

## Submission information

Form: Committals: make a submission

Name

[REDACTED]

Your email address (required - will not be published)

[REDACTED]

How would you like us to treat your submission? Choose one of the following and enter it in the box below:

- (a) Publish my submission and my name on the VLRC website
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Answer: (b)

1 What purposes can or should committal proceedings serve?

They can be of use in outlining the case to be heard and to satisfy any criteria related to the proof of offence. In some matters where there has been no contest by the accused ie a confession of perpetration at the outset it could be more efficient to simply list the matter for hearing.

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?

If a confession has been issued then at that point the charges should be clearly determined. If a plea is changed to guilty after a committal process and there has been some length of time before trial scrutiny should be applied to reducing the charges. The Borstevski case is a point whereby a lesser sentence was incurred although there appeared to be primary evidence at the outset that the accused had committed the offence and community perception was that the accused had cynically waited before changing plea which gave him an advantage in sentencing.

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

If possible, in the face of consistent and convincing evidence the charges should be placed as early as possible to bring about expedient process.

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?

(a) full supply of the evidence that is compelling to present at the outset of laying charges

(b) full sharing of the compelling evidence that would efficiently lead to process of the matter

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

It does depend on the actual evidence collated I guess. Transferral of information between parties in the prior question would help expedite process. However, these proceedings might not be required if the matter is able to be handled according to an accused confession. In terms of 'testing' evidence in the form of witness testimony where an accused has not conceded, perhaps in the face of other evidence this testimony could be eliminated from committal process, although the defence would still be entitled to know of the intended witness testimony.

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

In accord with my answer above I think so.

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?

I doubt this is effective really is it is most likely to be undertaken in the trial process.

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

I imagine that if an accused is strenuously not conceding guilt and there is insufficient other evidence in material form then witnesses might be essential to final prosecution.

9 Should cross-examination at a committal hearing be further restricted or abolished? If so, why?

Perhaps if it was abolished it would not matter. An opportunity to cross examine occurs in trial anyway so maybe it is more efficient to leave that until trial process.

10 If cross-examination at a committal hearing is further restricted, how should this occur?

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

Those who have been traumatised by the crime or are in fear or in danger from the accused's network who fear retribution should not be cross examined.

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

Video testimony.

13 Should the current test for committal be retained?

I don't think it is necessary.

14 Having regard to the DPP's power to indict directly, is there a need for a test for committal?

I don't think so if there is irrefutable evidence to suggest an indictment is valid.

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

I would suggest a limit of a one day maximum committal hearing process to be retained to enable a degree of disclosure between parties.

16 How effectively do committal proceedings ensure:

- (a) appropriate early resolution of cases
- (b) efficient use of court time
- (c) parties are adequately prepared for trial?

(a) It does not appear to be an expedient process.

(b) It appears to create a doubling down of workload that creates a backlog of cases

(c) It might ensure good preparation for trial for both sides but again it is likely to simply be doing the work required at either stage. Therefore I'm not sure committal hearings bring anything new to the situation that will develop in trial.

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

- (a) appropriate early resolution of cases
- (b) efficient use of court time
- (c) parties are adequately prepared for trial?

I would suggest that for the more serious crimes bail should not be issued until and only if at the committal process it is then established it is appropriate. A person should be remanded if the matter includes and degree of violence or threats thereof until a short committal process is set to happen.

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

By reducing them to a day length process that excludes the use of witness testimony that will be delivered anyway.

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

As indicated in 17, there should be no granting of bail in relation to violent crimes or threats of violence. This would eliminate one aspect of the process. I think a short committal process would help to reduce length delays.

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

They might do but they are minors although facing charges of a serious nature. If the accused is an early adolescent and first offender it might be warranted to have a committal process that is more extensive. It may provide an alternative to incarceration. But if the accused is near to the age of adulthood and has prior convictions this would imply that more expedience is required to resolve the matter. Incarceration for older accused children is likely inevitable in this process.

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

I imagine specific appointments of support staff to the OPP would be necessary to assist in the expedient collation and preparation of evidence for the purpose of trial, if there was less time allocated to a committal process, or in the event that there was none occurring for the matter. For young offenders it might mean more resources for the interim before trial.