T R A N S C R I P T

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Friday, 5 November 2021

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WITNESSES *(via videoconference)*

Mr Paul Mracek, President, and

Mr Kevin Mackin, Secretary, Royal Victorian Association of Honorary Justices.

The CHAIR: Welcome back. Thank you for joining us in this public hearing into Victoria's criminal justice system. This is being led by the Legislative Council Legal and Social Issues Committee.

We are being joined for this session by the Royal Victorian Association of Honorary Justices, and with me I have Kevin Mackin, the Secretary, and Paul Mracek, the President. To both of you gentlemen, thank you very much for joining us and thank you for your submission.

Can I just let you know that all evidence taken is protected by parliamentary privilege. That is under our *Constitution Act* but also under the standing orders of the Legislative Council, and this means that any information that you provide to us today is protected by law. You are protected against any action for what you say during this hearing; however, if you were to go outside or you were to go to another place and say similar things, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

We have Hansard in the background hanging onto every word you say, and they will be recording this. Of course your transcript will form part of the report; it will also go onto our website. You will receive a copy of that transcript, and I encourage you to really have a good look at it to make sure that we have not misrepresented you or misheard anything that you have said.

Kevin, if you would like to make some opening remarks on behalf of you both, and then we will open it up to committee discussion. Thank you.

Mr MACKIN: Thanks very much, and thanks for the chance to talk to our submission. I start off by recognising the traditional owners of the land where I am, the Gunnai/Kurnai people, and pay my respects to their elders past and present.

My name is Kevin, and I am a bail justice. I have been a bail justice for many years now, and I have done over 800 hearings in some very interesting and eye-opening situations in the wee small hours of the morning and on the weekends, when the courts are not open. As you have mentioned, Chair, I am Secretary of the Royal Victorian Association of Honorary Justices, the RVAHJ, and I am joined by our President, Paul Mracek. Paul is a longstanding, long-serving justice of the peace and highly respected. Our association has been around for over 100 years and represents Victoria's JPs and bail justices. Most of the bail justices in Victoria are part of our group, and our submission derives from their joint experience and their input.

What we would like to do is focus on that part of the justice system that deals with short-term bail and remand of the most vulnerable members of the community—the children, the First Nations people and the people with mental health and cognitive challenges. You may not be aware, but prior to the introduction of changes to the *Bail Act* in 2017 everybody in Victoria that was accused of a serious crime had the opportunity for an independent review of the police decision before their liberty was taken away. We strongly believe that removing this oversight of after-hours remand decisions by police was a retrograde step for justice in Victoria. As members of the community we are thankful that some of the people in the department of justice had the foresight to at least retain that level of protection provided by bail justices for the most vulnerable people in our society. Amongst the recommendations in our submission is the reinstatement of bail justice hearings for all Victorians, not just those that are at risk, and also that bail justices be provided with appropriate resourcing and support. Historically bail justices bailed around 10 to 15 per cent of adults, so it follows logically that now that police are making remand decisions without that independent oversight there are probably 10 to 15 per cent of adults remanded who would otherwise have been granted bail by a bail justice. That is very concerning for us and should be for the community, we believe.

Our members are very concerned about the way the 'getting tough on bail' changes to the *Bail Act* in 2017 have been implemented, especially for the children, for the First Nations people and for the people with mental health and cognitive challenges. Imagine you are a 14-year-old young girl or boy that has been charged with an

offence. You have been held by police for maybe 8 or 9 hours. You have been interrogated for ages. Different people have come and gone, but most of the time you have just sat in a cold interview room huddled in a blanket. So now it is 2 o'clock in the morning. You are cold, hungry, tired and scared, and some person comes in and starts asking you questions: 'Are you applying for bail? Do have a compelling reason for wanting bail? Why do you think you should get bail?'. You are not represented by a lawyer, but it is up to you to convince this person you have never met before to let you go home, otherwise the law says you must be remanded. That just does not seem fair. To us it is not justice, especially not for these at-risk kids, the First Nations people and the people with mental health and cognitive challenges—they have all sorts of barriers to being able to mount a cogent and successful case for bail, especially at 2 o'clock in the morning when they are under stress, tired, hungry and scared. That is why we support removing the reverse onus test for those sorts of people.

In the guiding principles of the *Bail Act* 2017 changes Parliament recognised the importance of maximising the safety of the community and persons affected by crime to the greatest extent possible and also the taking account of the presumption of innocence and the right to liberty. So what that means to a bail justice is that making a bail or a remand decision is primarily a risk assessment. It is to balance the rights of the accused person with the safety of the community: 'What is the chance of this person putting the community at risk? What is the chance of this person reoffending? What is the chance of them turning up to court in three, 10, 12 months time?'. There is a huge difference between making that sort of assessment just after the person or child has been caught and charged by police and making it a day later when a magistrate makes the same decision, when the person has probably calmed down a little bit, had the chance to have full and proper legal representation, been advised by somebody that knows what to do and what to say and had the opportunity to think through their predicament.

Bail justices see these people at their absolute worst. They may be under the influence of drugs or alcohol. They may be in a state of mental distress. Not often but often enough they are raging at the world, yelling at anybody who approaches them. Sometimes they are so dangerous they need to be kept in the cell, and you are trying to talk to them through a little flap in a big steel door. Some of our hearings are done at hospitals and other facilities. In many, many cases it is almost impossible to have a sensible and reasonable discussion with them, let alone give them the opportunity to make a compelling case for bail.

Other times, though, you see someone who has just messed up. They have done something stupid, perhaps something really stupid. Sometimes something in their history or some other action that they have done in the past puts them in a situation where they need to show exceptional circumstances to get bail. So when we make these sorts of risk assessments in these cases, bail justices need to find a way to mitigate the risks, maybe finding someone to commit to helping a person with cognitive challenges to come to court on a particular day or finding alternative accommodation for a couple of days over the weekend or finding somebody in the community to take a First Nations child under their wing. That can be really, really challenging at 10 or 11 o'clock at night or 2 or 3 in the morning, because those resources just do not exist.

A couple of months ago I had a situation where the only way I could see to mitigate the risks to let me bail a child who lived in residential care—and kids in resi care are a whole separate issue that we could spend weeks talking about—was to have that child put into an alternative facility for a few days until they could be taken to the Children's Court. This kid had major issues with one of the workers at the resi care facility, and if I were to send the child back to that facility there was a high likelihood they would reoffend. So there was no alternative. There was no way to change the resi facility they were in in the middle of the night, and there was no alternative to give them bail.So bail justices are severely limited in the options that are open to them to allow for bail.

It is really impossible. In our submission we made a lot of the most recent introduction of online bail hearings for First Nations people and people with challenges. We recognise that any time spent in jail waiting around for a bail justice to attend to have a fair hearing has got to be kept to an absolute minimum, but we strongly believe that the fairest and best hearings, especially for this cohort of at-risk people, are done in person and that remote hearings should be kept as a last resort and only used as a backup if there is no way to get an in-person hearing done.

We are really especially concerned that some people in the system may be trying to solve the problem of not having enough bail justices around the state by promoting online hearings in their place. And sure, online

hearings provide efficiency benefits for the police, but we are not convinced they promote just outcomes, human rights and fairness for the accused people, particularly for this cohort at risk but for other people as well.

There is another concern that we raise which we did not include in our submission, but I will throw it out there because it came up recently. It is this question: why do we leave the decision on whether to apply for bail up to these young kids or people with mental health conditions? So if a child comes along, a 13- or 14-year-old—does not matter, a 16- or 17-year-old—and says, 'I'm not applying for bail', then they are not applying for bail. And it is difficult in many cases to talk them around, to say, 'Well, we're going to pretend you've applied for bail'. What I am supposed to do is say, 'Well, you didn't apply for bail, therefore you're remanded'. I do not think we should be leaving that decision up to the kids. We have got to find a way to assume that they are asking for help.

Also, why do we let them decide whether to accept help from, say, the Central After Hours and Bail Placement Service? So if a kid says to the social worker, the youth worker team, 'I'm not accepting CAHABPS support'—Central After Hours and Bail Placement Service—then CAHABPS cannot do anything for them. CAHABPS cannot advocate for them to get bail if they do not accept the support. These kids are not in a state to be able to make a rational decision about that, and yet the system does not support them in that way. So it seems unreasonable to do that.

As you can see in our submission, there is a lot more to say. I have just hit some of the key points that I thought were particularly important in terms of how it could be assisted to give more people bail more often when it makes sense. I am happy to answer any questions that you or the team may have on these or any other aspects of our submission.

The CHAIR: Thank you, Kevin, and thank you, Paul. That was really interesting. How many bail justices are there in Victoria?

Mr MACKIN: Great question. There used to be about 420 or something like that. They sort of dwindled. They were allowed to dwindle down in numbers over many years. Prior to Bourke Street there were 250-odd; after Bourke Street we lost about 100, so we are down to about 105, 106 now, I believe. We did an analysis of what would be required to be able to have in-person hearings within a reasonable time at police stations all around, and we worked out we should have 500. Police did a similar analysis with a totally different methodology and came to the same conclusion. So we need about 500; we have got 100. Doing it all remotely is not the right answer. That is the key for that.

The CHAIR: I totally understand that, Kevin. As an organisation, are you concerned by the levels of remand? We were just looking at the stats and the number of people who are refused bail, so they are remanded and they are released on sentence served or sometimes even without sentence, so they have actually spent weeks incarcerated which they would not have. Is that something that concerns your organisation?

Mr MACKIN: Well, as an organisation but also as a member of the community, having people held when they do not need to be is a significant concern. When it is because of a systematic process that they have got no control over and it is none of their fault, then that is very problematic.

We—most bail justices—attack any situation with a bail hearing to find how they can bail. We are called 'bail justices', not 'remand justices'. So we are trying to find ways to do it, but very, very often there is just not any support or infrastructure or anything where you can reasonably take the risk to let somebody out, and you have to protect the community first. We had a situation over last Easter when a child was remanded on the Thursday night. Now, the Children's Court did not sit until the following Tuesday. That child would have been in Parkville for five days. Thankfully, the commissioner for youth justice just stepped in and had the after-hours remand court look at the case on Saturday morning and release the child on bail. But there was no opportunity for alternative strategies to be put in place over that particular time.

The CHAIR: Can I just get an understanding? I am thinking about those remote areas, so Warrnambool police pick up someone, they have done the wrong thing. How does the bail justice get involved in that circumstance? Are the police compelled to ring you?

Mr MACKIN: Always the police have the opportunity to bail. If police choose not to bail, if it is a child, a First Nations person or a person that flags as having mental health or cognitive challenges, police must seek a

bail justice. That cohort has the opportunity for a bail review. With many police stations—Warrnambool you mentioned; Warrnambool is one that has reasonably good coverage of bail justices, but for others the bail justice might be an hour or two drive away. If it gets too long, that is when perhaps a remote hearing might be suitable if the person is suitable for a remote hearing. It has to be a marriage of both things. But it is becoming more and more difficult to have coverage, particularly of all the regional police stations, with the small number of bail justices that we have got available. When we were back up around 400, 500 BJs—bail justices—the coverage was a lot better, but since it has dropped off it is not as good as it needs to be.

The CHAIR: Yes. Who is responsible for recruiting bail justices?

Mr MACKIN: The Department of Justice and Community Safety.

The CHAIR: Okay.

Mr MACKIN: They are in the process of recruiting another 75 as we speak, which is fantastic and we are really glad to see that, but they need 300 or 400 more.

The CHAIR: Yes, that is right.

Mr MRACEK: Just to add to that, it has to go into the budget. The budget is required for that to be added in before they can do the recruitment for it, so they have to make an analysis of how many they believe an area requires and then make the budget. Once the budget is approved, then they can go and look and search and get appointed.

The CHAIR: Okay. Do you know if that budget process has occurred? For that 75 it has, but—

Mr MRACEK: Yes. The May budget allocation was for 800 more JPs over the next two years and another 75 bail justices over the next two-year period.

The CHAIR: Terrific. Thank you. I have one other question, but I will come back. Tien.

Dr KIEU: Thank you, Chair. Thank you, Paul and Kevin, for your assistance today and also for the very important work you and all the people in the bail justice system are doing. Coming back to Paul's remark just now, my information is that the budget has committed to a 60 per cent increase in the bail system, but maybe it takes time to roll out. And connected to that, I like to move into the technology. First of all, it is about online hearings. As we are now doing things online and we are coming out of the pandemic, I cannot see that we will be totally face to face or in person—there will be a mixture, or a hybrid system, particularly for bail hearings. We have a relatively big state—not as big as Western Australia, for example—but with the distance and the speed that need to be covered, sometimes bail hearings need to be in the middle of the night. And also the workload given the number of bail justices is not enough in the sense to cover every corner of our state. Why do you think that online hearings are not good for bail hearings, and what would you think about a hybrid system going forward? I have another question about technology, but let us hear your comment on this first. Thank you.

Mr MACKIN: Certainly. Thank you for the questions. Great question. Certainly remote hearings have a place—online hearings have a place—in the solution, and as a hybrid model that would be absolutely perfect. But my team's position and the feedback that we are getting from a lot of the bail justices is that an in-person hearing has a much better opportunity to have a good discussion and know what is actually happening not only with the person but around the person. The level of communication is much better face to face, so the chance for a successful outcome is stronger. Some of the research that is coming out of the US and Europe is underpinning that, and I am happy to share that with you. Our position very strongly is that the first preference should be an in-person hearing, if that is possible, in all cases. And then the remote hearing, the online hearing, is a fallback. We are quite happy with that approach, because you are then balancing how long it might take for a bail justice to drive 100 kilometres to go somewhere and the time that that person is held unnecessarily against the reduction in quality of the hearing. So it is a very fine balance.

For example, I live in South Gippsland. I do a lot of hearings towards Morwell, Traralgon and Sale. That is an hour drive for me to go there. I will more than happily get in the car and do that if there is an opportunity for me to release a child on bail—more than happy to do that. I do that at my own expense, I do that in my own time

and I do that at 2 or 3 in the morning, through the rain, hail and sleet, over the mountains. That is fine; happy to do it. If that child is communicative and we could have that discussion face to face on the computer and I could get a sensible interaction with them, it might be a quicker, faster result. More often than not, though, I am dealing with a child that has already been held by police for a number of hours. They are stressed, they are tired, they have had enough. I tried to do a video hearing with a young girl—she was 14—huddled up in the corner of a concrete cell with a blanket over the top of her head. If you are trying to do that by video, it is impossible. If you are face to face, you can move around and get in her line of sight and start to try and break down the communication barrier and develop some rapport and some discussion so you can see where this kid is really coming from, not just get grunts from a bundle of blankets. In that particular case I said, 'No, this is not working. I'm getting in the car. I'll be there in about 45 minutes', and we did it in person. I was able to break down that barrier and have that discussion. So I think that is a better solution. My worry is that people will think, 'We don't have to have 500 bail justices. We can get away with 100 or 200 and we'll do the rest by video'. That would be a very, very poor outcome.

Dr KIEU: Yes, I totally agree with you that we have to be able to have in person as the situation demands rather than as a uniform approach and not individualised.

I move on to the next question. I have a science background, and I am not proposing this, but you mentioned that at a bail hearing you have to make a decision, and that is essentially a risk assessment. The risk assessment is very difficult because there are competing demands, and also it is very complicated because there could be many, many factors in that. There are some studies at universities and elsewhere where people have been talking about using some artificial intelligence or something to help the judicial system. I do not know whether you are aware of that, but it is just top of my mind now. It may assist, for a bail justice in particular and in other circumstances, to take into account so many and such complicated factors in order for you to make a human decision in how to argue for or how to make a decision yes or no for an application. What do you think about that? Any comment on that?

Mr MACKIN: Sure. So I do not have a science background, but I have worked in the IT sector for 40 years and I was aware that there were moves down this path of providing tools to bail justices to help support the decision-making process. Provided those tools were developed with real-life bail justice input into making them useful and providing valuable outcomes and did not end up having a guy sitting there tapping away on a computer when he should be listening and watching and learning, I think they would be incredibly valuable. We would be very, very supportive of working with whoever we needed to work with to explore how that might be used, and our people would be very receptive to it.

Dr KIEU: Yes. I mean, I think this sort of intelligence has limitations. Despite what people say, it is actually not generally as intelligent as and does not have the emotions of a human or to the standard of a human being. But it could be of help.

Mr MACKIN: It is starting, and it is good to be in on the ground level of that stuff and help input to it rather than just taking what has been given. So I would be very happy to be part of that.

Mr MRACEK: Can I just add two points?

The CHAIR: Yes, sure.

Mr MRACEK: One is that having a blank system and I think a hybrid approach is correct, which is what we have actually proposed back. It is pointless asking for a remote session if a person lives 5 minutes away from the police station and it takes you 40 minutes to organise a remote witnessing when the BJ can be there in 10 minutes. On average it is taking them 30 to 40 minutes to get the bail justice remote hearing system working with all the paperwork. So it is a matter of having a commonsense approach and saying that if it is going to take you half an hour, or in excess of that, to organise to get someone in the greater Melbourne area, then you do remote. If it is going to take you more than an hour regionally, then you do a remote. Otherwise the person can get there. It is something that is reasonable in terms of practicality for people, and it makes far more sense. We have proposed that. It is not getting much airplay.

The second issue is—I am an engineer by profession, so I like statistics—if you are saying that they have increased the number of BJs by 60 per cent, that is based on 100. We used to have 400, so 75 on 400 is more

like a 25 per cent increase, not a 60 per cent increase. So it just depends on where you start in regard to how you start doing the statistics for that.

Dr KIEU: That is the number I have been given. I am happy to check that.

The CHAIR: Yes, that is right. Tania.

Ms MAXWELL: Thank you, Chair. Kevin, Paul, thank you so much for being here today and for providing your submission. I just wanted to go back to the after-hours bail support as part of the CISP. As you were saying, none of these services are available after hours. Would it be beneficial if they were?

Mr MACKIN: Absolutely. It would give us more opportunity to bail. If there was a possibility of putting a child somewhere other than Parkville, I would take that almost every time. If I could put a child into secure welfare by decision rather than having to go to youth services and beg and try and cajole and convince them that they should—and they may or may not have a position available for that child—then I would do that before sending them. I have been to Parkville. I do not wish it on anybody. So anything that we can do to save somebody from going to Parkville or staying in the police cell overnight—and this is the whole thing: people say, 'Oh, it's only until the magistrate's available'. Well, in Melbourne that might be the Bail and Remand Court the next day if it is on a weekend. In the country it might be three days away. If you are a child, it could be till the next time the Children's Court sits. Taking somebody's liberty away, even overnight, should not be treated as something we do off the cuff, yet we do it all the time. Because bail justices now do not do bail hearings for the rest of the community, everybody else just gets to sit in the cell overnight waiting on a magistrate to be available, and that is appalling.

Ms MAXWELL: Do you have access to prior offending?

Mr MACKIN: Yes, we do, absolutely, and it plays a very important part. Of course you do not go back too far; people have the chance to change. But if it demonstrates a pattern—so if I see a pattern of somebody who does not come to court, the chances of giving them bail are reduced a little bit. If I see a pattern of offending with knives and guns and stuff like that, then that is a high-risk red flag. If I see a pattern of people, kids, doing dumb, silly things and they just happen to be the one that keeps on getting caught all the time, you have a totally different view. But yes, we do.

Ms MAXWELL: And what alternative do we have for young people in resi care who at times will abscond and commit crimes? The alternative seems to be to take them back to that very resi care that they are leaving from. Now, we have heard a lot through this justice inquiry about more therapeutic approaches in residential care, which I think is absolutely necessary, but if you are in your role and you have got a child in front of you from resi care, what other alternatives do you have? Because the options seem very limited and do not seem conducive to good outcomes either way.

Mr MACKIN: Thank you. That is a terrific question, and it is one of the hardest parts that we have to live with after we have made a decision. I will give you an example. I had a 14-year-old boy. I had seen him three or four times. We were on first-name basis. He was a nice kid, actually. So he was back in the resi care facility, and in the backyard there was the lawnmower shed and the lawnmower and there was a can of petrol. And he took the table tennis bats that they had been using to play table tennis, and he went out and poured petrol on the table tennis bats and set them on fire—and he was running around the backyard going 'woo-woo-woo-woo' with them. I have done stuff like that as a 14-year-old.

There is no opportunity within the resi care system to deal with that activity. Their only opportunity is to call police. So they call police. Police come in and charge him with arson. He is already on four counts of bail for other silly things. Now he is facing a charge of arson. What are the chances of him reoffending? It is not something that as a bail justice I can address in a half-hour or hour hearing overnight, but there has got to be a way to break that nexus and do something that will help him get along or at least recognise that what he has done is just normal 14-year-old silliness, not a vicious crime—arson, for God's sake. I bailed that kid by the way and sent him back there. The alternative? I do not know. But resi is tough, and the problem from a bail justice point of view is there is no alternative to resi in that short-term space that we are dealing with at the pointy end.

I had a child that had a problem with the resi worker, and it was clear, absolutely clear as day to me, that if I sent that child back to the same facility, the chances of the child reoffending were high. I said, 'Well, I would like this child tonight taken to a different facility', and there was nobody available that could make the decision and to facilitate for that child to go to a separate, different residential care facility. The people do not have the resources and tools and stuff available after 5 o'clock and through till 9 o'clock the next morning. I tried to make something happen the next day by writing some notes and stuff. We do not have the ability to follow up those things—so, little things like that.

The Central After Hours and Bail Placement Service—we call them CAHABPS; I do not know if you have come across them—are absolutely wonderful people. They work really, really hard and do a great job, but they have no tools. They do not have the ability to do anything. For starters, their service shuts at 3 o'clock, so they cannot provide any support for anybody after 3.00 am. So after 3.00 am there is nothing to support the child. They are at the whim of what may or may not be available. They cannot say, 'Okay, we'll put a social worker with this kid in a hotel room for a few hours until we can get them in front of the Children's Court', which might be a really good, viable option. If you have got two kids in a resi facility fighting, you have to get them apart. I would be happy to sit there and sign an order to go and put them in a hotel room with a social worker. But they cannot do that, from what I understand. I might be wrong, but I have not been able to find a way to do that stuff.

Ms MAXWELL: And I guess the first question would be: whose responsibility is it to pay for that? That should not have to be a consideration, but ultimately it will be.

Mr MACKIN: Thankfully it is not my consideration, although I think at the end of the day I end up paying for it one way or another. And I am more than happy to if it gives the kid a chance. People with mental health are the same. You release somebody that is having some mental health challenges in the middle of the night, they go to the hospital—or you send them off to the hospital—and that is a revolving door, and they are out on the street again doing the same thing. So what are you going to do? It is tough.

The CHAIR: It is a good segue. I have been looking at the department's submission. Now, they are saying that 42 per cent of people entering the Victorian prisons report a chronic condition or disability. A third of them have a mental health diagnosis. So if that is when a bail justice should be brought in, that is a significant number of people in our justice system, and I cannot see that that is being reflected. I am just wondering: how do the police make that assessment of whether that person fits into those confines of 'First Nations person', 'child' or 'person with mental health or disability'.

Mr MACKIN: I cannot speak for the police. I can say that from our point of view if somebody flags on the police system as being a First Nations person, then I accept that they are a First Nations person. Funnily enough I have a habitual question when I am talking to First Nations people just to break the ice and create some rapport. I will often say something like, 'Which mob are you with?'. I had a young lady say, 'I'm from the Truganini mob', and I said, 'I thought Truganini was the last of the full-blood Tasmanian Aboriginals. She died in Victoria. That's not a tribe'. And she said, 'Isn't it? Well, my boyfriend's Aboriginal'. And that was enough for her to be flagged as an Aboriginal person. I treated her that way anyway, because it is there, and that is fine. So 'I do not know' is the answer to that, I am sorry, Fiona.

The CHAIR: It would just seem to me that you would be hearing a lot more cases—

Mr MACKIN: Absolutely we would be.

The CHAIR: just looking at the numbers going through. But is probably more of an observation. Tien, did you have any further questions?

Dr KIEU: Yes, I have a quick one. You mentioned that the honorary bail justice people no longer have judicial immunity and only personal liability. How did that come about, and does that have anything to do with your thinking that moving from the honorary system to the CALD services would lead to better outcomes in decision-making?

Mr MACKIN: Sure. Thank you for the question. Up until 2014 bail justices in the bail justice system, which has been around since the 1980s or 90s—a long time—were under the *Magistrates' Court Act*. And under the *Magistrates' Court Act* both bail justices and justices of the peace were covered with judicial

immunity the same as magistrates are. When they drafted the *Honorary Justices Act 2014* that immunity was changed and replaced with what we have at the moment, which is the protection from civil liability. Nobody picked it up. We did not know about it. Bail justices were still being trained in 2016 that we had the same protections as a magistrate.

It was not until the Bourke Street case, when a bail justice's credibility was called into account and he was thrown under a bus, that people started to look at it and we looked up the legislation and said, 'Hang on. This is not what we understood. It's certainly not what we had been told were the conditions that we were doing our stuff under'. We have been advocating since then for the reinstatement of judicial immunity, because we are making the same decision as a magistrate; we should have the same protection. What the learning of that is is that if it all blows up and goes wrong, it is possible that an individual can get thrown under the bus, and it comes into your mind as a personal risk in making a bail decision. 'If I get this wrong, people may well just throw me under the bus like they did the last time'. It does play on your mind. We lost nearly 100 bail justices after that event in Bourke Street because they were not happy with the way the BJ was treated and the way the whole thing was just a nightmare for them. And that poor guy is still going through trouble.

The CHAIR: Yes. It is a very important issue. Welcome, Kaushaliya, but we are saying goodbye to our witnesses I am afraid.

Ms VAGHELA: Sorry about that.

Mr MACKIN: It was really good. You should have been there.

The CHAIR: That is right.

Ms VAGHELA: I know. I know. Sorry, Kevin.

Mr MACKIN: It is all right. It is not a problem. If any questions come up out of what you have read, do feel free to give me a call. I would be happy to clarify for you.

The CHAIR: Thank you, Kevin. I must say I took note of your recommendation around—actually we took note of all of your recommendations but certainly that one about recording the bail hearings I think is pretty important.

Mr MACKIN: It goes hand in hand with the lack of immunity. Now we do not have immunity and, 'We are going to record everything that you say and do from the minute you walk into the police station, and everything will be okay, don't you worry about it'. It is scary—scary.

The CHAIR: Absolutely.

Ms MAXWELL: Sorry. How does that work if you have to do that from home because there is a confidentiality issue?

Mr MACKIN: That is one of the questions that our people have raised. I mean, if you are on the computer, that is fine, as long as your family is not sitting around the corner listening to what is happening. But it also goes the other way. If you are in a police station and you are recording and two constables are talking about what they did with the last guy, over in the corner, what happens to that? Or if they are talking about the party they had the night before and how they had too much to drink? I don't know. It has got hairs all over it, that thing.

The CHAIR: Thank you, again, very much. We really appreciate the work that you do, but we really appreciate the time that you have taken to provide a submission and the time you have taken to speak to us so openly and candidly. It has been great.

Mr MRACEK: Thank you.

The CHAIR: You will receive a transcript of today. Please have a look at it, make sure we did not mishear you or misrepresent you, and ultimately that will go up on our website and will form part of our report, which will be released—if all things go to plan—at the end of February. Thank you.

Mr MACKIN: Fantastic. Thank you for the work you are doing too. This is great. We appreciate it.

Witnesses withdrew.