

QUESTIONS ON NOTICE



Meeting details	PAEC Inquiry into the Victorian Government's Response to the COVID-19 Pandemic – Public Hearing
When	2:24pm - 3:02pm – 19 May 2020
LIV Attendees	LIV President Sam Pandya, and CEO Adam Awty

Question on notice (Page 7 - Proof version Hansard transcript)

Ms Vallence: You mentioned in your presentation that you had been consulted and made some recommendations in terms of the Omnibus Bill put before the emergency sitting of Parliament. You said that most of your recommendations were taken up. Could you share with the Committee which recommendations you made that were not?

Justice System - General

- Correction Programs Updates

The Courts have been asking practitioners to provide updates on what programs were available to their clients during bail and parole applications. Some courts do not take the word of the prisoner and require confirmation from prisons. A prisoner's engagement with relevant programs is a useful tool for the Courts to gauge their rehabilitation and risk to society. Lawyers who have multiple clients do not always have the resources to receive in writing from every prison a report of every program that continues to run or has understandably been suspended.

Despite several weeks of consultation and agreement in principle for a weekly update on what programs are running across all prisons, Corrections Victoria have been unable to produce such a document.

- Sentencing Act CCOs

Reforms in the Omnibus enables the use of *electronic monitoring conditions on community corrections orders (CCOs)*. The LIV would support electronic monitoring being reserved for more serious offending. Electronic monitoring bracelets contribute to stigma and can act as a barrier to a person to attending interviews, training and other engagements.

- Remote hearings for people in custody

Particularly in disadvantaged areas and where people who have vulnerabilities which are a barrier to participation via audiovisual or audio only link. Some regional places are unable to accommodate AVL, so are insisting travel to Melbourne or do the hearing by phone.

QUESTIONS ON NOTICE



- Youth detention and isolation practices

The Bill may permit those in youth detention to be placed in isolation 'whether or not' the person is suspected of having COVID-19. LIV recommended that the breadth of the terminology 'suspected' would be too broad allowing a person in youth detention to be placed in isolation without proper justification.

To forego the possibility of abuse, the LIV recommended that the Secretary provide evidence in writing and be given the discretion to direct the manner in which an independent visitor 'attends' a youth justice centre or alternatively, that the Children's Commissioner be notified of any period of isolation.

Children's Court

- Unrepresented children

Where a child's legal guardian prevents the child from attending court. The LIV recommended that the provision in s600U be amended to allow a court to compel attendance by the child in order to obtain legal representation.

Not implemented, as per s600U(b), the Court may deal with the matter in the absence of the person.

Property law & Litigation

- Doctrine of frustration for retail leases and non-retail commercial leases and licenses

Threshold for frustration at common law be decreased to include COVID-19. The threshold of frustration permits a tenant to terminate a lease, potentially under a lower threshold than usually required under the common law doctrine.

This was not implemented and the common law position maintained.

TABLE OF LIV ADVOCACY

Section	Issue	Why	LIV proposal	Result
Administrative Law and Human Rights	Implications of legislation potential overriding the Equal Opportunity Act 2010	Ensuring that anti-discrimination measures are protected	Override provision in the Act to be expanded to include the Equal Opportunity Act to ensure limitations on rights are proportionate	Not implemented - the Equal Opportunity Act was not included in the exceptions for the Charter

QUESTIONS ON NOTICE



			and protect against discrimination.	and the Constitution Act 1975.
Administrative Law and Human Rights	Right to Life for prison populations	Prisoner's increased vulnerability due to COVID-19	The LIV recommended that the Bill recognises a prisoner's right to humane treatment when deprived of liberty under the <i>Charter</i> , where reducing prison populations due to concerns that social distancing measures could not be observed in prisons	Implemented protective quarantine measures.
Criminal Law Section & Litigation Lawyers Section	Suspension of jury trials and adjournment/days in matters listed for jury trials	Financial hardship and ongoing medical expenses accruing in the interim. Concerns about the liberty of persons held on remand who may be found not guilty at trial	The LIV recommended judge alone trials for currently listed jury trials. These should be heard via video-conferencing.	This was introduced and for criminal matters it resembles the NSW format.
Criminal Law Section	Bailed individuals required to report to police stations in person	Heightened risk of spreading COVID-19 to co-inhabitants and the police officers in the station.	The LIV recommended implementing measures that would alleviate the requirement for low risk cohort of bailed individuals to report in person.	Part 2.1 empowers regulations to be made regarding the method or processes by which conditions of bail are monitored or enforced s4(1)(f).
Criminal Law Section	Early prison releases	Preventing entry of particular people or groups	The LIV recommended the Act replicate Part 15 of the NSW	The Corrections Act was amended so the Secretary

QUESTIONS ON NOTICE



		into prison where necessary to protect the health of inmates and others	Government's COVID Legislation Amendment (Emergency Measures) Bill 2020, to provide authority to the Commissioner to prohibit entry as necessary to protect the health of inmates and the spread of COVID-19.	or governor may prohibit or restrict visits for health and safety reasons.
Criminal Law Section	Infringements continue to operate during pandemic period	Time of great financial uncertainty and resource heavy process to enforce and defend a fine.	The LIV recommended a suspension of the priority of the infringement system whilst the pandemic is ongoing	Period to pay fines extended from 6 to 12 months
Criminal Law Section & Workplace Relations Section	Backlog of cases and need for matters to be determined with the appearance of parties.	To assist with the backlog, hearings and pre-trial matters capable of being resolved without hearing should proceed	The LIV recommended that matters capable of being decided without hearing proceed, with due regard to encroachment upon procedural fairness.	The Act provides that the Court may determine certain matters without hearing
Criminal Law Section	Access to clients in custody to receive instructions	Practitioners appearing before the court without instructions from their clients and the impact on the clients right to a fair trial.	The LIV recommended clarification under section 34C of the Bill, regarding the scope of the definition of 'representing', particularly whether there would be assurances that instructions have been able to be taken.	Restricts visits by lawyers and their assistants from entering a prison unless the Governor has permitted the visit to be conducted with physical barriers and modification to abide by distancing measures.
Criminal Law Section &	Youth detention and isolation practices	Bill may permit those in youth detention to be	LIV recommended that the breadth of the terminology 'suspected'	Under Part 3.3 of the Amendments to the Children,

QUESTIONS ON NOTICE



<p>Family Law Section</p>		<p>placed in isolation 'whether or not' the person is suspected of having COVID-19</p>	<p>would be too broad allowing a person in youth detention to be placed in isolation without proper justification. To forego the possibility of abuse, the LIV recommended that the Secretary provide evidence in writing and be given the discretion to direct the manner in which an independent visitor 'attends' a youth justice centre or alternatively, that the Children's Commissioner be notified of any period of isolation.</p>	<p>Youth and Families Act 2005, the Omnibus legislation implemented protections for persons placed in isolation to not exceed 14 consecutive days, requirements for persons to be supervised and receive mental health supports and required treatment, where the officer in charge must record in the register details of every use of isolation.</p>
<p>Family Law Section</p>	<p>Absence of children's court video-conferencing facilities</p>	<p>Teleconference facilities are in a closed Court internal network, where practitioners will be forced to continue to attend in person to properly advocate for clients</p>	<p>The LIV sought advanced technological opportunities to be implemented for remote attendance and assistance to clients.</p>	<p>S171 of the Act amending the Evidence (Miscellaneous Provisions) Act 1958, allows for a Court to direct an appearance by audio visual link or audio link— removing provisions under the Evidence Act that a Court must not make a direction for a child to appear</p>

QUESTIONS ON NOTICE



				before or give evidence via audio link.
Family Law Section	Unrepresented children	Where a child's legal guardian prevents the child from attending court.	The LIV recommended that the provision in s600U be amended to allow a court to compel attendance by the child in order to obtain legal representation.	Not implemented , as per s600U(b), the Court may deal with the matter in the absence of the person.
Litigation Lawyers Section	Interference to the service of writs by process servers	Stricter controls on movement will prevent matters from proceedings unless rules for substituted service are relaxed.	Substituted service should be able to proceed online if the serving party can provide a supporting affidavit that addresses whether the virtual destination is still current for the party to be served and whether there is a clear nexus between the virtual destination and the party. The determination of substituted service by the Courts should be available via video - conference.	Implemented alternative methods of service by delivering a copy of document by electronic communication, sending by registered post or leaving a copy of the document for that person in accordance with the Regulations.
Property and Environmental Law Section	Relief on land tax for landowners during the pandemic period	A considerable number of landowners will forego rental income and/or experience their own job insecurity where they are unable to secure a tenant due to restrictions on inspections	The LIV recommended broader relief from 2020 land tax liabilities to assist taxpayers where the owner has consequently deferred or waived rent.	Land tax relief was implemented under the National Cabinet Mandatory Code for commercial leasing, conditional upon the provision of rental relief by the landlord under COVID-19 Omnibus

QUESTIONS ON NOTICE



				(Emergency Measures) (Commercial Leases and License) Regulations 2020.
Property and Environmental Law Section	Applicability of the doctrine of frustration for retail leases and non-retail commercial leases and licenses	Threshold for frustration at common law be decreased to include COVID-19.	The LIV recommended that injunctive relief be permitted in urgent circumstances	Not implemented - common law position maintained.
Technology and Innovation Section & Succession Law Section	Witnessing Affidavits and signatures in remote working arrangements	Ambiguity about whether courts are willing to accept the filing of unsworn affidavits where it will later be sworn or affirmed when circumstances allow.	Emergency legislation to allow for video-conferencing witnessing of Affidavits and signatures For signatures, the LIV proposes that a video conference call in which the deponent either electronically signs a document and immediately emails it to the solicitor or physically signs a hard copy document and immediately scans and emails it to the solicitor. The solicitor then co-signs the emailed version of the document.	Regulations were introduced on 12 May 2020 following extensive consultation
Workplace Relations Section / Litigation Lawyers Section	Backlogs in workers compensation matters	Many plaintiffs will be unemployed and unable to access entitlements to	The LIV suggested that an independent assessment panel be established to assess damages	Not implemented

QUESTIONS ON NOTICE



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