

# Law Reform Case Study:

## Committals



### What was this project about?

The Commission was asked by the Attorney-General to consider whether Victoria's committal system should be reformed or abolished.

The term 'committal' refers to the transfer of indictable (serious) criminal charges, such as rape or murder, from a lower court to a higher court, for trial or sentencing. Charges for indictable offences are filed in a lower court and go through a series of preliminary procedures before they are committed to a higher court. For example, the prosecution must provide the accused and the court with the evidence it will be relying on in the case (disclosure), and the parties must meet to discuss if the case can be resolved. These preliminary steps are known as 'committal proceedings.' In Victoria, they include a step where a magistrate considers the evidence to decide if it is 'of sufficient weight' (strong enough) for the charges to proceed to trial. This is called the test for committal or 'committal determination'.

The purpose of committal proceedings includes:

- determining if the criminal charges can be heard in a lower court (more serious charges might be withdrawn, leaving only charges that the lower court can hear)
- determining how the accused proposes to plead (guilty or not guilty)
- narrowing the issues in dispute
- resolving matters where possible (for example, an accused may agree to plead guilty to some charges if the prosecution withdraws others)
- ensuring a fair trial through disclosure of evidence—this might include allowing the defence to cross-examine prosecution witnesses.

### Why did the law need to change?

Committal proceedings have existed for centuries. Their original purpose was to make sure that matters only went to trial when there was evidence to support the case.

Today, committal proceedings allow an accused person to find out what the case is against him or her, and they give the accused an opportunity to test the evidence of the prosecution witnesses.

Supporters of committal proceedings say they are an essential element of a fair trial. They also say that committals often help matters to resolve early, without going to trial. They say the law is working well and no change is needed.

However, others say that committal proceedings are used by the defence to gain a tactical advantage. They say that pre-trial cross-examination is stressful and traumatising

for victims and other witnesses, especially if they have to give evidence in committal proceedings and then again at the trial. There are concerns that committal proceedings make criminal justice more expensive, because of the number of steps involved, which also cause long delays in finalising matters.

### **Origin of the project**

All Australian states and territories, and comparable common law jurisdictions overseas, have reformed committal proceedings, some of them in the last few years. New South Wales, Tasmania, Western Australia and England and Wales have abolished the test for committal, but have kept other aspects of committal proceedings. In Victoria, the Attorney-General asked the Commission to review committals to see how the trial process could be made easier for victims, as well as improving efficiency, and ensuring a fair trial for the accused.

### **What was the Commission's task?**

It was the Commission's job to decide if the committal system should be abolished, reformed, or remain the same.

The Commission was asked to consider reforms that would:

- reduce trauma experienced by victims and other witnesses
- make the system more efficient, for example by reducing delay
- ensure fair trial rights.

### **What did the submissions say?**

Some submissions supported retaining the Committal test. They included submissions from the Magistrates' Court, some County Court judges, Victoria Legal Aid, the Victorian Aboriginal Legal Service, the Criminal Bar Association (Victoria), and Australian Lawyers for Human Rights. They emphasised the contribution that the test for committal makes to fair trial rights. They said that it encourages the prosecution to review its case at an early stage. They also highlighted the benefits for the small number of accused people whose cases are discharged by a Magistrate and who would otherwise have had to endure the stress and anxiety of a trial.

Those who argued the test for committal should be abolished included the Supreme Court, some County Court judges, the Director of Public Prosecutions, Victoria Police, and the Victims of Crime Commissioner. They suggested the test for committal is now unnecessary and that fair trial rights are protected in other ways. They said the committal test contributes to duplication and delay.

### **Report and recommendations**

The Commission decided that it is unnecessary to conduct a committal test in all cases, so it should be abolished. However, a lower court should have the power to discharge the accused when there is no reasonable prospect of conviction. The defence should be able to apply for a discharge.

The Commission recommended keeping other parts of committal proceedings and said that the lower courts should continue to manage most of them. This was because many indictable cases are successfully resolved in the lower courts, with around a third heard and finalised there, following the withdrawal of the most serious charges; and another third committed to the higher courts for sentencing following an early guilty plea.

Supreme Court cases are a much smaller group, which don't usually resolve in the lower courts. The Commission said it would be more efficient for the Supreme Court to deal with most of these cases. It recommended that, aside from cases involving a child accused, charges within the Supreme Court's exclusive jurisdiction should be filed in the Supreme Court, which should conduct all the necessary pre-trial procedures.

Other recommendations proposed reforms that would improve efficiency and reduce delay in pre-trial procedures, while ensuring fair trial rights and reducing trauma for victims and witnesses. These reforms included:

- reducing the number of pre-trial hearings
- giving more responsibility for indictable prosecutions to the Director of Public Prosecutions, rather than the police, from an early stage
- providing more information to victims of crime about the progress of a prosecution
- taking steps to reduce 'overcharging', where accused people are charged with many offences, most of which are dropped
- applying more strictly tests about when and how witnesses can be cross-examined before trial
- steps to improve disclosure of evidence
- having more experienced lawyers involved at an early stage
- expanding the intermediaries program to assist witnesses with communication difficulties
- more funding to reduce delay in getting forensic evidence.

### **When was the report tabled?**

The report on committal and pre-trial procedures in indictable criminal matters was tabled in the Victorian Parliament on 16 September 2020.

### **What happened next?**

The Victorian Government is currently considering the report and its recommendations. The Government said that it is committed to implementing reforms to improve the committal and indictable pre-trial process, to reduce trauma experienced by victims, ensure fair trial rights and improve efficiencies in the criminal trial process.

### **More information**

The report, public submissions and consultation paper can be found on the Victoria Law Reform Commission's website, [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au).

*September 2021*