

**Administration of Justice Offences: Final Report of the Victorian
Parliament Law Reform Committee**

Government response

The Victorian Parliament Law Reform Committee has made a substantial contribution to legal research with its final report on Administration of Justice Offences.

The impetus for this reference stemmed from the work of the Model Criminal Code Officers' Committee (MCCOC), which released a Discussion Paper and Report on Administration of Justice Offences during 1997-98, proposing the introduction of uniform legislation in this area of the criminal law. The Law Reform Committee was asked to inquire into the current state of the law in Victoria and specifically, whether it should be amended in the light of MCCOC's recommendations.

The Committee received its Terms of Reference in April 2003 and released a comprehensive Discussion Paper on the subject in August 2003. It called for submissions and received a total of ten submissions from Victorian stakeholders. During November 2003 the Committee consulted with stakeholders in Brisbane and Sydney and held public hearings in Melbourne. The final report was tabled in June 2004.

While several recommendations affirm the appropriateness of the existing laws, a total of 20 recommendations involve some form of legislative change. The Committee recommends that the Victorian law governing administration of justice offences be codified. It proposes the creation of nine new 'administration of justice' offences: eight offences to codify the common law offence of 'perverting the course of justice' and one new perjury offence. The report also recommends amendments to three provisions of the *Crimes Act* (ss 314, 315 and 320) to clarify the scope and structure of the existing laws.

The Government supports the majority of the Committee's recommendations. It gives support in principle to the creation of a statutory offence of perverting the course of justice and to the proposed reforms of the law of perjury. In the context of the comprehensive review of the *Crimes Act* 1958 being undertaken as part of the Attorney-General's *Justice Statement*, further consultation with stakeholders will be undertaken to examine specific proposals for law reform, including those involving the creation of a number of separate offences relating to misuse of evidence and interference with witnesses. Rendering long-standing common law into a statutory form is a complex undertaking, and it is to be expected that, through the processes of consultation and review, a clearer legal framework for the law on these important criminal offences will be achieved.

The Government would like to record its appreciation to the Committee for its research and analysis of this important area of law.

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Schedule of Recommendations and Responses

Recommendation	Response
PERVERTING THE COURSE OF JUSTICE	
<p>Statutory offence: Perverting the course of justice</p> <p>1 That a new statutory provision be created for perverting the course of justice that incorporates the common law elements of the offence so that the new provision would make it an offence to "do an act that is capable of and has a tendency to pervert the course of justice".</p> <p>That the provision define the meaning of "tendency" as meaning "a possibility or risk that the course of justice will be perverted". (55)</p>	<p>Supported in principle. Implementation subject to further consultation with Victorian stakeholders.</p>
<p>2 That the proposed new statutory offence of perverting the course of justice specify intention as the mental element of the offence. (61)</p>	<p>Supported in principle. Implementation subject to further consultation with Victorian stakeholders.</p>
<p>3 That the <i>Crimes Act 1958 (Vic)</i> be amended to change the maximum penalty for the offence of perverting the course of justice to 15 years imprisonment. (74)</p>	<p>Supported in principle. Implementation subject to further consultation with Victorian stakeholders.</p>
<p>4 That there be no change to the current law in Victoria concerning false accusation of offences. (94)</p>	<p>Supported. No further action required.</p>
<p>5-11 Creation of specific offences: Overview Recommendations 5-11 are inter-related, as they propose the creation of a range of new offences dealing with different aspects of conduct which may be described as 'perverting the course of justice'.</p>	<p>Any proposals for legislative action in response to these recommendations will need to be considered, in consultation with stakeholders, in the light of proposals for legislative action involving other relevant administration of justice offences and related laws of evidence.</p>
<p>New offence: Misuse of evidence</p> <p>5 That statutory offences be created in Victoria for the misuse of evidence, making it an offence to:</p> <ul style="list-style-type: none"> (a) fabricate or alter evidence; (b) destroy, conceal or suppress evidence; and (c) knowingly use fabricated or altered evidence. <p>where the intention is to:</p> <ul style="list-style-type: none"> (a) prevent the bringing of judicial proceedings; or (b) influence the outcome of current or future judicial proceedings; or (c) improperly use the judicial proceedings for the purpose of impugning or vilifying the accused person or other witnesses. <p>That the maximum sentence for this offence be 7 years imprisonment. (111)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p> <p>Further development of this proposal will also take into account the recommendations of the Sallman report on document destruction where these are applicable to criminal proceedings.</p>

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6	<p>New offence: Deceiving a witness</p> <p>That a specific statutory offence of deceiving witnesses be created in Victoria, making it an offence to deceive another person with the intention that the other person or a third person will:</p> <p>(a) give false evidence at legal proceedings; or (b) withhold true evidence at legal proceedings.</p> <p>That the maximum sentence for this offence be 5 years imprisonment. (114)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>
7	<p>New offence: Corruption of a witness</p> <p>That a specific statutory offence of corruption of a witness be created in Victoria, making it an offence to:</p> <p>provide, or offer or promise to provide, a benefit to another person with the intention that the other person or a third person will:</p> <p>(a) not attend as a witness at legal proceedings; or (b) give false evidence at legal proceedings; or (c) withhold true evidence at legal proceedings.</p> <p>That the provision also makes it an offence to ask for, or receive or agree to receive, a benefit for themselves or another person with the intention that they or another person will:</p> <p>(a) not attend as a witness at legal proceedings; or (b) give false evidence at legal proceedings; or (c) withhold true evidence at legal proceedings.</p> <p>That the maximum penalty for this offence be 7 years imprisonment. (117)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>
8	<p>New offence: Threatening a witness</p> <p>That a specific statutory offence of threatening a witness be created in Victoria, making it an offence to cause or threaten to cause any detriment to a person (who intends to attend as a witness at proceedings) with the intention that the person or another will:</p> <p>(a) not attend as a witness at legal proceedings; or (b) give false evidence at the legal proceedings; or (c) withhold truthful evidence at the legal proceedings.</p> <p>That "threat" be defined to include a threat made by any conduct whether explicit or implicit and whether conditional or unconditional. That the maximum penalty for this offence be 5 years imprisonment. (120)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>

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9	<p>New offence: Preventing a witness from attending That a specific statutory offence of preventing a witness from attending legal proceedings be created in Victoria, making it an offence to intentionally prevent (by conduct) a person from attending as a witness at legal proceedings.</p> <p>That the maximum sentence for this offence be 5 years imprisonment. (123)</p>	<p>legal proceedings See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>
10	<p>New offence: Preventing a witness from producing an item in evidence That a specific statutory offence of preventing a witness from producing an item in evidence be created in Victoria, making it an offence to intentionally prevent a witness from producing an item in evidence where the item is required to be produced by subpoena or summons.</p> <p>That the maximum sentence for this offence be 5 years imprisonment. (125)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>
11	<p>New offence: Reprisal against a participant in legal proceedings That an offence relating to reprisals against witnesses and other participants in legal proceedings be enacted in Victoria making it an offence for a person without reasonable cause to procure or cause violence, injury, damage or loss to any person with the intent to punish a participant in a legal proceeding (other than a party to civil proceedings) for anything said or done in the course of, or in relation to the legal proceeding.</p> <p>That the maximum sentence for this offence be 5 years imprisonment. (144)</p>	<p>See response to Recommendations 5-11.</p> <p>Codification is supported in principle, subject to further consultation with stakeholders, as part of the Justice Statement review, on the scope and nature of the proposed offences.</p>
ACCESSORY AFTER THE FACT		
12	<p>That in Victoria the offence of accessory after the fact continue to apply only to serious indictable offences. (155)</p>	<p>Supported. No further action required.</p>
13	<p>(a) That a provision be created in the <i>Evidence Act</i> 1958 (Vic) which provides that formal proof of the conviction of a principal offender may be led in evidence at the trial of an accessory after the fact and that the conviction of the principal offender will constitute prima facie proof of the commission of the principal offence.</p> <p>(b) That the provision also state that, for the avoidance of doubt, at the trial of an accessory after the fact, evidence of out of court admissions made by a principal offender cannot be used in evidence to prove the commission of the principal offence where such admissions are contrary to the rule against hearsay evidence. (161)</p>	<p>Supported in principle, noting that the <i>Evidence Act</i> will be reviewed as part of the Justice Statement project.</p>

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14 That the existing provisions contained in s 325(1) of the <i>Crimes Act</i> (Vic) relating to the knowledge or belief requirement for the offence of accessory after the fact be retained in Victoria. (174)	Supported. No further action required.
15 That the defences of "lawful authority" and "reasonable excuse" to the offence of accessory after the fact in s 325(1) of the <i>Crimes Act</i> 1958 (Vic) be retained. (177)	Supported. No further action required.
16 That no change be made to the current Victorian law relating to the offence of accessory after the fact in relation to the disposal of the proceeds of an offence. (180)	Supported. No further action required.
17 That the reference to "conviction or punishment of the principal offender" in relation to the accessory after the fact provision in s. 325(1) of the <i>Crimes Act</i> 1958 (Vic) be retained. (182)	Supported. No further action required.
18 That the current penalties in section 325(4) of the <i>Crimes Act</i> 1958 (Vic) for the offence of accessory after the fact be retained. (187)	Supported. No further action required.
PERJURY	
19 That the current law in Victoria which provides that witnesses who give unsworn evidence due to impaired mental functioning or youth are not liable to perjury, be retained. (204)	Supported. No further action required.
20 That section 314(3) of the <i>Crimes Act</i> 1958 (Vic) be amended so that: (a) the offence of perjury is restricted to statements (both written and oral) made on oath or affirmation in or for the purpose of "legal proceedings"; and (b) "legal proceedings" be defined as meaning "proceedings in which judicial powers are exercised, and includes proceedings in which evidence may be taken on oath"; and (c) a reference to "legal proceedings" includes a reference to any such proceedings that have been or may be instituted. (213)	Supported in principle.
New offence: Deliberately making a false statement on oath or affirmation 21 That the <i>Crimes Act</i> 1958 (Vic) be amended, making it a separate offence to deliberately make a false statement on oath or affirmation, where the statement is not made for, or in the course of "legal proceedings" (as defined in Recommendation 20 above). That the maximum penalty for this offence be 5 years imprisonment. (215)	Supported in principle.
22 That s 314 of the <i>Crimes Act</i> 1958 (Vic) be amended to clarify that the mental element for the offence of perjury is the lack of belief that the statement was true. (222)	Supported in principle.

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23 That the offence of perjury in s. 314 of the <i>Crimes Act</i> 1958 (Vic) specify that the offence of perjury only applies to statements that are objectively false. (227)	Supported in principle. Implementation subject to further consultation with Victorian stakeholders. See also Recommendation 26 below.
24 That the offence of perjury in s. 314 of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that if a sworn statement includes an opinion of the person making the statement, the statement is false if the opinion is not genuinely held by the person. (230)	Supported in principle.
25 That the common law rule of evidence requiring that evidence of perjury be corroborated be retained. (241)	Supported. No further action required.
26 That a new provision be inserted in the <i>Crimes Act</i> 1958 (Vic) which provides that a jury may convict a person for the offence of perjury where they are satisfied beyond reasonable doubt that: (a) the person made two sworn statements, one of which is irreconcilably in conflict with the other; and (b) the person is guilty of perjury in respect of one of the sworn statements; but (c) the jury is unable to determine which of those statements constitutes the offence. That the provision specify that it is immaterial whether or not the two statements were made in the same proceedings. (252)	Further consideration is required on this Recommendation, together with Recommendation 23, in consultation with Victorian stakeholders.
27 That no change be made to the current maximum penalty of 15 years imprisonment for the offence of perjury. (260)	Supported. No further action required.
28 That the offence of perjury in section 315 of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that it is immaterial whether or not the sworn statement concerned a matter material to the legal proceedings. (265)	Supported in principle.
29 That the offence of perjury in the <i>Crimes Act</i> 1958 (Vic) be amended to provide that the court, body or person dealing with the legal proceedings must have jurisdiction. (269)	Supported in principle.
30 That the offence of perjury in the <i>Crimes Act</i> 1958 (Vic) be amended to provide that, it is immaterial whether or not the court, body or person dealing with the legal proceedings was properly constituted or was sitting in the proper place. (272)	Supported in principle.
31 That the offence of perjury in s. 314 of the <i>Crimes Act</i> 1958 (Vic) not be amended to specifically refer to 'perjury by an interpreter'. (275)	Supported. No further action required.