

SUBMISSION NO. 4



Inquiry into County Court Appeals Youthlaw Submission

Youthlaw is Victoria's statewide community legal centre for young people. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework. Youthlaw is based at Frontyard Youth Services, which is a series of co-located youth services for at risk young people, many of whom are transient and homeless.

Youthlaw welcomes the opportunity to respond to the Victorian Parliament Law Reform Committee's Inquiry into County Court Appeals. Youthlaw acts for clients up to the age of 25, many of whom are defendants in summary criminal matters in the Magistrates Court and some of who appeal their conviction/s and sentence/s to the County Court.

We understand that the basis of the inquiry is to consider whether appeals from the Magistrate's Court to the County Court should continue to be hearings de novo, or whether they should be heard in some other way. Our key submission is that appeal hearings should continue to be heard do novo.

Youthlaw understands that the historical justification for de novo hearings is based on the need to balance competing interests in achieving justice. Youthlaw believes that this justification continues to exist. We need to have a just and equitable system that deals with criminal matters summarily and that balances the rights of defendants with the needs of victims and other members of the community.

We do not believe that costs would necessarily be saved if the appeal system were to be changed. There would be increased costs associated with the transcription of Magistrates Court proceedings. Victoria Legal Aid would also have to bear additional costs for legally aidable matters. These costs would be a particular barrier for those appellants who are self represented and who are not eligible for legal aid.

Youthlaw believes that the 1999 changes have had a significant negative effect for appellants. Our experience is that defendants often lodge appeals immediately after the decision in the Magistrates Court which is during a time of great stress, especially if they have received a jail sentence. We are also aware of cases where defendants have lodged appeals without legal advice and have subsequently attended community legal centres and Victoria Legal Aid seeking advice and representation on the appeal when the right to abandon the appeal has lapsed due to the above-mentioned changes.

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ON NOVEMBER

We believe that the risk of an appellant receiving a higher penalty without warning undermines the principles of both natural justice and double jeopardy. In addition, the requirement of the appellant having to make out an exceptional circumstances case to abandon their appeal is an additional hurdle and a barrier to justice for the appellant.

Youthlaw submits that appeal hearings should continue to be heard do novo. We are concerned that if hearing de novo is changed there will be more contested appeals, delays in hearing times and longer hearings in both the Magistrates and County Court hearings.

If you have any queries, please do not hesitate to contact Anna Radonic, Principal Lawyer on 9611 2424.

Yours faithfully



Paula Grogan
Director