

The CBA committee is considering a proposal to develop a proactive program of reform from the perspective of accused persons. Most of the continual program of reform emanating from government in the criminal law is prosecution and victim driven. It is submitted the interest of the accused person is not receiving adequate attention and is steadily being eroded.

This ambitious undertaking is beyond the resources of the volunteer CBA committee. The committee seeks input from CBA members as to:

1. Whether the list proposed below is an adequate starting point for a reasonably comprehensive proactive reform project;
2. What additional areas for reform members consider need attention (Peter Chadwick suggested items 10 & 11 on the list & other members must have come across areas in need of sensible reform);
3. What areas CBA members see as priorities for reform;
4. What contribution you as a member would make to the process. The CBA voluntary committee cannot take on a proactive reform campaign in addition to keeping up with the demands of responding to existing reform proposals from government. Each proposal must be carefully considered and developed both in terms of the detail of the reform and the strategy for having it implemented if it is to be anything other than kite flying. CBA members need to be prepared to give time to the process of developing each reform proposal before the CBA committee can be expected to take on a heavier work load;

Some of the issues identified are already the subject of work by the CBA committee and proposal by government (e.g. disclosure, plea bargains / sentencing indications)

Issue	Rationale	Reform	Possible strategy
1. Disclosure	Ensure early & complete disclosure to defence	Require informants to declare all documents etc obtained or created during investigation as part of informants statement	Amend the Crimes (Criminal Trials) Act, Mag Ct Act
2. Forensic science services	Accused's right to test evidence & facilitate a proper system of accountability by police forensic services to the court	Establish dedicated independent forensic service for accused persons	Lobby Vic & Cth governments, Law Council, legal aid bodies, CLCs etc

3. Costs	Those found NG should not be punished by costs	Successful defendants in SCt & CCt trials entitled to full costs order	Lobby Vic & Cth governments, Law Council, legal aid bodies, CLCs etc
4. Funding – legal aid	Legal funding should be based on independent assessment of appropriate fees & costs	Establish an independent court fee scale for criminal matters in MCt, CCt, SCt, & HCt	Draft appropriate scale. Lobby judges etc for criminal scale in line with civil scale & lobby govt.
5. Accountable rehabilitation services	Prison rehab & community rehab services should be regularly & independently assessed to determine their effectiveness	Establish appropriate PIs, including level of recidivism, for rehab programs	Lobby sentencing committee etc
6. Interpreters Privilege	Communications with legal rep through interpreter are simply communications in verbal rather written form	Amend law to clarify the existence of the privilege	Amend Evidence Act or other appropriate Act
7. Interpreters at Court	One interpreter should be available to accused in court & for conferences at court. It is part of trial process & cost should be borne by state	Remove distinction between interpreters paid for by prosecution providing in court service but not allowed for conferences at court	Lobby DPP, VLA, & DoJ
8. Notices of additional evidence	Minimise occurrence of notices of additional evidence	Prevent accused being confronted with additional evidence shortly before or during trial	Requirement for additional evidence to be exceptional circs with leave of court – Amend Crimes (Criminal Trials) Act, Evidence Act or Crimes Act

9. Plea bargaining	Bring negotiations into open formal process & provide real meaning to the 'sentencing discount'	Provide for plea bargains and specify discount provided. Impose cost penalty if prosecution reject offer but accused succeeds to extent of their offer	Amend Sentencing Act
10. Mental Impairment – alternative procedure	Where prosecution & defence agree defence made out matter should proceed w/out jury	Avoid artificial jury trial, tends to bring justice & jury system into disrepute	Amend C(MI)A
11. Remit minor matters to Mag Ct from County Ct	Avoid unnecessary trials & pleas in County Ct	Where trial on substantive matters does not proceed less serious indictable offences caught up in committal process should be able to be remitted to Mag Ct	Amend Mag Ct & County Ct Acts
12. Impact of new technologies	New technologies, such as emailing transcripts should not be used as an occasion for cost shifting to defence	Introduction of new technologies should automatically result in an adjustment of fees paid to defence	Amend Court Criminal scales (when they exist) & legal aid fees

RESPONSE SOUGHT

Members should respond by listing additional issues for possible reform including the suggested rationale, proposed reform and strategy. Members should also indicate which reform issues they consider the top 5 priorities and which they would be prepared to put their time into working on. This can be done by email to the secretary Greg Lyon SC at gjlyon@vicbar.com.au, to Greg Connellan at gconnellan@vicbar.com.au or to or by sending a written response to the committee. The committee will determine whether and how to implement the proposal based on the members response or lack thereof.

CBA Committee
30 January 06