LAW REFORM COMMITTEE

Inquiry into Administration of Justice Offences

Melbourne – 24 November 2003

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Witnesses

Victor Stojcevski, Victorian Legal Aid

The CHAIRMAN - I think we might start. First of all I think we should welcome our witness today, Victor Stojcevski from the Victorian Legal Aid body.

Welcome to this inquiry, Victor, and can I indicate that our work is covered by the Victorian Parliamentary Committees Act. As such any evidence you give is subject to Parliamentary privilege and all the privileges that go with that.

The inquiry is in relationship to administration of justice offences - any evidence that you give us today you will get a copy of the transcript. You will have an opportunity to review it and to make any corrections that you believe are necessary to the transcript. It will then be published on our website and be available in written form. So thank you for coming along.

I think I have introduced all my colleagues to you so we will not go through that process again. Perhaps if we start off working sequentially through your submission and starting off with perverting the course of justice. In your submission you indicated that there were a number of specific offences which exist, particularly in the New South Wales and Queensland Codes which the VLA indicated that it opposed the introduction of more specific offences.

We have received other submissions which have indicated that broad and vaguely defined offences which people aren't necessarily aware of the full implications of in advance are not desirable and that in fact there should be some more specific clarification.

What is your response to that and what view do you take in relationship to that response which says that specific offences should be more knowable and accessible?

Mr STOJCEVSKI - Well, the general approach that we couch in our submission is that the current common law offence of perverting the course of justice should be legislatively rendered. So that is the basic sort of platform we go under.

We think it is then unnecessary to list six, seven, eight specific offences to try and capture narrow and prescriptive fact situations or behaviours that may arise. We think that such an approach will not effectively capture all those situations and we think an appropriate legislative rendering of a general offence with appropriate definitions would be sufficient to capture enough behaviour.

The other argument against rendering a lot of specific offences is that such explicitness will not necessarily aid in understanding the offence. Similarly rendering a general offence will not then suggest that there won't be any interpretations of the general offence - that there will not be some sort of judicial interventions in what specific meanings and situations apply to the offence.

So for example concealment, if we have a specific offence on concealment, there will be a common law established about concealment. If we have a specific offence about fabrication or falsity there will be a common law established about that. So we don't want myriads of common law. Well we do have myriads of common law but I think we don't want to encourage word plays on where falsity finishes, where fabrication finishes and I think the simplicity of having a general offence, “attempting to pervert,” that captures those sort of situations and says in the actual legislation it may involve X, Y and Z. I am not a parliamentary draftsperson but I am sure something like that could be done.

I guess the other point to make there is I think it is a fairly accepted position that no unprescriptive provisions should be avoided in favour of general provisions. I know giving evidence to the Scrutiny of Acts and Regulations Committee, some of their reviews, the Vagrancy Act and the Summary Offences Act, they postulated a presumption against the listing or itemisation of specific offences where it could be caught within a general offence and we think that is a good approach and certainly an approach that many legislators have adopted.

The CHAIRMAN - So would that then lead into your rationale in relationship to a specific offence for threatening witnesses. Are you saying well look, that in itself is not sufficiently covered by the general offence and that's why you - - -

Mr STOJCEVSKI - That's right, yes. I think where we did itemise a couple as we thought that there would be greater practical significance for those, either because the idea of the course of justice as enunciated by Rogerson might not be applicable in certain circumstances and I think that comes into reprisals particularly.

Mr LUPTON - Is that the point after the trial is over?

Mr STOJCEVSKI - Yes, yes. And where certain other third parties are brought to bear on a situation and I think they might be outside the context of administration of justice. It might be a complex set of events and we felt that those situations should narrow the specific offence and that's only just going on some of the collective wisdom of some of the criminal lawyers back in the office and threatening behaviour is conduct that occurs regularly. You know, we understand that there is threatening behaviour.

Mr LUPTON - That can occur before the course of justice is concluded as well as afterwards, can't it?

Mr STOJCEVSKI - That's right, yes. In police investigations which are outside Rogerson.

Mr LUPTON - How do you see that working? Is it possible that a general offence might be capable of covering all of those things or do you think that a specific offence needs to cover matters that occur before the conclusion of proceedings as well as afterwards?

Mr STOJCEVSKI - No. I think the latter point. I think Rogerson is good law. I think the administration of justice begins where a court of appropriate jurisdiction takes the matter on. But where threatening witnesses can occur, like you said, before the administration of justice begins, reprisals against witnesses can occur after the administration of justice ends so that sort of phase of justice needs to be couched and witnesses need to be protected both before and after the administration of justice - - -

Mr LUPTON - You see that being better achieved by having a specific offence relating to witnesses?

Mr STOJCEVSKI - Yes, yes.

The CHAIRMAN - And that seems to also logically for you then extend to reprisals as well?

Mr STOJCEVSKI - That's right, yes.

Mr LUPTON - Threats or reprisals about witnesses at any stage of the process before or after.

Mr STOJCEVSKI - That's right, yes.

The CHAIRMAN - And do you have any reservations about that particular offence in the light of the Fingleton case?

Mr STOJCEVSKI - Not really, no, not really. I think it gained Federal attention because it was the Chief Magistrate of Queensland but I think as we say in our submission, such an offence should be there to protect witnesses and should be there to protect, you know, interpreters, our practitioners, other legal personnel and I think the fact that it was the Chief Magistrate of Queensland who was charged and convicted of the offence is really immaterial. I think the wisdom of the offence goes to the fact that the Chief Magistrate actually was a supporter and was involved in the drafting of the offence and I think it is good law in that respect.

The CHAIRMAN - OK. Just back on the threatening witnesses, it seems to me that that is something that is occurring in the course of the administration of justice, in the course of a court case. Why isn't that covered by attempting to pervert the course of justice?

Mr STOJCEVSKI - Why isn't it, well - - -

The CHAIRMAN - Yes, or why might it not be? Why would you - - -

Mr STOJCEVSKI - I think VLA's position is that it would be. I think threatening in the course of administration of justice would be and I think in terms of a general offence with appropriate definitions which might include but not be exclusive to wordings within the Act, threatening witnesses during the course of the administration of justice would be an offence attempting to pervert the administration of justice.

Mr LUPTON - You wouldn't need a specific offence for that then?

Mr STOJCEVSKI - That's what I'm arguing, yes.

Mr LUPTON - It's only after the course of justice is concluded.

Mr STOJCEVSKI - That's right.

Mr LUPTON - That you would need a specific offence and it would be - - -

Mr STOJCEVSKI - In terms of reprisals.

Mr LUPTON - In relation to reprisals specifically.

Mr STOJCEVSKI - Yes, but then threatening in the context leading up to the administration of justice, you would - - -

Mr LUPTON - If all legal proceedings were instituted.

Mr STOJCEVSKI - That's right.

Mr LUPTON - So if we had a general offence, it would cover any threats against witnesses.

Mr STOJCEVSKI - Per se.

Mr LUPTON - From the time that the proceedings were instituted to the time that they finished but any threats to witnesses before that or reprisals against them afterwards would need to be covered by a specific offence. Is that what VLA's position is?

Mr STOJCEVSKI - Yes, I think so. I think for the purposes of simplicity and for the purposes of saying that threats to witnesses should be discouraged, you really need the administration of justice type offence because it is larger than just threatening another person. It is trying to destabilise or, to use some of the common law, strike at the heart of justice in a particular issue.

So I think that that act ought to carry a more serious consequence than say a threat during police proceedings, during investigations where no administration of justice course has actually been enacted upon.

Mr LUPTON - You have had an opportunity to read the Criminal Bar Association submission, I believe.

Mr STOJCEVSKI - Yes.

Mr LUPTON - One of the points that they cover is that if such an offence about reprisals against witnesses was created, it ought to be limited to situations where no intent to pervert could be proved and the penalty ought to be less severe. Do you think that that's a valid point or do you have any comment about that kind of submission?

Mr STOJCEVSKI - Well, I think for reprisals the mens rea for such an offence is not in fact intention to pervert the course of justice. It is intention to harm another individual who is connected to the proceedings in some way. If that actually has had some sort of impact on the course of justice, I think that needs to be taken into account and probably would be taken into account in terms of a trial.

But I think the mens rea for that is in fact the intention to undertake harm on another person because that person was involved in some sort of legal proceeding so I think on that particular issue there is a different mens rea to the mens rea established for the administration of justice type of offences.

The CHAIRMAN - Can I just follow up this prior to judicial proceedings actually being on foot and police investigations because in your submission you affirm Rogerson and you indicate that interpretation of the course of public justice should not be regarded as being on foot until the jurisdiction of some court or competent judicial authority is invoked and you quote Rogerson with approval on that.

In relationship to this issue of threatening witnesses which you say should be a separate offence, do you regard that as being sufficiently covered by the Summary Offences Act. I just refer you to s.52A which is at p.70 of our discussion paper which says that, "A person must not harass a person because that person has taken part or is about to take part or is taking part in a criminal proceeding in any court as a witness in any other capacity" with a penalty of imprisonment for 12 months.

I suppose what I'm trying to get at here is we have got summary offences and obviously attempting to pervert the course of justice is regarded as a more serious offence.

Mr STOJCEVSKI - Yes.

The CHAIRMAN - Would you sustain that differentiation where there are police investigations which could include threatening witnesses prior to any actual court proceedings being on foot, would you sustain that distinction and the Rogerson type distinction in relationship to court proceedings?

Mr STOJCEVSKI - It strikes me that there probably is good reason to retain that distinction. I think harassment is of a different nature to threats.

The CHAIRMAN - OK. So you would still have a serious offence of threatening witnesses within the Crimes Act which would apply before or after judicial proceedings have commenced?

Mr STOJCEVSKI - Yes. And I think in terms of after it might apply in the context of appeals or retrials or anything like that. So I think that needs to - even though that might also be contained within the course of justice per se, but the fact that an appeal or a subsequent trial are events that may occur a number of years after one trial has ended, I think that is where the idea of threatening after the course of justice has thought to have been exhausted comes into it.

I think that the Summary Offences Act is probably of a less serious nature but I think we don't want to confuse harassment with threats where in serious criminal cases there might actually be a real attempt to upset the course of proceedings prior to the administration of justice taking place during the police investigations.

I have heard from our criminal lawyers that such activity does occur. People often in remand where there might have just been an initial hearing but police investigations are still on foot and threatening action is occurring - in that context.

The CHAIRMAN - Yes, sure. OK. Have we covered that point? Yes. We will move on to the questions in relationship to accessories and in response to question 23 which asks you whether the Victorian law should be amended to clarify the proof that the conviction of one person can, where relevant, be led at the trial of another person, you answered yes to that question and say in your submission it needs to be firmly established that an accused can only be convicted on evidence admissible against him or herself.

Could you just briefly outline for us the rationale for that approach because it does raise questions about whether it would make it even more difficult to prove one of the elements of accessory that a principal offence has been committed and just noting that the Criminal Bar Association came to an opposite conclusion in their submission. Do you have any comments?

Mr STOJCEVSKI - Yes. Well, I think the Criminal Bar Association submission was quite enlightening on this and this was one of the areas where they suggested some clear statements and reform was needed. I think they ended up suggesting that an exception to the general rule should take place. I think VLA is of the view generally that accepted rules of evidence in criminal proceedings and criminal investigations should stay as firmly in place as they can and I think exceptions to the general rule should be presumed against unless there's very good policy reasons for such an approach.

I think the policy reasons that we have for this offence don't necessitate that. I think the maintenance of evidence that only is allowable against the accused should remain intact. I think there is a lot of - I think we are aware that admissions made in custody, admissions made after custody and proceedings that might occur outside the course of a proceeding that is actually taking place against an accessory - throwing those into the mix I think would tend to lead to some sort of injustice against the accused.

I think the accused and the accused's representative should be aware and should be able to cross-examine and should be able to challenge those views that might be occurring outside of the course of a proceeding and the fact that they can't in this sort of offence would, I think, derail the ability of a defence to make an appropriate defence and I think is sort of against the grain of the common law and I think the policy reasons for that should not be approved.

I know the Criminal Bar came down with another conclusion but I think even they admitted that they did have some difficulty with such a conclusion and I think it is a difficult policy position but I think in terms of VLA's position, the only evidence admissible in court should be the evidence laid against the person and that the person should have every opportunity to challenge such evidence.

Mr LUPTON - You don't see any room for exceptions in particular cases?

Mr STOJCEVSKI - Well, there probably is room for exceptions in particular cases, but then the argument is where do the exceptions start and finish, like a more serious offence. There might be general public policy reasons to create an exception, but then we get other exceptions, and I think for the integrity of the law and for the integrity of some of the evidentiary processes that, you know, exceptions applying upon other exceptions is probably not an approach that we would want to go down in Victoria.

Mr LUPTON - You see the way the question was framed in the discussion paper where it says should the law be amended to clarify the proof of the conviction of one person can, where relevant, be led at the trial of another person, seems to indicate that we are being asked to consider whether there are circumstances where it may be relevant that that kind of evidence be admitted. That is what it makes me think about and I am just wondering whether that kind of approach to the question you turned your mind to or not.

Mr STOJCEVSKI - Yes, I think the sort of typical case, and I think it was broached briefly in the Discussion Paper, was admissions made during remand, admissions made against the principal, even after that person might have been acquitted of an offence, and I think VLA's view is that, given the complexity of some of the offences occurring and the increase in technology, both on the prosecution's side but also in terms of potential offenders' use of electronic forms of begetting criminal behaviour, I think trying to cast the net so wide and involve a whole series of possible assertions or claims that may have taken place outside of an offence, it just strikes me as being - if you start trying to conceive of every possible situation where that could occur and spell it out in the legislation, I think we're probably going to be finding ourselves in a bit of trouble.

I think for policy reasons of the common law, and there I am talking about the judge-made law, well in this situation for this reason the knowledge that a fact has come to light is material to the trial consideration, I think that is probably sufficient to leave it with the judges to make that call.

The CHAIRMAN - OK, and perhaps before we move on to question 24, just to - this is in relationship to knowledge or belief of the actual offence, you took the view that the law should require knowledge or belief?

Mr STOJCEVSKI - Yes.

The CHAIRMAN - And that it should not extend to knowledge or belief of a related offence, could you just outline the reasons why you took that view?

Mr STOJCEVSKI - Well, I think a couple of reasons why we took that view were- I think it is consistent with some other jurisdictions and it is certainly consistent with the common law position, and also trying to turn our mind to the fact situations. There are a lot of things, a lot of courses of behaviour now that occur in private situations. For an example, a partner's account has grown significantly in recent months because you have separate banking accounts, and you think well, that is a bit odd and I know such and such is involved in this but that is really a bit odd. Then creating or suggesting that that person, the wife or husband of a particular individual would then be liable for a criminal offence I think is probably a bit difficult to sustain, especially given the fact that a lot of activity does occur in private, and a lot of activity - on the one hand we have legislation really giving a new sort of emphasis to what is privacy, and how certain activities, documents, relationships are private.

So I think it is contradictory then to say well, people should really know what is the nature of that private arrangement, and I think you get away from that if you actually know - if the offence talks about knowledge of the principal offence, rather than related offences.

The CHAIRMAN - If I am hearing you correctly, that would suggest overturning well-established law as set out in s.325(1) of the Crimes Act. In your submission, you indicate in your answer there that you think the common law position should apply, but you do not elaborate on that, but it seems to me, at least in terms of looking at the Crimes Act, that in fact the legislature has taken a different view, and in fact said well, "Its knowledge or belief the principal offender would be guilty of the principal offence or some other serious indictable offence". You are arguing that should be repealed?

Mr STOJCEVSKI – No, I am arguing that - well, what we are suggesting is that the clause "or some other serious indictable offence" I think you should have knowledge of that principal offence rather than some other, so that the second clause - - -

The CHAIRMAN - Yes, that is what I am saying. I mean the current section says "or some other serious indictable offence".

Mr STOJCEVSKI - Yes.

The CHAIRMAN - What about lawful authority or reasonable excuse?

Mr STOJCEVSKI - That is right. But I think my reading of the common law, and certainly some of the other jurisdictions was that it is principal offence.

The CHAIRMAN - Yes.

Mr STOJCEVSKI - So the common law position is principal offence.

The CHAIRMAN - But not in Victoria.

Mr STOJCEVSKI - That is right, not in Victoria. And so the Victorian rendering is somewhat broader than is the situation in common law and in some other states.

The CHAIRMAN - And what would be the rationale for overturning s.325(1)? I mean can you give us any examples where you think that that has created problems in terms of defence?

Mr STOJCEVSKI - Well, I just think - I cannot give you examples, but I think the idea that charging someone based on knowledge or belief in a related offence probably is unrealistic in the sense that I think individuals tend to keep their behaviours and their conducts pretty individualistic - your banking accounts, what you do at work, what you do over the Internet where you have a password for this, a password for that, a separate PIN for this and a separate PIN for that.

I think individuals keep their behaviour pretty individualistic and if you were to broaden the scope of the offence to say well, if a person X had, six accounts, they were doing this, they had four PINs for doing that, you must have realised that this person was getting money from some sort of drug offending or something like that, and I think that is a bit of a stretch. I think if the accessory did in fact know that an account grew by $60,000 because person X told me that he was carrying the materials from the warehouse to another person's house, that is of a different nature. But because that person also had a windfall of $30,000 in an account that that person is not a signatory of, on an account that that person doesn't have the PIN number for, but that person happened to find a new television in their house on the Saturday, and then trying to tie those things together and saying well, you really should have known that that person was doing drug couriering or something.

The CHAIRMAN - So really you would think that that kind of characterisation would make it too broad and vague.

Mr STOJCEVSKI - I think so.

The CHAIRMAN - And start to catch things where people had no real knowledge of what is going on.

Mr STOJCEVSKI - That is right. Yes, and I think the point I was trying to make before is generally there is a sort of expansion of privacy discourse that people are becoming a lot more private in their dealings, people have separate bank accounts, people have separate PIN numbers, people have different ways of conducting themselves which just generally tends to be outside the knowledge of other persons.

The CHAIRMAN - In a way there is a similarity in the evidence you are giving with the Criminal Bar Association's position, that they seem to be saying that by putting in terms such as "related offence", it is difficult to categorise that kind of thing. You do not know quite where related offence begins and ends, so it is a difficult thing.

Understanding that point, you are actually going the other way though and saying that "other serious indictable offence" ought to be removed from the s.325.

Mr STOJCEVSKI - That is right, yes.

The CHAIRMAN - Why is it necessary to wind that back, in your opinion?

Mr STOJCEVSKI - Well, I think it is necessary to wind that back because as I am suggesting, it is probably too broad at the moment. I think the Criminal Bar Association, argued against "related offence", we argue against - the language of the legislation escapes me - but a serious indictable offence, and I tend to think that, unless a person is aware of the specific nature of the criminal activity that was engaged in, then that person ought not to be held legally culpable for being aware of such behaviour.

The CHAIRMAN - Are you able to relate to us any examples of that sort of situation arising under the current law that talks of other serious indictable offence?

Mr STOJCEVSKI - No, I am sorry, I not able to do that.

The CHAIRMAN - OK, perhaps we will move on. Can I direct your attention to question 37 in relation to duplicitous accounts in the context of perjury. In your answer to that question you state "The law should be amended to the effect that several false statements made under the same oath should constitute one charge of perjury".

The Criminal Bar Association in their submission indicated that the current law did not need to be changed and "that the good sense of the Prosecutor appears to be the best guarantee of a coherent charge being laid". Can you comment on your position and also have you got any thoughts on their view?

Mr STOJCEVSKI - I think generally the Criminal Bar Association does rely a bit heavily on the goodwill of its own membership in this respect. I think the view that Brooking put in *Hoser* where perjury occurs more than once they occur within - it should be one perjurious act rather than you perjured yourself here, you perjured yourself here, you perjured yourself here, you perjured yourself here. So I think prosecutors may in fact do that and I am unaware of how often that occurs and whether there is some sort of gentlemen's agreement among practitioners that that should be the case.

But I think that where there are duplicitous counts, rather than having alternative charges, that the view as outlined by Brooking in the Discussion Paper - and I did not prepare it for the answer - but I do recall him saying that, rather than itemising each of the perjurious statements in a sworn testimony, that that is one count of perjury and that should be the case.

The CHAIRMAN - Under oath.

Mr LUPTON - You have broken the oath is the essence of the charge, not each time you have said the false thing.

Mr STOJCEVSKI - That is right, yes, and I think that is the point that Brooking makes and I think that is wise, and I am not aware of the practices in prosecution but I think something like that probably does need to be explicitly said rather than relying on some sort of cultural practice that is undertaken by the prosecution.

The CHAIRMAN - Do you think that characterising it as Justice Brooking does would lead to one charge of perjury being laid for every alleged oath that was broken, so each actual time he was sworn in and gave evidence and it was perjured evidence, that would be one charge.

Mr STOJCEVSKI - I think that would generally be the case unless there were specific phases in the giving of the evidence, specific classes of evidence given. Evidence that might have been of a different nature.

The CHAIRMAN - Different nature, yes.

Mr STOJCEVSKI - But I think generally that would hold.

The CHAIRMAN - And within each class of evidence, the number of different times that you falsely answered questions would be evidence of the extent of the perjury?

Mr STOJCEVSKI - That is right.

The CHAIRMAN - Rather than producing continually more and more charges.

Mr STOJCEVSKI - Yes, of perjury, yes.

The CHAIRMAN – That would presumably make the hearing of perjury charges simpler to only have one charge laid, and then the evidence in relation to that would be the individual statements that were made.

Mr STOJCEVSKI - That is right, yes.

The CHAIRMAN - Dympna?

Ms BEARD - Victor, in question 41 relating to the low incidence of charges and convictions for perjury. In your answer, you say that the barristers and solicitors discourage witnesses from giving evidence where they believe they are likely to commit perjury. Could you elaborate on that answer please, and how does it follow from this that the incidence of proven perjury charges is not lower than the actual level of perjury being committed?

Mr STOJCEVSKI - Well, I think it is well established in terms of lawyers building up a case, that the legal profession relies on the parties to the case being honest to the legal profession, because there is a sort of acceptance that you do not have to tell your family what you did, you do not have to tell X what you did, but you need to tell me what you did, and we will present that in the best light. And I think that is a product of a good legal system in Victoria and a well respected legal system in Victoria, where barristers and solicitors do take very seriously their role as officers of the legal system, and I think the practice within the legal profession of informing witnesses that trying to falsify yourself on oath will not work - it is better to tell me the truth, tell me what in fact took place, and then we will try and work out a best case result for you rather than, well, rather than going down another path, and I think lawyers take that pretty seriously.

I think lawyers also understand that the health of the legal system to an extent rests on that, and it would not be very edifying for the legal system that they are a part of if there was high levels of perjury. It would certainly throw into discredit some of the practices of the legal profession, and I think the profession takes that seriously.

The CHAIRMAN - I think that somewhere you did indicate that an express warning to witnesses who do not fully appreciate the extent of their legal obligations, from the judge would be helpful.

Mr STOJCEVSKI - Yes I think so, and I think it is probably as important now given increasing numbers of culturally and linguistically diverse communities coming from different religious backgrounds, different languages. An oath or an affirmation might not have the same resonance for a person of a different religious background or a different linguistic background as it probably would be for a person for whom the Evidence Act was created in 1958, the sort of typical Anglo-Saxon male involved in the justice system. So I think for agnostics and atheists as well, I think witnesses need to be made aware that this is a very serious situation. If an oath or affirmation does not distil that for the witness then probably an explicit warning would distil that. And I think the justice system owes that to itself that this is a very serious proceeding and that false evidence given here will be treated seriously and you may well find yourself back here.

Mr LUPTON - Let the record show - - -

The CHAIRMAN - - - -where you stated that the offence of perjury should explicitly extend to interpreters and we had a rather interesting discussion with Legal Aid in Queensland who took the view that they really thought that in relationship to interpreters the law of perjury was adequate, certainly within their code, to cover interpreters. Could you just elaborate on why you think that we need to explicitly extend the law in this area to interpreters in Victoria.

Mr STOJCEVSKI - Well I think - and I think it is also part and parcel of what I said to the former question about cultural and linguistically diverse communities. These communities are increasingly becoming part of the legal system. Their effective engagement in the legal system does rely somewhat heavily on the role that interpreters play there. I think interpreters - I think in terms of consistency, if we have got to include interpreters in terms of reprisals, if we have got to include interpreters in terms of threats which is what we say in terms of the course of administration of justice proceedings and threats, that all parties to the proceedings should be included, then I do not really think you can exclude them in terms of perjury.

The CHAIRMAN - I think the argument is whether or not they are already covered by the law. It is not a matter of excluding them but whether it is necessary that we include them.

Mr STOJCEVSKI - I think in terms of explicitly including them, I think it is worth suggesting to interpreters explicitly in the law that they are in fact part of the system.

Mr LUPTON - Would a way of doing that be to include that kind of warning in the oath or affirmation that was taken by the interpreter?

Mr STOJCEVSKI - Oh definitely. Yes, definitely. I think interpreting services are still a bit unprofessional. I have not done any research on this and I do not have an expansive knowledge of it, but I am aware that some interpreters, especially in communities that probably are not as established in Victoria as some other communities, an interpreting service can be a bit of a dodgy practice and I think there is a need to inform them and raise the standards in that respect somewhat. I think informing interpreters of their critical roles and their deviation from that critical role ought to be done.

The CHAIRMAN - All right. I think we have covered most of the areas we want to cover in detail and I perhaps should have given you an opportunity to talk generally to your submission at the beginning. So are there any particular things you would like to address around your submission? Or are there particular cases that VLA has dealt with which have brought into sharp focus for you aspects of administration of justice, offences that we want to talk about.

Mr STOJCEVSKI - I would like to say that it operates somewhat in the background of the discussion paper the codification versus common law sort of paradox, I guess. VLA does not hold a policy position per se on codification versus the common law as a general principle. But where the matter is relevant, and I think it is relevant to this class of cases, I think we tend towards codification rather than relying on the common law and I think that comes out in our submission. I think while we accept the literature that even codification does not do away with common law because you have judge made law interpreting definitions from time to time and scoping out behaviour that comes into the offence, we certainly think codification does create easier access, it may not be easy access, but it is certainly access that I think would be preferable in terms of going back to the administration of justice offence. If there was an explicit offence where there is a definition of what that means where a person could go to, where a person could go to the second reading speech and actually understand what is actually being intended here rather than trying to pull out a logic out of 100 years of cases and try and understand what the law is - I think that is preferable. So easier access.

And I think related to that ease of access is the idea of reducing the costs of justice and I think VLA takes that very seriously. In fact it's a statutory obligation of VLA in terms of how it undertakes its activities with a mind to making justice cheaper. So I think those two are connected.

And I think the other point that needs to be made, I know it was made in the discussion paper so I will not labour it, but I think in terms of the second reading speech and the intention of Parliament, it really does confirm the democratic nature of the law, that this law is something that does come out from the community at the here and now, rather than it being something handed down through the common law. I know the Criminal Bar Association's submission talked about there not being a need for reform and I think VLA tends to view it a bit differently. The idea is - if the Parliament chooses to update, clarify a particular series of behaviours within the community, then we obviously put our views. But that is a choice for Parliament to make and I think it is an appropriate choice for Parliament to make to clarify the law, because then it does go to affirming the relevance of the law in the community, and I think that is fair enough.

So while VLA does not have codification as a cause celebre in its activities, I think in this area of the law as the discussion paper points out very clearly and expansively, there probably is - there would be benefit from

legislatively rendering certain behaviours and definitions so that people are more aware of what those behaviours are and what those definitions mean.

The CHAIRMAN - Thank you. Are there any other final questions? Victor, if we have any supplementary questions that we might like to ask you in writing, would you be happy to respond to those?

Mr STOJCEVSKI - I would be happy to respond to those, yes. And if I am unaware of them in terms of actual cases on the ground I will refer them to the appropriate solicitor to help me out.

The CHAIRMAN - Thank you very much for attending today and giving us your submission.

Mr STOJCEVSKI - Thank you.