



VICTORIAN PARLIAMENT
LAW REFORM COMMITTEE



Media release

From Rob Hudson MP, Chair

PARLIAMENTARY INQUIRY CALLS FOR RETENTION OF COUNTY COURT APPEALS PROCESS

The Victorian Parliamentary Law Reform Committee today released its report into the practice of "de novo appeals" from the Magistrates' Court to the County Court.

The de novo appeal – the right to a new hearing heard afresh – is a long-standing part of the practice of criminal law in Victoria. The de novo appeals gives a person convicted in the Magistrates' Court the ability to have their conviction or sentence heard again in the County Court. The use of this form of appeal dates from the 17th century.

In 2004, the Victorian Government's *Justice Statement* asked the public to consider if this practice was still necessary, given significant changes to the way in which the Magistrates' Court operates.

In responding to this question, the Parliament Law Reform Committee considered a range of matters, including:

- the historical justification for this method of appeal,
- the benefits of the de novo appeal in ensuring fair and reasonable access to justice,
- alternative forms of appeal that could be introduced, and
- the benefits and costs of alternative appeal models.

Chair of the Parliamentary Law Reform Committee, Mr Rob Hudson, said that the Committee approached the question of alternatives to Victoria's model of appeals with an open mind.

Mr Rob Hudson said, "The Committee has given careful consideration of the value of the existing approach to appeals in the criminal justice system."

"The Committee balanced a range of competing views about the value of this approach to hearing appeals, and considered a variety of preferred appeal models put by a broad cross section of those involved in the Victorian criminal justice system."

"Different jurisdictions of Australia have a range of appeal models which allowed the Committee to determine if changes to the Victorian system would be likely to improve the administration of justice," he said.

"In looking at these models, and international practices, the Committee was able to see that alternatives to the de novo system would not introduce significant improvements to the efficiency of the justice system."

The Committee concluded that the de novo appeals system provided superior access to justice than alternatives that restricted the scope or grounds of appeal, and that the de novo system delivered these benefits in a very cost effective manner.

The Committee has recommended that the de novo appeals system be retained in Victoria, but that a number of changes should be introduced to improve the performance of the de novo system.

These recommended changes are:

- A greater use of judicial warnings pertaining to the potential that sentences, on appeal, can be increased.
- Greater flexibility to allow appeals to be withdrawn prior to the new hearing.
- Records relevant to the appeal process should be retained for a longer period of time to reduce the possibility of abuse of the de novo appeals system.

"On behalf of the Committee I want to thank everyone who participated in the inquiry process. This review made recommendations that will strengthen the criminal justice system in Victoria, and should also serve to increase public confidence in the ability to receive a fair and speedy trial in Victoria.", Mr Hudson said.

The full text of the Committee's final report is available at:
<http://www.parliament.vic.gov.au/lawreform/>

For further information contact Mr Robert Hudson, MP, Chair, Parliamentary Law Reform Committee. Mobile 0427 840 263

Committee Recommendations

Recommendation 1.

That the Magistrates' Court Act 1989 be amended to require the County Court judge hearing an appeal under section 83 of the Act to give an appellant a warning, as early as possible during the hearing, that she or he faces the possibility of receiving a more severe sentencing order than was originally imposed by the Magistrates' Court.

Recommendation 2.

That clause 6 of Schedule 6 of the Magistrates' Court Act 1989 be repealed so that an appellant is not required to seek the County Court's leave and to demonstrate 'exceptional circumstances' in order to abandon an appeal.

Recommendation 3.

The Committee recommends that audio tapes of the proceedings in the Magistrates' Court be retained for six months.

Recommendation 4.

That de novo appeals from the Magistrates' Court to the County Court be retained in their current form, subject to the minor procedural modifications recommended by the Committee.