LAW REFORM COMMITTEE

Inquiry into Administration of Justice Offences

Melbourne - 24 November 2003

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Paul Coghlan, Director of Public Prosecutions

The CHAIRMAN - Can I welcome to the inquiry the Director of Public Prosecutions, Mr Paul Coghlan QC and his associate, Mr Bruce Gardner. Could I introduce to you other members of the committee, Mr Richard Dalla-Riva, who is a Member of the Legislative Council, Ms Dianne Hadden, a Member of the Legislative Council, Ms Dympna Beard who is a Member of the Assembly, Mr Tony Lupton, Member of the Assembly and Mr Noel Maughan. Can I also introduce Merrin Mason who is the executive officer to the Committee and Kristin Giles who has been the policy and research officer, legal policy and research officer on this inquiry.

Thank you for taking the time to talk to us. Our proceedings here are covered by the Parliamentary Committees Act which means that any evidence you give is subject to Parliamentary privilege. If, at the conclusion of your evidence, once we give you the Hansard transcript there are any corrections you wish to make, you may do so. Once that is finalised your evidence will be public and will be published on the Internet and available in written form.

Perhaps we could start off, Paul, by you talking generally to your submission. I think at the time of getting our material ready anyway, we did not have a written submission but I understand that you now have produced one. So you might like to talk in general to the question of codification or not and then perhaps go to the specifics of aspects of your submission where you deal with some of the major offences in relationship to codification and the common law and the MCCOC report. We will hand over to you and then we will come to our questions in due course.

Mr COGHLAN - Two aspects really. I suppose people who have practised in common law states have a reluctance to go down the codification path. Although codification of areas of the law in this state has produced probably different results. We have got codification of the common law as it relates to theft in those parts of the Crimes Act which we have now had in the Crimes Act for 30 years.

That was basically the adoption of the English Theft Act and most, but not entirely, the provisions that were brought in in England shortly prior to that.

They were necessary reforms, the old law of larceny had been difficult and complex. A fair bit of case law has come out of the modern provisions but it has, I think in general terms, been proved to be a workable set of provisions.

In relation to the sexual offences area, we have probably now had two different attempts at codification of the common law in 1981 and 1991 for practical purposes. By and large the provisions have proved to have been satisfactory but the judicial interpretation of much of the statutory provisions has kept in place a number of jurisdictions that might have been seen as part of the common law and much of that material is presently subject to debate in the reference of the Law Reform Commission presently has on sexual offences.

We have codified the law in relation to serious assaults by the creation of the offences of intentionally causing serious injury, recklessly causing serious injury and the corresponding injury offences together with a number of offences relating to the endangerment of life and endangerment of injury.

They have not been a happy set of reforms and in particular the distinction between intentionally causing serious injury and recklessly causing serious injury has proved to be a difficult and at times an almost impossible one. The distinction between something that is done with the intention to cause serious injury or done, intentionally foreseeing the probability of serious probability but going on nonetheless have not been easy concepts for juries to deal with and lawyers do not do much better. So they have not been a happy set of provisions.

Whether they are provisions originally intended recklessness to be recklessness as to the conduct rather than recklessness as to the consequences, I do not know that anyone any longer understands. So that is our most recent area of codification and I guess we do not like it much.

It did replace a series of offences, malicious wounding, intentionally causing grievous bodily harm and a number of other wounding type offences which probably needed to be tied up so that argument at the end of the day might not be whether it was necessary to have the reforms or whether we got the reforms right. So there will always be those debates about what needs to be codified.

In dealing with the offences regarding the administration of justice, they are not common offences and they are not offences in terms of the present state of the law with which we have much difficulty.

Dealing separately with perjury for a moment, in perjury we would see strong reasons to look at the possibility of an offence which of itself could chose the distinction between what might be the perjured version of events rather than the prosecutor needing to chose the one. So you have got two versions on oath, which one is untrue? Now, that is an offence that one must be and that can be made an offence and has been in some states and we have never had it in Victoria.

We would say that some people at least are not prosecuted for perjury in circumstances where you cannot make that clean distinction between the two, the two versions.

We do not see any particular need for reform or I suppose for reform that would be in quite as great detail as some of the questions anyway would indicate. And in any event, we would keep a general offence.

I think experience tells us no matter how carefully we try and work out every set of circumstances by which we think the course of justice as we understand it might be attempted to be perverted or perverted, the ingenuity of man is somewhat greater than that and we are bound to leave something out.

At the end of the day we would accept the view that it will not be for us to make the decision as to what the form would be. Our preference to be keeping it pretty much in the way that it is but being realistic enough I think to say that we ought not though ignore the matters that have been raised. So we have attempted, in the written submission that we have provided, to answer each of the questions posed by the Committee.

I was wondering which areas we might approach in - - -

The CHAIRMAN - Why do we not start with perverting the course of justice?

Mr COGHLAN - Yes.

The CHAIRMAN - Because you are indicating in your submission a preference or a disposition to stay with the existing common law in relationship to that offence. Now, we just had a previous submission by **Dr NEAL** who said that it is really not acceptable to have a situation where in relationship to a serious criminal offence, the elements or the requirements, the elements of the offence are not clear to any prospective accused or defendant and that in those circumstances if there is a serious criminal offence it is highly desirable for someone to know what the particularities of the law are.

I suppose the MCCOC report can be seen as an attempt to do that, to in fact say, "Well, these are the various specific offences under perverting the course of justice with which you can be charged which therefore make it clearer not only to prosecutors and police but also to the accused what the offence is that they are being charged with". How do you respond to that?

Mr COGHLAN - (Indistinct) at the Bar so we are pretty close and I suppose we have had a lot of debates about these sorts of things. On behalf of the Criminal Bar Association when I was still at the Bar, I responded to a number of the Model Criminal Code provisions.

I would not have, for my own part, have thought that there was such uncertainty about the crime of attempting to pervert the course of justice as suggested in that submission. I mean true it is that people might not be able to put a technical name on things, but if we are looking at people just trying to affect the course of justice, affect how the system works or whatever, there is a pretty firm understanding in the community by people that they know you are not meant to do that sort of thing.

The only area that you could look at that might create some doubt in people's minds is that in terms of the operation of the present law, you could almost certainly be guilty of the crime of attempting to pervert the course of justice by trying to get witness to tell the truth or to do what in your mind was telling the truth. Because we regard the system really so seriously that if somebody has made a statement to the police who is a witness in a particular proceeding, it is not for individuals to be dealing with those types of situations but if you have got a reason to believe the witness is wrong or the witness is telling the truth then it is a matter that needs to be taken up with the investigation agencies rather than you taking the law into your own hands.

That becomes one of the great difficulties I think about provisions for instance which would forgive reprisal in circumstances where it is an answer to perjury. Apart from the difficulties about who decides what perjury is in

any event the fact of the matter is that the system is, of itself, of such importance that even well motivated interferences with the system should not be tolerated.

They are all matters that will go to penalty at the end of the day but it is a question of saying either we operate a criminal justice system which is free from interference, totally free from interference even by well minded interference or not - - -

The CHAIRMAN - Yes, I do not think we have got - that is a question.

Mr COGHLAN - Yes.

The CHAIRMAN - But I suppose we are trying to weigh up whether we stick with a general common law offence or whether we seek to codify specific offences and there is a number of options presented on p.52 which you might just want to - - -

Mr MAUGHAN - Mr Chairman, just before we go to that if I may, just to follow - - -

The CHAIRMAN - Let me first finish this and then we will come back to that.

Mr MAUGHAN - Sure.

The CHAIRMAN - There are three propositions about the general approach to perverting the course of justice which are outlined in question 4 on p.52 of our discussion paper which basically go to abolition of the general common law of perverting the course of justice and replacement of specific offences, the intention of the general offence in trying the legislation and the enactment of specific offences or the retention of the current common law position.

The fourth alternative which has been put forward by the Criminal Bar Association is that you may have a general offence codified but with no specific offences enacted so I suppose that is the fourth one that has now been put to us. Do you have any particular views about those four options? The A, B and C and then I suppose the D is the Criminal Bar Association which is codify the current common law but just in general terms?

Mr COGHLAN - I think if we are going to go down the path of codification and we do not see any difficulty with codification to the extent of choosing a legislative form of a general offence, that is B in the way that it is expressed.

Not entirely sure, a bit like the Criminal Bar Association, whether that does need to be accompanied by individual offences. But whether that is absolutely necessary in my view that is questionable.

Mr MAUGHAN - I was going to ask, in your comments about the fact that in your view most people understand what perverting the course of justice is and given the general comments about how serious an offence that is, why is it the DPP did not proceed with the prosecution in the Debs case and does that not give a mixed message out there in the community that perverting the course of justice is a very serious offence but most people do understand what it is, is it not then up to authorities at whatever level to prosecute whenever there is a perversion of the course of justice?

Mr COGHLAN - I don't think I can speak about individual cases but I - - -

The CHAIRMAN - The more general question would be what factors do you take into account in determining whether to prosecute for such an offence. What are the things that you are weighing up as a DPP?

Mr COGHLAN - Well, starting off in accordance with the prosecution guidelines, reasonable prospect of conviction. So that is an evidentiary test, combined with whether or not the offence as it is constituted is made out by the evidence. Governed then separately by whether or not it is in the public interest to do so.

Without talking about specific cases, there will be cases that although satisfying the reasonable prospects of conviction test, might, because of what is involved in it and without dealing with the specific reasoning in the Debs case, dealing with the crime of assisting the offender, one of the things that would need to be proved in such a case is that the murder had been committed and by whom it had been committed and whether it might be any easier to prove it in the case against the assisted than it is against the principal.

If we go back, you could look at the reported case of Welsh on its own facts which I think is referred to in the materials dealing with s.325 that to prove that somebody assisted the offender, you would have to prove that they knew or believed the crime of murder had been committed and by whom and then assisted. You would have to prove the guilt of the person who they were assisting. That will not, incidentally, be solved by any provision we had that says you can lead the fact of conviction because that would simply become one of the evidentiary matters that was there.

There are a whole range of approaches that we would take but very few cases do not get prosecuted because of insufficiencies in the law and when such areas arise we do seek reform. We regularly make submissions to the Attorney General's department on any matter of reform that we think is necessary to bring about what we see as our understanding of the proper operation of the criminal law.

Mr DALLA-RIVA - Paul, I just want to go back to your initial discussion where you indicated that the Thefts Act was an introduction fundamentally based on the English law, 1972. That appears on balance from what I am hearing a pretty reasonable codification of the issues. Then you went on to the issue about the serious assaults and that in your view - I may be wrong but correct me, that you do not believe that that has been quite as clear cut in terms of where there has been definitions (indistinct) intentional, in relation to the various serious degrees (indistinct). Can I ask, was the serious assaults legislation brought about (indistinct) an equivalent codification from some other jurisdiction or was it an adventurous (indistinct) from the Victorian legislators to create a more (indistinct)?

Mr COGHLAN - It is sort of the latter except I do not think anyone would have regarded it as being adventurous. I think it was seen as a genuine view of tidying up a series of - again it would have not been thought to be clear provisions. In modern terms the use of expressions such as malicious wounding or wounding with intent or intentionally inflicting grievous bodily harm and so on or I suppose in a lot of places around the world even thought to have been ready for reform. We probably would have been the last place - or one of the few places that had that particular constellation of offences and it was taken on as a matter, I think, of reform. I do not think it would have been viewed as adventurous. It really just, as sometimes happens with these things, it does not work in practice.

Mr DALLA-RIVA - What I am trying to get though is it in codifying in particular law on administration of justice offences there has been some argument by other witnesses that we ought not follow other codes and we ought to go down our own path and I am just curious - I want to labour on English Theft Act that used to be less of a problem in the longer term for legislators and I may be wrong again, as opposed to where we have gone down the path of codifying the serious assaults where, as you rightly point out, there has been a significant problem with the courts and subsequent understanding by juries and others about what the definitions are. Had they actually perhaps identified other legislations in other jurisdictions then maybe we would not be down this path now on the serious assaults. Do you understand what I am - - -

Mr COGHLAN - Yes, I know. My general commitment - there is a point where I totally agree with David Neal that if in Australia we could go down the path of uniformity, it is the place where we should go.

We operate essentially nine different legal systems so in a sense there are lawyers who go from one state to another are really highly qualified labourers in a sense because you are dealing with different legal systems. We are getting better at adapting to other people's law.

The jury might still be out though on the Model Criminal Code but I think you will find in our written submissions in terms of saying, "If we're going to have statutory reforms, then we probably ought to do it in a form that's pretty much as other people have done it".

I would have thought the worst alternative would be to go out into the wide blue yonder and just have yet another version of statutory reform of these offences. I think we have struggled a bit here about whether we should take on the Evidence Act and it does not really seem though in the places that now have it, the Commonwealth and in the ACT and New South Wales, it has not exactly brought the world to an end.

Mr LUPTON - Yes, perhaps I would just ask in relation to the general offence and then followed by certain specific offences. It seems that if you were put to the task of selecting one of those with possible addition of the Criminal Bar's point of view, is there anything to be - I think you were saying earlier that what the Criminal Bar is saying is a general offence basically.

What do you see though as the pros and cons of actually setting out some specific offences that probably makes the thing clearer to people?

Mr COGHLAN - If that is what is seen as the effect of it, as I say I am not absolutely convinced of that but if that is what is seen as the effect of it then it is not necessarily all that undesirable.

Mr LUPTON - But on that point, let us take the Fingleton case where she was charged under a specific section of the Queensland code in relationship reprisals against witnesses. Now, there have been some issues raised about whether or not - there has been some controversy around it although when you actually talk to the people who were associated with the administration of law in Queensland and here they think it is fairly straightforward.

I suppose I just want to ask you the question, would it have been so straightforward here in Victoria if it was just the general offence of perverting the course of justice because in a sense you have had an Act that took place there that was subsequent to evidence being given which involved a reprisal. Do you believe that in Victoria it is generally well understood that perverting the course of justice also applies to reprisals against witnesses and would it have caused a similar, if not greater furore here in Victoria under that general offence?

Mr COGHLAN - I am not sure that it constitutes the offence.

Ms HADDEN - That is what New South Wales said.

Mr LUPTON - But it clearly - - -

Ms HADDEN - That is right, would not have charged - - -

Mr LUPTON - If the specific offence was not there, it is unlikely that there would be a conviction.

Mr COGHLAN - I think there are a whole lot of reasons about that. One of which is the nature of the evidence of the witness given in the proceedings that they had been given. Whether or not it was absolutely clear in Victoria that the interference with such a witness constituted an attempt to pervert the course of justice is questionable.

I do not claim to have looked at it in minute detail but I must say my reaction in reading it was at the time I am not sure this conduct would be punishable in Victoria.

Mr LUPTON - Without saying whether it ought to be or whether it ought not be, is that statement of affairs a reason for actually attempting to clarify the situation?

Mr COGHLAN - You might be able to answer it without deciding whether you want to punish it or not. I am not sure, that becomes the difficulty about that. But you see if the legislature decided that we did want to punish such conduct, then it is better to have done it by a clear provision.

The CHAIRMAN - Just referring you I suppose to p.80 where the case is discussed. It says, "Following an analysis of Fingleton's motivation for making the threat and other matters, the Court of Appeal held that on the evidence it was objectively open to a jury to decide that the appellant acted as she did with a view to punishing Mr Gribbin rather than resolving any difficulties supposed to exist between them of working together in performing their respective functions".

And then the court goes on to talk about the seriousness of the offence in handing out the penalty.

Mr COGHLAN - But I had in mind, you see, that whether or not an affidavit provided by a magistrate to a judicial committee would necessarily give rise to that being the course of justice as the other matter. If you are dealing with attempting to pervert the course of justice, was the mere fact of somebody providing an affidavit to a judicial committee reviewing a decision made with respect to another magistrate the course of justice? Not sure.

The CHAIRMAN - Do you think that she may have alternatively, in Victoria, been charged under s.52A of the Summary Offences Act which refers to harassing a person because the person has taken part or is about to take part or is taking part in a criminal proceeding in any court as a witness or in any other capacity?

Mr COGHLAN - Yes, well it might depend upon, again, what the nature of the - you see, that is criminal proceedings.

The CHAIRMAN - Yes, that was not a criminal proceeding.

Mr COGHLAN - So it was not a criminal proceeding?

Ms HADDEN - No, no, it was ICAC.

Mr COGHLAN - It was really the question of whether, in our terms, it was really a judicial proceeding if you like. I mean I would not want to be said to have been given a definitive opinion about that but it would be one of the things that would have been a serious consideration for us in considering the offence.

But in general terms, to ring - it was plainly open it seems to me for a jury, I think the Court of Appeal is perfectly correct in terms of their analysis of it. Something I do not necessarily always say about the Court of Appeal in Queensland.

Ms HADDEN - It has been said in - we have visited Sydney and Brisbane and it has been said in one of the states that codification of administration of justice offences is a prosecutor's dream. Although, having heard that comment, we also discovered that the incidence of prosecutions is very small in Queensland and in New South Wales as well.

I am wondering what would be the benefit of codifying it if it is going to make the offence clearer to people. It is not making it clearer because if it was then the convictions would be much greater, both in higher and lower courts in those two jurisdictions.

Mr LUPTON - It might be clearer because they are not doing it.

Mr COGHLAN - Or we should be grateful to live in a place where people have got pretty good respect for the legal system I guess. I think we would say, just on that point, that we do not have cases that we do not prosecute in this area because of difficulties that we see with the legislative framework or with the common law framework.

But on the other hand we do not know what is not investigated by the police because they do not think things are clear enough or whatever. But from the point of view - I mean it has gone through various filtering systems a bit before it gets to us. We do not see anything much that creates problems for us but I cannot speak from the investigator's point of view whether they see it differently.

The CHAIRMAN - Paul, perhaps we could move on to perjury.

Mr DALLA-RIVA - Just one question before we move on, Mr Chairman.

The CHAIRMAN - Yes, sure.

Mr DALLA-RIVA - We are still on for - - -

The CHAIRMAN - Yes.

Mr DALLA-RIVA - Just in relation to the police investigations in the course of justice, and I know there was some recent cases. I don't want to talk in specifics but a matter involving the train, but where people are charged with perverting the course of justice as a result of the police investigation, I know there is some suggestion to examine whether that should be included or maintained in the framework of the - if there was clarification. I just wanted your views?

Mr COGHLAN - Given there has been a bit of view that has been thought about the definition of the course of public justice that comes out of Rogerson in the High Court, we have not found that to be a particular problem. We think Rogerson is sufficiently broad in its terms to catch most investigations that you would really want to take on. It has not been restrictive in that sense.

Mr DALLA-RIVA - Would you like to see it restricted?

Mr COGHLAN - No, I do not think it needs to be. I do not think it needs - we have gone as far in Australia as - if we go to the west I mean we have successfully prosecuted, whether it is a matter that would have necessarily survived on finally after retrial remains to be seen. But I mean you can pervert the course of justice with respect to a stewards' inquiry in a horse race.

That has been accepted and it might rightly be so, you know, that it has been conducted in the public interest with a view to protecting ordinary members of the public involved in horse racing. But, if you try and stop the stewards doing their job then it is - you need to have a fairly broad operation of the concept of the course of justice.

I think the problem in part has been that I think there are many people who think that Rogerson might be too restrictive rather than it being not too broad. But that has not proved a practical problem at the moment.

The CHAIRMAN - Paul, just moving on to perjury in Victoria, the truth of the statement is no defence to a charge of perjury if the defendant believed it to be false or reckless or they were reckless in making the statement whether it was true or false which is quite different from the New South Wales or Queensland provisions which require that the statement be objectively false.

Do you think that approach, the sort of objective test that the statement was either false or not should be adopted in Victoria?

Mr COGHLAN - We are not sure about it. We are not sure whether you can be convicted of something that was actually true.

The CHAIRMAN - Even if you believed it to be false.

Mr COGHLAN - If you believed it to be false.

Ms GILES - Would the question not be is that in the public interest to be - - -

Mr COGHLAN - I do not know that we have prosecuted anyone in those circumstances and that derived largely from a reference to Smith & Hogan, the English criminal law text which says at common law that is the position and apparently cites a number of ancient authorities for it. But I do not know that we have ever proceeded on that basis in Victoria.

The CHAIRMAN - But no one, to your memory, has been prosecuted for making a true statement believing it to be false or being reckless in making the statement?

Mr COGHLAN - When it became known to be true, no, not that I know of. See, generally dealing with stat decs in 107(2) of the Evidence Act a person who makes a declaration which the person knows to be false is liable to penalties for perjury. I do not think that you could know something to be false if it was objectively true. I do not think that creates a particular problem than in s.141, the other provision in the Evidence Act, any person who upon or on any oath, examination, affidavit, affirmation or declaration whatsoever which is mentioned or referred to or which is required, authorised or permitted by or under any provision of this Act wilfully and corruptly makes any false statement, how that could mean only subjectively false and not actually false we are not sure.

So we are not completely sure that whatever view was taken in England and by the Model Code Committee, we are not convinced that there is enough left of the common law in Victoria in this area to - I mean we do not have much of the common law of perjury left anyway by the time we look at the statutory provisions.

When you look at s.314 of the Crimes Act, false statement is the expression that is used there as well. It does not seem to us that it is capable of being subjectively false in the ordinary meaning of the word.

But on the other hand, the combination of s.107, s.141 and s.314 is not a very happy one. That might be viewed also in relation to the supplementary perjury provision that appears in the 5th schedule of the Magistrates' Court Act relating to committal proceedings. The jurated statements in committal proceedings - it gets more complicated this, every time you look at it. 108 of the Evidence Act also creates a problem.

According to rule 8 of the 5th schedule of the Magistrates' Court act, "A statement that the informant intends to tender at a committal proceeding must be" and there it sets out a series of requirements as to what has to be included in it. "In the form of an affidavit and bearing an acknowledgment that the statement is true and correct

and is made in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury". So it is yet one of the other places where we pick up liability for perjury, this time in a statement form and on the precondition that it is intended to be tendered as part of a committal proceeding.

It is a peculiar thing because I think that nearly all statements taken by police officers, no matter what the purpose of them is, bears the jurat which is the jurat of the form of the Magistrates' Court Act. It may or may not give rise to perjury if it is not for the purposes of a committal proceeding. So that is yet another one of the little bits around the edges relating to perjury.

The CHAIRMAN - I think we have pretty much covered out questions. We had a number of questions which might best be answered by correspondence.

Mr COGHLAN - Yes, certainly.

The CHAIRMAN - We were interested in knowing whether you kept any statistics in relationship to the incidence of these offences, the approximate ratio of prosecutions resulting in convictions, the type and length of sentences generally imposed and just overall I think some statistics in relationship to these sort of administration of justice offences. But perhaps if we write to you, you might be able then - - -

Mr COGHLAN - We can - - -

The CHAIRMAN - Supply us with those.

Mr COGHLAN - We will have them in one form or another and I suspect it will be easy to look at them as individual cases. I do not think there will be enough for it to say that there are any specific trends about it.

The CHAIRMAN - Sure.

Mr COGHLAN - One way or another. Perjury, as an offence that can, in terms of penalty, get penalties spread right across the board from fines to substantial periods of imprisonment because it covers such a wide area.

The CHAIRMAN - What do you think incidentally of the penalty in relationship to perverting the course of justice which is out at the 20 - - -

Mr COGHLAN - Yes, 25 years. We - - -

Mr MAUGHAN -Can you recall anywhere there have been substantial penalties, 15, 20 years to your knowledge?

Mr COGHLAN - You will see in our written submissions, we are not unduly concerned about the 25 years as a head sentence and I do not know, we will get it out of the statistics. I would be surprised if there is a sentence in Victoria over five years that has ever been given for - that would be my impression of it.

Mr LUPTON - It has been suggested that allowing these offences to be triable summarily in certain circumstances would be a useful change. Do you have any comment about that?

Mr COGHLAN - Yes, I think there are a series of things that might happen I think in the foreseeable future. There is a possibility I suppose, given the civil jurisdiction of the Magistrates' Court is now $100,000. We might go down that path in the criminal area. If we are going to look at that sort of thing and therefore the possibility of more serious offences, I would hope it could be accompanied by a veto by me that prevented matters being dealt with in the Magistrates' Court if I was of the view that they ought to be dealt with in the higher jurisdiction.

Mr LUPTON - An election subject to a veto?

Mr COGHLAN - Yes, the problem about it is though, and you run the risk - I have now been doing this for 35 years and you run the risk of just being accused of becoming an old fart which might be true - that one of the things that has had the biggest effect on sentencing in Victoria by far is the fact that nearly every burglary is dealt with in the Magistrates' Court.

But I think that burglary is a very key offence in terms of the way that the community see it and the way it affects sentences and I think that we have driven sentences down for burglary to be very low and we have just got to face the fact that if we deal with things in the Magistrates' Court they are perceived to be less serious.

They are dealt with less seriously and become just a bit, you know, too much of an every day occurrence. That is the risk that you have got to guard against with matters such as these. That is why, generally, I think we have taken the view that perjury and like offences have been - - -

Mr LUPTON - Given the extremely wide range of potential cases from a small fine up to a significant gaol sentence, is the possibility that those at the most minor end of the scale ought be capable of being heard in the Magistrates' Court - - -

Mr COGHLAN - Yes, but if they relayed it to the Magistrates' Court itself, unless it was a very serious example, attempt to bribe a magistrate or something, but if you had something that was about a Magistrates' Court case, then you would have to think there were some cases capable of being dealt with in the - when we deal with the false report to police offence that really fits into this category, the unique offence, the summary offence which is capable of being dealt with on indictment, it is in a class of one. That is at the option of the defendant, not at my option, so it is really quite a peculiar offence really.

But with that rider about having some control over choosing the cases that can be dealt with, we seem to deal with more and more stuff in the Magistrates' Court than we did.

Ms HADDEN - Just on that point, does that then limit judicial discretion by having burglary cases as an example heard in the Magistrates' Court? Do you think that - - -

Mr COGHLAN - The maximum sentence you can get for any number of burglaries is five years I suppose is the total sentence I think, cumulative in the one sentence is five years.

We tend to think now, in Victoria, rightly or wrongly and I do not want to get into any political debate about it but we regard five year sentences as being relatively high sentences. I guess they certainly are for the people who have to serve them. I am not sure whether that is the public perception or not.

I have a specific statutory requirement that requires me to have regard to the needs of the victims of crime and they are the sort of things we think about.

The CHAIRMAN - Thank you very much, Paul, for appearing before the Committee. We will look forward to reading your submission and I take it you will be happy that if there are any supplementary questions arising out of reading the submission that we could deal with those by way of correspondence?

Mr COGHLAN - And if it was thought desirable for us to come, we are happy to come back, we are not far away.

The CHAIRMAN - Thanks, Paul and Bruce.