

Courts Legislation (Jurisdiction) Act 2006

Changes to committal proceedings

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Topics for discussion

- Project origins & objectives
- What's the problem / what can we do better
- Process for change
- What is changing (committals)?
 - Structural / legislative
 - Administrative
 - Cultural
- Other changes



Project origins & objectives



- Project origins → Justice Statement
 - Review and overhaul the Crimes Act
 - Review criminal procedure
 - Review criminal jurisdictional thresholds
- Project objectives
 - Reducing delay
 - Reducing complexity
 - Increasing accessibility
 - Increasing efficiency

Process for change



- Consultation
- Workshops / discussion paper
- Advisory Group – Courts, VLA, LIV, CBA, Bar, OPP/DPP, Cth DPP, VicPol
- Data modelling
- Legislation
- Rules

Causes of delay

- Factors identified as causes of delays in trials being heard
 - Over-listing of matters
 - Late changes of plea
 - Lack of preparation by the defence
 - Late nolle prosequi
 - Lack of preparation by the Crown
 - Inadequate resources – courts, DPP, LAC
 - Inadequate judicial control



Delay in NSW

- Each party tends to only to see the problems generated by the actions of others
- One of the best ways to fix delay in the higher courts is to focus on committal mentions – NSW did this
- 1999 – median time to trial – 230 days
- 2002 – median time to trial – 130 days
- 2007 – trials listed within 90-120 days of committal (cf median time)

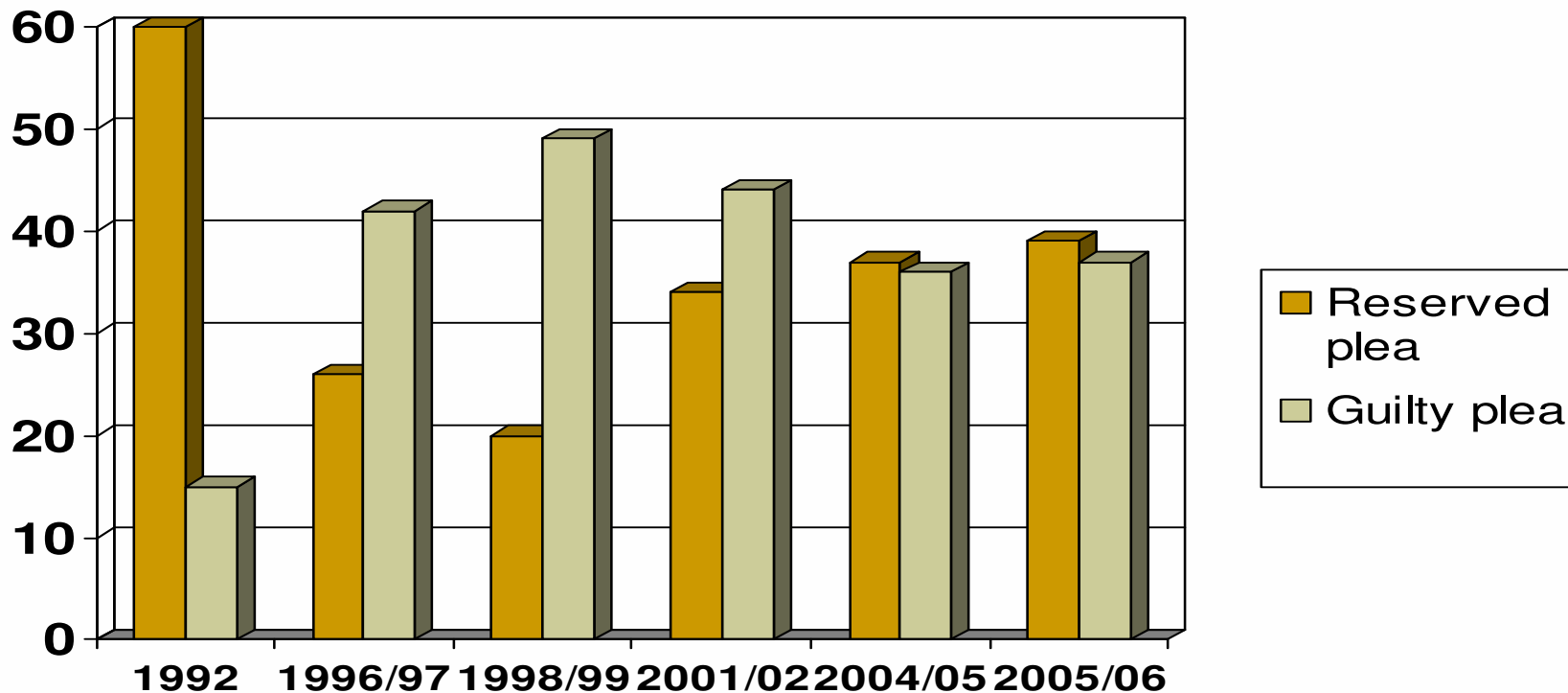


Committal outcomes – Victoria

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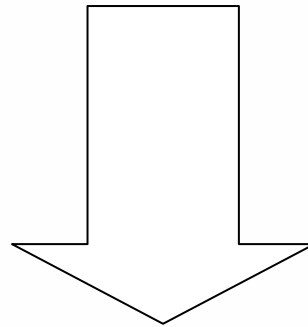
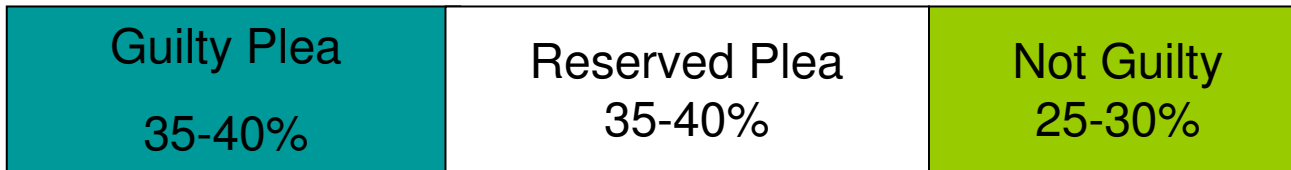
- After considerable improvement in the 1990s, there are fewer pleas of guilty identified at committal proceedings and an increasing number of reserved pleas



When are PGs identified?



- **Committal**



Case conference
Directions hearing
After Directions Hearing
Trial

20%
more
PG's

- **County Court**



Why is this occurring?

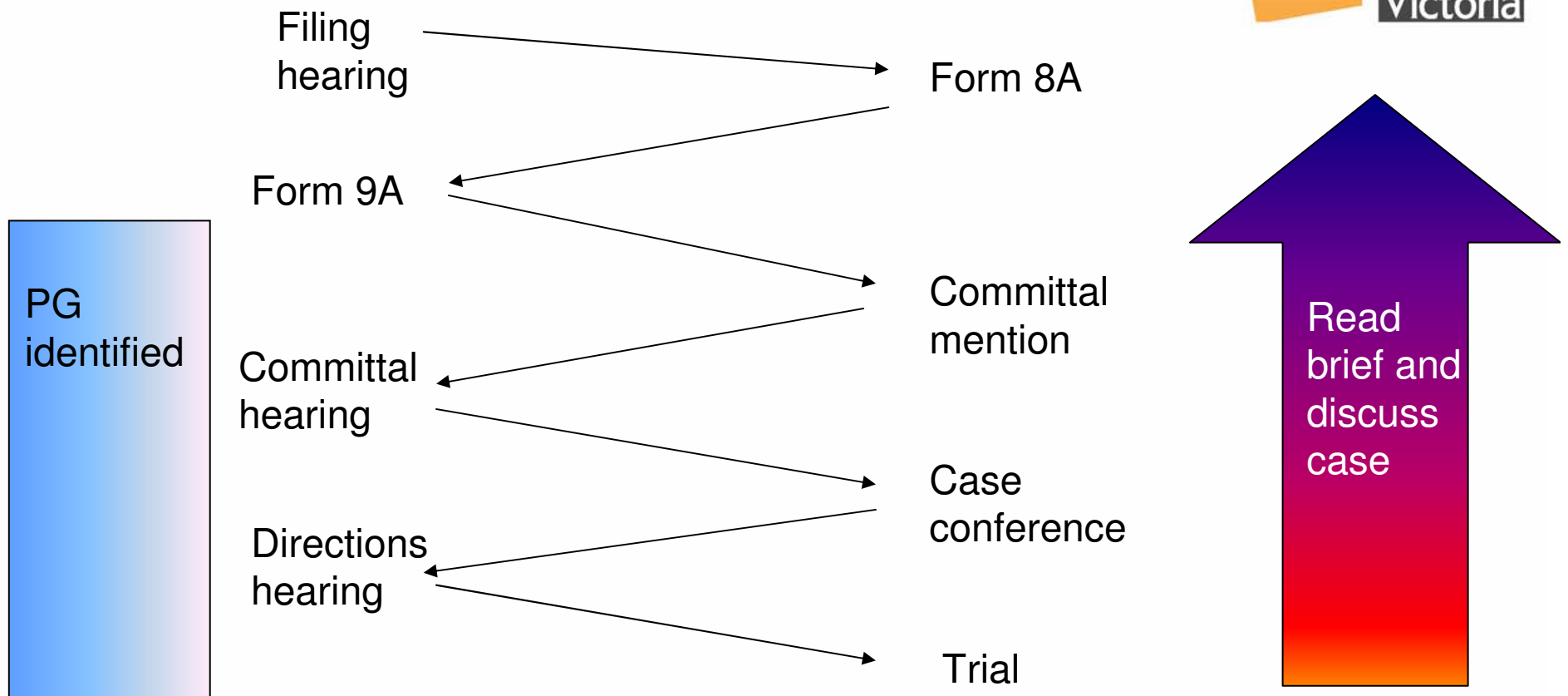


- Focus is on compliance with processes rather than on outcomes /results:
 - the system leads people to focus first on potential contest rather than potential resolution
 - time frames for Form 8As mean they are completed for the first committal mention, before the parties have talked about the case
- Resources not allocated to early stage of proceedings and this limits the time that practitioners have to deal with matters.
- Other party is not interested in talking (reactive not proactive)
- Not everyone has read the brief before the committal mention.
- Pleas discussions too often commence “at the door of the Court”
- Cases tend to drift along or bounce between steps in the process

Some cases bounce



Earlier decision-making is a key to success



Leave to XXN witnesses



- The “hurdle” test
 - parties concentrate on satisfying the formal requirements and filing the Form 8A rather than thinking about the issues in the case.
 - there is a tendency by the defence to list every possible witness for cross-examination and for the prosecution to consent to the calling of these witnesses.
 - has been successful in reducing the length of committals because it has reduced the number of witnesses called (a large number of committal hearings take less than 2 days)
- Conclusion – no significant benefit in the parties spending more time applying for leave and arguing objections, therefore no change to the test to be applied

Objectives of change

- We should make the most of each court appearance
- Where a matter can appropriately be dealt with summarily it should be
- Where a matter will ultimately be a plea of guilty, this should be identified at the earliest opportunity
- Achieving the above will help to reduce:
 - court time in the committal hearing or trial system (including case management)
 - preparation and appearance costs of the parties
 - trauma/stress/inconvenience for the victim, defendant and witnesses
 - time the Informant spends in assisting the prosecution



What is changing?

- New rules and forms
- The Court has made new Rules and Forms
- Consultation on Rules and Forms has taken place
- Magistrates' Court (Committal) Rules 1999
- Caution: please check the new Rules and Forms for references



Pre committal mention



- Filing hearing – no change
- Service of hand-up brief
 - Defence practitioner – may accept service of the brief, may specify won't accept new charges
- Notice that Practitioner acts (r.2.01)
 - file/serve 21 days before the committal mention
- OPP response within 5 days of receipt (r.2.02)
 - File with court 21 days before committal mention if no one acting for accused

Case direction notice



- Clause 11AA, Sched. 5 MCA
- Must be in the prescribed form - Form 10A must be filed 7 days before the (first) committal mention
- Must be signed by both prosecution and defence
- Purpose – get the parties talking about the case before going to court
- Give the court confidence that progress is being made on case direction
- If further committal mention, court may order a further case direction notice be prepared / filed

Case direction notice



- Indicate that both parties have read the brief (or if they have not, why they have not)
- Indicate whether the parties have discussed whether the case could be resolved as a plea of guilty (and if so, on what charges)
- Specify how the matter is to proceed:
 - Summary jurisdiction application
 - Hand-up brief – PG, RP, NG
 - Committal case conference
 - Committal hearing
 - Adjournment sought

Adjournments – Clause 11AB



- Parties seek adjournment on the papers to continue discussions → Court may do this for up to 14 days, if satisfied that it is in the interests of justice to do so (eg Form 10A shows parties are genuinely discussing the case)
- Bail may be extended in absence of defendant

Request to XXN Witnesses

- List witnesses defence request and whether informant consents or opposes
- If agreement – “the Court must grant leave unless it is of the opinion that it is inappropriate to do so.” (clause 13(4A) Sched. 5 MCA))
- If no agreement on a witness the form must indicate:
 - why the defendant considers the evidence of the witness to be relevant and cross-examination to be justified; and
 - why the informant opposes the granting of leave.



Process – Form 10 A



- Parties must discuss the case
 - no requirement about how or where this is to be done (eg could be over the phone or face to face)
 - Parties to work out the most effective method for each case
- Either party may prepare the document

Committal Case Conference



- Legal practitioners must attend
- Wherever practicable the committal case conference will be conducted on the same day as the committal mention
- Court may direct the parties to attend a committal case conference (cl.4A, Sched. 5, MCA)

Administrative change - \$\$

- VLA is increasing its fee payments for committals to conduct negotiations and participate in discussions for the Form 10A (and to read the brief)
- Increased funding for OPP to increase capacity for committal negotiations



Cultural change

- The structure requires some things to be done differently and supports people working together constructively
- It focuses on sorting things out as early as possible – avoiding case drift / bounce
- Funding to support this renewed focus at the early stage of proceedings
- Effectiveness of reforms will depend on change from both prosecution and defence
- How can you and your organisation make the most out of these changes?



Other changes - committals



- Compulsory examination procedure
 - if in the interests of justice, can get this order between committal mention and committal hearing (s.56A(1) MCA)
- Witness statement may be read out loud at a committal hearing if in the interests of justice to do so (eg nervous witness, what will they swear up to?) (Cl.15(1A), Schedule 5 MCA)
- Amenability of corporations

Transitional provisions



- Changes to the committal process commence on 1 July 2007
- Amendments apply “only with respect to proceedings commenced on or after the commencement of” these provisions (cl.37(2) of Sched. 8 MCA) [s.35 of the *Courts Legislation (Jurisdiction) Act 2006*]
- Other possible reforms
 - SAC report on sentencing indications and discounts
 - Reserved pleas to be abolished

Determine offence summarily?



- New criteria for deciding whether it is appropriate to try an indictable offence summarily
- Seriousness of the offence (s.53(3)(a) MCA)
- Adequacy of sentencing orders if determined summarily (and can consider any priors) (s.53(3)(b) MCA)
- Any decision of the court about how the same charge against a co-defendant should be determined (s.53(3)(c) MCA)
- Any other relevant matter (s.53(3)(d) MCA)

Determine offence summarily?

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- Seriousness of the offence (s. 53(3)(a) MCA)
 - Nature of the offence
 - Manner in which offence alleged to have been committed
 - Degree of organisation
 - Presence of aggravating circumstances
 - Part of series of alleged offences
 - Complexity of the proceeding
- Summary proceedings may be commenced out of time with consent of defendant and Crown Prosecutor or DPP (s.26(5) MCA)

Lowest appropriate jurisdiction

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- Common law offences punishable by 10 years imprisonment or less (eg common law assault, affray, false imprisonment) (s.53(1A) MCA)
- Offences where the value of the property does not exceed \$100,000 (currently \$25,000) (eg theft, burglary, obtaining property by deception) (Sched. 4 MCA)
- Certain other specified offences (eg perjury, dealing with proceeds of crime, conspiracy to cheat/defraud, possess/carry/use an unregistered handgun under the *Firearms Act*) (Sched.4 MCA)

Transitional provisions

- Changes to indictable offences being tried summarily commence on 1 July 2007
- These amendments apply “irrespective of when the offence is alleged to have been committed or when the proceeding commenced.” (cl.37(1), Sched. 8 MCA) [s.35 of the *Courts Legislation (Jurisdiction) Act*]



Summary

- More cases can be dealt with summarily
- Focus is on early discussion – read the brief, what direction is the case heading in?
- New Form 10A (7 days before committal mention)
- More funding to support the changes
- Potentially significant reduction in delays
- Needs support of parties to be effective
- Questions?

