. Additional sittings of the Supreme Court in regional courts would also be necessary.

115. Bail applications often occur in the course of committal proceedings, especially where the disclosure of exculpatory evidence lead to a reduction of charges. It is unclear where bail applications would be heard in the Supreme Court proposal. It is preferable that proceedings not be fragmented and for one court to deal with the same proceedings at any one time. Therefore, the Supreme Court would require resources not only to hear bail applications but to offer the bail support programs and initiatives currently available in the Magistrates' Court, including CISP, Youth Justice and Forensicare.

116. Both Victoria Legal Aid and the OPP provide duty advocates to appear in committal proceedings (filing hearing, committal mentions, committal case conference). If committal proceedings are split, both VLA and OPP would face an additional resourcing issue to provide duty advocates in different courts.