LAW REFORM COMMITTEE

Inquiry into County Court appeals

Melbourne — 13 February 2006

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Mr P. Coghlan, QC, director of public prosecutions; and

Mr B. Gardner, manager, policy, Office of Public Prosecutions.

The CHAIR — Welcome to this first day of public hearings into County Court appeals. I welcome Paul Coghlan, the Director of Public Prosecutions, and his colleague Mr Gardner. As we are running short of time and as you are experienced at these hearings, I will not go through the usual introduction. Perhaps, Paul, you could give us an overview of your submission, after which we might ask some questions. We have until about 12.30 p.m.

Mr COGHLAN — I suppose in part I am one of the people principally responsible for leading to this inquiry, because at the time of the work that was done leading up to the justice statement, in lengthy consultations and discussions at that time I raised the question of the need for de novo appeal hearings in the County Court. I did so based on an idea I had that if you took de novo appeals to have arisen as a result of the general nature of proceedings in what were originally the courts of petty sessions and then in the Magistrates Court, did you run a necessarily more efficient or just legal system by having two hearings for any summary offence? It is as simple as that.

It is anomalous, as I point out in the submission, that if you are convicted by a jury at trial all you can do against any conviction so gained, to get a retrial, is to demonstrate error — to actually demonstrate a miscarriage of justice. I suppose, though, we have treated County Court appeals as being a bit of a safety valve — that is, we have magistrates who work constantly and under pressure and do things quickly, and we do have a safety valve which consists of being a County Court appeal. But whether or not that needs to be a de novo appeal is quite another matter, in my submission.

Take a sentence appeal, for instance. Our general theory of sentencing — although subject to various legal requirements — is that it is a process of intuitive or instinctive synthesis — that is, that the sentencer imposes the sentence that they think is the appropriate sentence in all the prevailing circumstances. Why one should substitute the intuitive or instinctive synthesis of one person for the intuitive or instinctive synthesis of another person might be an interesting philosophical question. But it cannot be something that is born out of a view of justice or what would otherwise constitute miscarriage — that you may have the choice to be sentenced by two different people, depending on which sentence you liked in the first place.

True it is that as part of our system and the way it operates, people run a plea in a certain form before a magistrate and if they get a result they do not like, they might run it in a different way before a judge; they might get more material together and might have a psychiatric report that they did not have at the time of the Magistrates Court hearing. But the question arises as to why the magistrate, being the primary sentencer, should not have that material in the first place. Why do people not simply get their work ready better and earlier? Why depend upon the fact that you are going to get two tries as being the way that you conduct your business? I am driven by the general philosophy that you should not do things twice if you can do it once.

You would always have appeals that would have to show that a sentence imposed by a magistrate was manifestly excessive and that if you could demonstrate that, then you would succeed, or otherwise you could appeal against conviction if error had been shown.

It is a relatively modern phenomenon in Victoria that we in fact tape-record all the proceedings. We did not do that for a long period of time, but we do now. There are courts from which a complete copy of what transpired can be gained and provided, so appeal is open a bit more generally in that way.

The structure of our appeals is a funny thing in the way that they are done statutorily. The appeal really starts off, as it were, as an appeal against sentence — that is what section 83 of the act says — but you may attack it in two ways: by attacking either the sentence itself or attacking the conviction on which the sentence is based. There is an anomaly from our point of view, and it arises in this way.

Because of the way that section 85 of the act is expressed, there is no reason to bind you to the plea that you made in the Magistrates Court; you can simply effectively appeal against conviction and sentence, irrespective of what happened in the Magistrates Court. Cases can be negotiated by the police, who will be involved in the majority of Magistrates Court cases, or by us in some of the cases — by people representing me in cases over which I have control — in which you get a plea of guilty. Now whether we call that plea bargaining or we give it some other name, the reality of how the system operates is that people come along and offer to plead guilty to certain things; and if that seems to meet the needs of the case, then that plea would be accepted.

One of the difficulties that presently arises about that is that it does not bind you. So you can negotiate a plea. Say you plead guilty to 'recklessly causing serious injury' as against 'intentionally causing serious injury' — and the distinction between those two offences is often pretty marginal, to the extent that quite often we do not really understand what the difference is, and indeed at common law there would have been no difference between them — 'recklessly causing serious injury' can be dealt with summarily; 'intentionally causing serious injury' cannot. So you can have a case that comes out of the binding indictable stream — that is, it cannot ever be dealt with summarily — into the summary stream — that is, dealt with on a plea — and in which appeal is then taken and you get a plea of not guilty to the charge, but you cannot bring your 'intentionally causing serious injury' charge back onto the table.

In one particular case, for a whole series of reasons, we settled a number of charges of sexual penetration with charges of indecent assault with a very, very sensitive complainant who we were desperately worried about putting through the system. We were offered the plea to 'indecent assault' and we accepted that plea, and the magistrate decided to dispose of the case in the Magistrates Court; the penetrative offences could not have been.

Our reason for taking the plea mostly was governed by the proposition that we did not want to put a complainant through the burden of giving evidence if it could be avoided, and we were concerned about whether she could give evidence at all. That went through in the Magistrates Court and a term of imprisonment was imposed, and rightly imposed, by the magistrate. There was then an appeal, which turned into an appeal against conviction and sentence.

We were then faced with: one, we could not resurrect the penetrative offences; and two, the difficulty of running the appeal and calling the complainant, when that is really what we never wanted to do in the first place. That case finished up with an acquittal. It was an appeal that succeeded in the County Court. Try to explain that to victims and say that we have a criminal justice system that operates fairly. So there are difficulties that operate in that area.

The CHAIR — That case attracted some considerable publicity.

Mr COGHLAN — Yes; I am not burdened or driven by publicity, but publicity very often reflects what the public attitude is to things and you ignore it at your peril. You do not make your decisions based on how much the public outcry is about things, but it reflects something that is happening there in the community and you take notice of it. Sometimes you are more informed than others.

I got 70 emails about a case this morning, but I wonder whether that is driven more by the Sunday *Herald Sun* saying, 'This is how you contact the Office of Public Prosecutions' than it is otherwise driven; but the mere fact that 70 members of the community take the effort to do it reflects some public feeling about things, so you do not ignore it.

That is a particular bugbear from our point of view about what happens in County Court appeals. But I go back to the beginning. If you say that one of the strong reasons not to have County Court appeals is that magistrates are more secure in the simple and straightforward system that we have, I think that is open for consideration. It is open for consideration by way of saying that it needs to be

more than an analysis that would say you would expect some other person's opinion is better than the opinion of the magistrate.

I reckon that for all sorts of reasons there are reasons to trust the magistrates, not the least of which is their familiarity with local conditions. When talking about the prevalence of particular crimes, or whatever, in a particular community, very often the local magistrate will have a much better idea than judges will have.

That is not a criticism of judges; it is just the fact that if you live in a town, for instance — or live in an area or a suburb and practise in the suburb every day — you will know what happens in the town. I would expect a magistrate at Dandenong or Frankston to have a much better idea of the prevailing circumstances in their communities than I would expect a judge to have, even if the judge were trying hard to keep in touch. If it be a process of intuitive or instinctive synthesis, what is it we are substituting?

I would submit to the committee that in those circumstances the safety net is manifest excess. Whether there is always available an appeal saying, 'This is just a manifestly excessive sentence' — and we constantly say about that — that is not a matter about which much argument ever arises, because you look at it and say, 'Look, this is just a manifestly excessive sentence'. So you would leave an appeal of that kind open but you would not go through the whole process.

Magistrates worry that they would have to give more elaborate reasons for sentence if there were to be only this ground of appeal. Personally, I am not convinced of that. I think the reasons are the reasons that are reasonably given in the prevailing circumstances. Manifest excess will be determined by reference to the facts and the circumstances surrounding the offender rather than by the reasons that are stated by any particular magistrate at a given time.

I am sorry that that was a bit rambling; I have covered the terms of reference more systematically in the written response that has gone in. Apart from that one area I have concern about — that is, the way that you can just change your plea — it is fair to say that from our perspective practically the system works pretty well.

There were two sets of big changes really — in 1989 and 1999. The change of plea really comes from the 1989 amendments, but otherwise they operate reasonably. I have not gone back any further, but it certainly seems that appeals of this kind were available in the colony of Victoria in the 1890 consolidation of the Justices Act. They were not in exactly the same form, but there were appeals to the then Court of General Sessions from petty sessions as long ago as that. Whether they were de novo cannot be determined by a simple reading of the legislation, but one assumes they would have had to have been; there would not have been even the remotest possibility of record, so one assumes.

But times have changed from when cases were heard in the second division of the Magistrates Court at Sunshine by three justices. Times have changed; we simply do not have those cases anymore. Every case in this state is heard by a professional magistrate. Do we need to hear them twice? That is really the question at the end of the day. Is it easy to change? No, it is not. But if we do not talk about change, I do not think we are ever going to change it, even for the better if that be so. They are the general remarks I would make.

The CHAIR — Thank you, Paul. Perhaps I could ask you a couple of questions. You may not have had the benefit of seeing other submissions?

Mr COGHLAN — No, I have not.

The CHAIR — In its submission Victoria Police indicates that it prefers the South Australian model where the grounds of appeal have to be identified and then the appeal is made directly to the Supreme Court. Do you have any views on that? Are you able to comment on that?

Mr COGHLAN — I would not take it to the Supreme Court. I think what I am saying in terms of saying that error has to be shown is that would require grounds to be identified — you would have to show what the error was. In fact, I would be saying there would be fewer Supreme Court appeals rather than more. I would say you would cast doubt on section 92 appeals. At the moment we have section 92 appeals as well as section 83 appeals. Section 92 appeals are on a question of law to the Supreme Court.

If something were to be done at this stage, there would be no reason not to concertina those into one appeal to the County Court. I suppose in our changes from general sessions to the County Court we have a much more professional County Court in that sense than we had in days gone by. Those changes have now been around for more than 20 years.

I have been around for 37 or 38 years, depending on what view you take of practising law. I tend to think of things that happened 20 years ago as being fairly recent. In my private life one of the things I do is collect glass. I have done so nearly all my life but I think I have gotten to a point where I have to stop saying I am the only one of the young glass collectors who does not collect Italian glass — I have to say I am one of the old glass collectors now, I think.

The CHAIR — Perhaps if I could foreshadow some of the arguments put by other people who will be presenting today: the Victorian bar and the Criminal Bar Association of Victoria are saying that if you end de novo appeals, what you will end up with in the Magistrates Court is basically lawyers feeling the need to explore every possible aspect of every legal argument in order to preserve it for an appeal. In other words, you will end up with longer, more complex and perhaps more tendentious arguments going on in the Magistrates Court in order to preserve appeal grounds for the County Court. Do you have any views on that?

Mr COGHLAN — I do not know what your professional obligation is to keep back things you would not argue in front of a magistrate in case you wanted to argue them on appeal. Either something has merit or it does not have merit. If it has merit, it ought to be argued in front of the magistrate. It seems odd to think that you would conduct a case on the basis that you regard there being a point which might be of any merit but you do not need to argue it because we will always have a County Court appeal.

It is an argument for slothfulness, not preparing your cases properly — that is what it is an argument for. If it has merit, it ought to be argued in front of the magistrate. But if it is missed, if it is entirely missed and it occasions a miscarriage of justice, it is no bar to appeal in any event. The usual rule is you expect matters of law to be properly argued before the primary court. It is the same in a jury trial. However, most cases that succeed in Victoria these days in relation to what comes from jury trials — that is, succeed in the Court of Appeal — succeed on matters that have not been argued in the court below. That is because different minds see cases differently.

But you have to convince the court that there has been a miscarriage, and if there has been a miscarriage, appellate courts do something about it — that is their obligation. It does not matter whether it was argued below. For that matter, in one sense it does not matter if it is even a ground of appeal before the court hearing it — if the court sees a miscarriage and it is an appellate court and it has the power to do something, it needs to fix it up.

The CHAIR — I suppose allied with that they were running the argument that basically in the Magistrates Court you have a lot of criminal defendants who on the day of hearing may be unrepresented or just end up with the duty solicitor and therefore do not often have the capacity to properly prepare a case and do not necessarily therefore make all the arguments that need to be made in support of their case?

Mr COGHLAN — We have traditionally, and you always would have, had a rule that favours unrepresented people. Even when we had the strictest rule in Victoria of County Court appeals — that is, you could not change your plea without the leave of the court — there was

always an exception for unrepresented people, and that is as it should be. On the role of the duty lawyer, I do not want to undermine the role of people who perform such work but you have to get sufficient instructions to know whether or not you are putting the case properly. If that requires a bit more work than we presently do to it, it is still better than hearing the case twice.

The CHAIR — Another issue that was raised was the question of seeing the Magistrates Court as a fairly high volume court where cases tend to be heard quickly and expeditiously, and there is an emphasis on moving the cases through, and therefore there is a view that in those circumstances there can be important things that are missed that may then get picked up in the more considered atmosphere of a County Court appeal.

Mr COGHLAN — If you have an appeal it is based on either error or manifest excess and it is still open — they would still open. It becomes the difference between merely a different view of sentence and a properly legal argument that says there should have been a different sentence. At the moment what we have settled for is, 'We will accept just that you think there ought to have been a different sentence'. That is really what I am submitting against. I am submitting against saying, 'Show some reason why the magistrate ought to have imposed a different sentence and then do it but do not do it otherwise'.

The CHAIR — Another argument that has been advanced is that if you are only allowing appeals on the basis of questions of law or presumably on the other narrow grounds you mentioned, you may in fact find there are situations where magistrates should have disqualified themselves from hearing the case and there will be more arguments being lodged in the County Court about the fact that certain magistrates should have disqualified themselves from hearing the case. It is more likely that magistrates who do therefore start disqualifying themselves would adjourn the cases leading to considerable delays.

I think the argument you get is that basically the County Court appeals system will be blocked up with people appealing on the question of bias and whether a magistrate should have disqualified themselves, and likewise in the Magistrates Court there will be more delays as a result of that question being raised. Do you have any comments on that?

Mr COGHLAN — It is all right if a magistrate hears it if you like the result. You take your punt. You say, 'This magistrate should not be sitting on this case but I am happy to let the magistrate sit on it and if I like the result, that is okay, and if I do not like the result, I appeal to the County Court'. Either proper questions of bias arise or they do not arise.

There is a difficulty about that. It is a difficulty about what happens in country towns in particular, I think, where magistrates are going to be familiar with the clientele, if I can put it that way, in a way that does not necessarily occur in large metropolitan courts. However, if magistrates are put on notice about it — I think there are very few country centres where only one magistrate sits but rather a range of magistrates sit. There is nowhere in Victoria which is really too far for any magistrate to go for the day. For instance, I do not think there is a magistrate who sits permanently in Mildura now, I think magistrates go there on relatively short-term postings. There are ways of managing these things.

The CHAIR — Another point that is made is that the number of appeals to the County Court is pretty small. You are talking about 2 per cent of cases — —

Mr KOCH — Two to three.

The CHAIR — Two to three per cent of cases, and in most cases they are dealt with fairly expeditiously. There is not really a great burden being placed on the County Court or the system, but it does ensure it is a more robust system of justice. If you have had two hearings, then it is likely that the system has dealt properly with your case and therefore this question of appeals to the County Court is not really an issue.

Mr COGHLAN — Well, 2400 a year is a significant amount of work for us. Around Victoria I would have five or six barristers briefed most days doing County Court appeals in Melbourne or somewhere. I am not sure that is an argument, apart from anything else. I am not sure you can say, 'It does not cost very much so do it'. I would prefer to get the principle right first.

I follow that if it does not cost very much, that will become a powerful argument at the end of the day for saying we would err on the side of keeping it rather that not keeping it. It just depends really on where we put the principle in the argument. If we put the principle at the top of the page, then you might never get to the economic argument. I am not sure, because nobody is saying you would do away with appeals altogether.

The CHAIR — Another argument is in relation to indictable offences being tried summarily in the Magistrates Court. The argument is they will not proceed to be tried in the Magistrates Court because the defendant would basically be giving up their right to a trial by jury and with diminished appeal safeguards basically they would opt to go to the County Court, and therefore any savings that might be generated by abolishing de novo appeals would be more than counterbalanced by the fact that more cases would be heard in the County Court. Do you have any comments on that?

Mr COGHLAN — They would have exactly the same rights of appeal if they did that. It is interesting that they would choose to go into a system where they had the same rights of appeal as the one from which they came. That is a bit of an argument about whether you could or you could not.. My instinct is it would have no effect.

I do not think the reason people have cases dealt with summarily is based on the proposition that they have a County Court appeal or it would be so in a miniscule number of cases. The jurisdictional limits are different. If you have an offence of recklessly cause serious injury that carries 15 years in the County Court and a maximum of three years — three?

Mr GARDNER — Two.

Mr COGHLAN — Two years in the Magistrates Court — there are things that drive people more than whether there is a County Court appeal available.

The CHAIR — I think the argument goes that if you have a look at the higher acquittal rates for trials in the County Court, if you look at things like that, basically it might be better to just go to the County Court.

Mr COGHLAN — I would believe it if I saw it. It is about cases that plead in the Magistrates Court. By far the majority of cases in the Magistrates Court are pleas, and that affects the way that things operate. I do not know what the statistics are, but I would be surprised if very many or a large percentage of the cases which are contests in the Magistrates Court are cases which could be heard on indictment. I would be surprised by that.

I see that argument, Mr Chairman, I just do not think there is much in it. I can understand how it can be put and how it is put, but I think if you analyse the way cases operate there is not much in it, I think.

Mr LUPTON — Just to clarify that, what you are saying is that the likely major motivating factor for people taking the Magistrates Court line is the lower potential sentence if they are found guilty?

Mr COGHLAN — Yes. It is not always absolutely true but by and large Magistrates Court sentences are less than County Court sentences, and you would expect them to be.

The CHAIR — Going to the 1999 changes for one moment, I think an argument has been put by some other parties appearing before us that the fact that the severity of the sentence

can be increased without warning is something which can act as a disincentive for people to appeal, or if people lodge an appeal after the Magistrates Court hearing they may not be properly represented or have had adequate legal advice and they are not fully cognisant of all the factors that might flow from an appeal to the County Court or they may not withdraw the appeal within the 30-day period, resulting in some disadvantage or hardship to them. Do you have any comment on that?

Mr COGHLAN — I am not sure if we know of a single case in the state of Victoria where a sentence has been increased in circumstances where somebody has applied for leave to abandon the appeal and not been granted that leave. I do not know of any case. It is unusual for sentences to be increased on appeal separate from a director's appeal. Common-law courts all around the world have tended, since directors have had the right to appeal against sentence, to leave increase up to the discretion of the director. It is pretty rare for anybody to get an increased sentence. For my own part I do not know that I would worry too much about having the 30-day rule, I must say, because I do not think in practice you are going to stop people abandoning. That was a scheme that really did want to try to emphasise the possibility of increasing sentences, but in practice it does not really happen, and I doubt very much whether judges refuse leave to abandon in any event.

The CHAIR — I think the argument, though, from Victoria Legal Aid is that you have to make out an exceptional circumstances case. If you are a poor appellant and you cannot afford legal representation, for that aspect of the appeal legal aid is not available and therefore you have to argue that case as an unrepresented person before the court.

Mr COGHLAN — As I say, I would be very surprised if people were refused leave in those circumstances. I would be amazed if there is much statistical evidence that showed either of two things: either that they are refused leave or, if having been refused leave, the sentence was increased — that would amaze me. Whether the 30-day exceptional circumstances rule needs to be there, I must say I am ambivalent about it. I do not know that it adds much to the law one way or another.

The CHAIR — I think legal aid has argued that it would be more effective to allow an appellant to abandon up to three weeks before the appeal date without penalty. Have you any comment on that?

Mr COGHLAN — That would be a pretty practical way of approaching it. I do not think courts are that interested in doing unnecessary work, really, so if somebody comes along and says, 'I want to abandon', I think most judges are going to say that is fine.

Mr HILTON — Can I ask a question about consistency. I took you to say in your submission that a magistrate may have some local knowledge, which presumably could be a consideration in a determination. From a rather simplistic view, I would have thought that a crime is a crime and a sentence is a sentence. Therefore, does the County Court not have some role to play in making sure that a person gets the same treatment whether he is in Broadmeadows or Frankston?

Mr COGHLAN — If it could. I think as to the theory that is quite right. But the range of allowable sentence is so wide in terms of us taking the view that the sentencer has the right, on the basis of either instinctive or intuitive synthesis, to form what they think is the appropriate sentence. In terms of the theory of sentencing, prevalence is a matter that can be taken into account. How you establish prevalence is an interesting thing, but one of the ways you might is by the number of cases that come before you as a particular magistrate or judge. You might at Frankston know that, as an example — and this has no factual basis — the crime of car theft in Frankston is absolutely rife and that there have been now 50 or 60 young men sentenced in the last 12 months for this particular crime, and it might affect the basis on which you form the proper view of what sentence is to be imposed. A County Court judge cannot necessarily have that view or come at it in the same

way. We accept all that in the process of the way we go about sentencing. It is a very inexact science, and you would have to use the word 'science' in inverted commas, in any event. It is very inexact.

I think I am the only person who looks at every sentence imposed by the higher courts in Victoria — perhaps me and Bruce, I guess, because we look at them together. The range of sentence that you might get for any given offence is absolutely huge, and that is sentencing really. But I do not think we achieve much consistency about sentencing by the use of County Court appeals because, apart from anything else, you never know whether you are almost sentencing the same person. You can have something happen in front of a magistrate and nothing much is put — and this goes back to the problem about the duty solicitor on the day doing their best, and you get a very perfunctory approach to it. A custodial term is imposed and somebody then turns their mind to the proposition that perhaps this can be done better. Then somebody gets a psychiatric report; the kid gets a job in the meantime, and so on, and a whole lot of things happen, so the County Court judge is sentencing, as it were, a different person to the person before the magistrate. I guess that is one of the good things about County Court appeals.

I say, though, of that: why can we not do that at the beginning, and then save manifest excesses being the basis? But occasionally — it happens once every 12 months — magistrates write to me being very bitter about what happens on County Court appeals, and it will be them saying, 'I had this local knowledge that caused me to impose this sentence'. Magistrates get pretty tense about some sentences that might go from imprisonment to non-conviction — and blame us.

Mr KOCH — I am from Hamilton in Western Victoria. I certainly pick up on what you raise in relation to the Magistrates Court and see that magistrates make a very valuable contribution in regional Victoria. What percentage of cases from the Magistrates Court are reheard?

Mr COGHLAN — It is very small. It would be an enormously small percentage, given that I think now probably close to 90 per cent of cases in the Magistrates Court are pleas, so I guess you are less likely to get an appeal out of plea. You still get some because some people do not like the sentence that is imposed. I would be surprised if it was more than 2 or 3 per cent of the total number of cases heard. It might even be lower than that if you factor in all the traffic cases and everything that goes through the PERIN court and through other places.

Mr KOCH — I appreciate that. I just think the magistrate's local knowledge and circumstance of a lot of these things plays such an important part in some of the outcomes, and also from the point of view of the small percentage of reoffence on many occasions, which I think is an important part also, especially from a resourcing point of view from our judicial system. I just wanted to make that point because in regional Victoria we truly value the status quo at this stage, and I am very keen to go through our formal hearings from that point of view to hear other people's opinions.

Mr COGHLAN — Whether this change affects many of those things about how magistrates, a high percentage of the time, operate locally and so on, I am not too sure. I do not think it does affect it much. I do not know whether it still happens, but when I used to do County Court appeals, which is a long time ago now — 30 years ago, I suppose — you got more appeals from certain magistrates.

The CHAIR — You do not see this as being, as some see it, a quick and effective way of having that appeals mechanism as a safety valve in the system where people can take their case and have it heard de novo? You might, as you said, get a lot of appeals heard from some magistrates, or more than others statistically.

Mr COGHLAN — That does not mean they are wrong. They might be just a bit harder than other magistrates, but it does not mean they are wrong. That is part of saying the range of

sentence that is properly open is a wide range. But I accept the argument that if it is regarded as being pretty cheap, then it is a bit of a safety valve. It is not particularly cheap from my point of view. In fact, it has got consistently more expensive. Less judges hear more than one appeal, for instance. There are more appeal lists than there once were, and whether it achieves what it originally set out to achieve — that is, a safety valve on what you regard it as being a necessarily less than perfect system — I do not know whether it provides that any longer. If it is an excuse to say it is all right to get it wrong, then you should not have it because we ought to get it right.

The CHAIR — Sure, but I think at least one of the submitters argued that the Magistrates Court is instinctive synthesis at 100 miles an hour. It is happening very quickly. They deal with a high volume of cases and this kind of change is basically going to mean that the whole process will slow down. To quote one of the submitters, they will have to give more considered reasons; they will have to refer to the case law on sentencing; there will be an increase in committals; there will be increased arguments on law during the hearing of a matter; there will be greater formality in handing up references; there will be more adjournments, and so on. The corresponding impact is you end up with a more cumbersome Magistrates Court.

Mr COGHLAN — Or not. There are always doomsayers. It does not matter whatever change you want to make, there will be somebody who will come up with an argument that says it will be longer and it will be more complicated, and it will be all these other things or not. I am not convinced. It might slow the process down a bit, but if we reduce the number of County Court appeals — I am not sure economics are necessarily the way to judge it — and then it does slow the process down, but if it does so in the name of getting it better, then so be it.

Mr KOCH — If it also did that and did not get it better, you would be happy to have it further reviewed and returned to where it is currently? That is the other side of the story.

Mr COGHLAN — I am not sure about that. If the test becomes manifest excess of sentence and at the end of the day you do not have any greater number of appeals or you have a lesser number of appeals or less appeals succeeding, there is nothing wrong with that. But the safety valve is still there.

I talk about the man from Mars who comes down and lands in Melbourne. He comes to the Melbourne Magistrates Court and he sees a summary case heard, and it is heard from beginning to end with a professional magistrate. It gets to the end of it and he says, 'What happens now?', and they say, 'There has been an appeal. We will now take this case over the road in front of a judge and we will hear it all over again'. He thinks, 'That is an interesting system'. Then he goes into a committal and he has a look at a committal and sits there and hears nearly the whole of the evidence in a case — with witnesses cross-examined substantially, He gets to the end of it and he says, 'What happens now?', and we say, 'We send it over to the County Court to be heard by a judge and jury'. He would think it was an even stranger system. I just wonder about whether, in terms of the valuable resources we have in the system, doing things twice is the best way to do it.

I do not think I am going to win this argument at the end of the day, by the way, but I am not going to give up on it. I follow that there are not going to be many voices at our end of this argument — me and the police, I suspect. But it does not mean we should not look at these things and does not mean we cannot make it better.

The CHAIR — Do you have any comments on the experience of the New South Wales system where basically the appeals are based on the transcript from the local court?

Mr COGHLAN — It seems to work all right. Nobody seems to think the world has come to an end in New South Wales. I doubt that it has increased or decreased the number of appeals in comparison.

The appellate process of its nature ought to be that you have really got to have something to complain about, just not that you are allowed to come and ask for a second opinion. If it is heard and it is a fair and a reasonably just result, why do you, as against some proper complaint, except in a system that is even beyond Rolls Royce now? We understood why we had that because we had untrained people hearing cases, but we do not have that any more.

The CHAIR — Thank you very much. We appreciate you taking time out of your busy schedule and no doubt numerous appeals to the County Court.

Mr COGHLAN — I have a very small number of director's appeals to the County Court — probably half a dozen a year.

The CHAIR — Thank you very much

Witnesses withdrew.

Proceedings in camera follow.