



LEGISLATIVE COUNCIL  
LEGAL AND SOCIAL ISSUES

---

Inquiry: Inquiry into Victoria's criminal justice system

Hearing Date: 6 September 2021

Question[s] taken on notice

Directed to: Dr Natalia Antolak-Saper, Australian Centre for Justice Innovation, Monash University

**1. MS WATT Page no. 50**

**Question asked.**

Do you have any recommendations for us on programming for people in remand at all? I noticed from your presentation there was not anything in there about, particularly, rehabilitative programs for people on remand, and given that is such a big cohort I just wonder if you have any to share with us.

**Response:**

Thank you Ms Watts, for the opportunity to expand on recommendations for programming for people in remand. I will address this question under the following headings 'Expanding rehabilitation programs' and 'The use of technology'.

**Expanding rehabilitation programs**

In recognition of the fact that remandees have access to a narrower range of rehabilitation programs a key recommendation is to expand those programs that address criminogenic needs by:

1. Developing and implementing a broader range of psycho-educational programs for remandees. For example, in South Australia the Department of Correctional Services designed and implemented innovative psycho-educational curriculum which increased 'individual's openness, motivation and readiness to engage' which in turn increased individual 'resilience and problem-solving abilities' (Woldgabreal, et al 2020, *Advancing Corrections Journal*).
2. Expanding access to the range of existing rehabilitation programs by allowing remandees to volunteer for participation in rehabilitation programs that are otherwise limited to sentenced prisoners.
3. Strengthening existing rehabilitation and reintegration services through the expansion of pre and post release treatment programs. Experiences from overseas jurisdictions consistently demonstrate that a focus on these stages helps to reduce re-offending. For example, in New Zealand a program called 'Out of Gate' collaborates with community-based organisations to



provide individual support to prisoners serving short sentences or remandees who are on remand for 60 days or more. The program is designed to help remandees or prisoners access post-release support in the community with a focus on rebuilding skills that will assist in obtaining employment, accommodation, education and training, and through the provision of tangible things such as ‘a place to live, a job, identification and a bank account, and connection with family and community supports.’ (Out of Gate, 2016, *Budget*). Participants who engaged with Out of Gate had their rate of reconviction reduced by 9.5%, and their rate of imprisonment reduced by 17% (when compared with those who did not) (Out of Gate, 2016, *Budget*). Such reintegration initiatives with community/government partnerships should be increased with a focus on post-release employment, education and training pathways.

### **The Use of Technology**

Being placed on remand is disruptive and may result in loss of connection with family, community and abrupt cessation of treatment programs. Technology, and the way in which it has been adapted during COVID-19, provides an opportunity for a reconsideration of the way that remandees and prisoners access technology while in custody. For example, during COVID-19 some overseas jurisdictions replaced in-person visits with video visitation, whereas others provided online access for training and education. Without replacing face to face interaction, such initiatives could provide additional opportunities for remandees and prisoners to have an ongoing relationship with family and community, and may provide an opportunity to access a broader range of training and education programs. In addition, technology can facilitate ongoing access to existing rehabilitation and treatment programs or to continue existing relationships with health care workers, such as counsellors, or social workers.

## **2. MS WATT Page no. 49-50**

### **Question asked.**

To provide a copy of the report sent to Australasian institute of Judicial Administration (once published).

### **Response:**

Thank you Ms Watts, for the opportunity to provide a draft report of the report entitled Unrepresented Accused in the Magistrates’ Court of Victoria, funded and published by the Australasian Institute of Judicial Administration. A published copy will be provided to the Committee once it is available. The following provides a summary extract from the report (with footnotes omitting) which highlights some of the key findings:

‘Consistent with the limited literature available, and the estimates of magistrates who were interviewed for this study, we found a large percentage of unrepresented accused, approaching



almost 50%. However, what the data also showed is the importance of examining in more detail the nature of the proceedings. For example, lack of representation was much more common in the initial stages of proceedings and in relatively minor matters, whereas an accused was more likely to be represented in more serious matters. Our observation study, which was limited to mention courts in the Melbourne Magistrates' Court, will therefore reflect different levels of representation compared to, for example, contested hearings. Similarly, when interviewed, magistrates were speaking about the full range of their experience, and therefore estimates of the prevalence of unrepresented accused understandably vary. Nonetheless, it is clear that magistrates encountered unrepresented accused frequently, and all considered that they presented some additional challenges compared to represented accused.

Contrary to expectations, we found that the observed matters involving unrepresented accused did not take more time than those with representation. Quite the opposite, matters involving represented accused took significantly longer on average, than with unrepresented accused. Consistent with findings in earlier studies, the majority of matters observed were very brief, with 50% taking 4 minutes or less. Again, it was important to consider the nature of the proceedings. While there was in effect no difference in the average time taken for adjournments and applications, there was a significant difference in relation to pleas. In other categories there were insufficient data to draw a conclusion either way.

These findings were contrary to the experience of magistrates who overwhelmingly considered that matters involving unrepresented accused took longer than represented matters. The main reason for this perceived difference was the time taken to assist an unrepresented accused. The length of time may also vary with the seriousness of the proceedings, and whether it is contested. A number of magistrates commented on the fact that unrepresented matters are not necessarily legally complicated but take longer due to management issues. This can be exacerbated where an accused has a substance abuse problem, mental health condition, or language difficulties. Although matters may take longer to explain, it may be that the answers from an unrepresented accused are not as comprehensive as those from an accused with representation.

...

... there are numerous suggestions for measures to address the challenges of unrepresented accused, many of which were endorsed by the magistrates interviewed. Beyond changes to legal aid eligibility, these include the provision of practical self-help material to unrepresented accused, a focus on assistance being provided at an early stage to facilitate the timely resolution of matters, and the role of duty lawyers. Unrepresented accused also have an impact on broader questions of case management. In particular, the prevalence of adjournments was described in an earlier study as "perhaps the most substantial problem increasing the overall workload demands of the criminal list."

There is extensive literature in the civil context looking at measures put in place to assist self-represented litigants. There is clearly a need for research focusing on those measures that are in



place for unrepresented accused in criminal matters, evaluating their effectiveness, and proposing further reforms based on a clearer understanding of the problem.

Finally, while the focus on unrepresented accused is often on the time taken in court, it is clear that the challenges they face may arise much earlier, and have ramifications which then flow through to the court room. It is therefore important to remember that “identifying solutions and implementing them is best done in a systems/holistic approach, one that explores the potential influence of all court participants at all stages of the process.”