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4 November 2024

### **Comment on the Justice Legislation Amendment (Committals) Bill 2024**

1. Liberty Victoria **opposes** the Justice Legislation Amendment (Committals) Bill 2024 (Vic) (**the Bill**) which would, amongst other things, abolish the power of Magistrates to discharge matters at Committal, prohibit committal hearings for certain matters, and make it much more difficult for an accused person to be granted leave to cross-examine witnesses at committal.
2. Liberty Victoria strongly supports the retention of committal hearings as a fundamental safeguard of our justice system.
3. Committal hearings have long served as a critically important part of the protections afforded in Victoria to persons accused of serious crimes. The current system holds significant value in ensuring adequate disclosure, promoting the early resolution of cases, minimising the impact on vulnerable witnesses and ultimately easing pressure on the criminal justice system.
4. Those calling for reforms have failed to understand the significant value, to our criminal justice system, of a well-run committal hearing. Often the strength of a prosecution case only becomes clear once witnesses have given evidence. Accordingly, committals enable an accused person to understand the case against them and assess the strength of the evidence, and also give the prosecution an opportunity to properly evaluate its own case. It is common for the prosecution to withdraw charges, or accept resolutions to lesser charges, as a result of the evidence being tested at committal.

5. Further, the current committal process is necessary to protect an accused person's right to a fair trial, and to ensure that there is proper disclosure. In cases that may be discontinued after committal (or where there is a discharge), that will result in the saving of considerable public resources by running flawed matters to trial. That also prevents complainants and other witnesses giving evidence in circumstances where the prosecution case is very weak or fatally flawed.
6. The value of the committal process was recently demonstrated by the case arising from a tragic incident in Daylesford in November 2023, when a 66-year-old man lost control of his car and crashed into a pub, resulting in the death of five people. The man was charged with 14 charges, including five charges of culpable driving causing death, an offence which carries a maximum term of 20 years' imprisonment.
7. Two medical experts gave evidence at the committal that they could not rule out the possibility that the man was suffering from a severe hypoglycaemic episode before getting into his car before the crash (and continuing at the time of the crash). After hearing evidence over three days, the Magistrate found that "no hypothesis of guilt is open given how the Crown have made their case". The accused man was discharged of all charges; after carefully reviewing this decision, the Office of Public Prosecutions stated that it would not file a direct indictment.
8. This decision highlights the critical value of the committal process in our justice system. The weaknesses of this high-profile prosecution case were only revealed when witnesses were called to give evidence and cross-examined at the committal stage. By discharging a case where a finding of guilt was impossible, the Magistrate saved all affected – the families of the victims, the witnesses, judges, jury members and the accused – from unnecessarily undergoing a gruelling and protracted trial process.
9. In the 2020 Victorian Law Reform Commission's report on Committals, it was documented that:
  - (1) The current committal system filters indictable cases effectively, with around a third of all indictable stream cases resolving in the lower courts and another third committed to the higher courts following a plea of guilty; and
  - (2) While cross-examination can be stressful, delays and failures by the prosecution to communicate what is happening in a case were also described as frequent problems by victims and witnesses.

10. Liberty Victoria observes that the criminal justice system already includes important safeguards to limit trauma to witnesses and complainants. For example, in many sexual offence cases, complainants are only cross-examined once in a pre-recorded environment. This applies to child witnesses in some cases, and those with cognitive impairments. Also, there are significant measures available to prosecutors and judges to determine the manner in which witnesses give evidence. These include not appearing physically in the courtroom, but by video-link to ensure the witness cannot see the accused person.
11. Importantly, judicial officers can control the manner of questioning, to prevent questions that are misleading or confusing, or unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or put in a tone that is belittling, insulting or otherwise inappropriate, or has no basis other than a stereotype (see s 41 of the *Evidence Act 2008* (Vic)). These obligations are taken seriously by the Courts and most legal practitioners. A few high-profile examples of cross-examination that breach those requirements should not be used to abolish or otherwise diminish committal proceedings given the myriad ways that committals benefit the criminal justice system.
12. Importantly, it must also be noted that removing an accused's right to question a complainant or witness prior to trial will often cause delays. For example, when a complainant is questioned they may give answers that trigger disclosure requirements or require others witnesses to be located. If this occurs during a trial it will result in the discharge of a jury, and the witness having to return at a future date to give evidence again. This is costly and will add significant delays to the criminal justice system.
13. The current system is not perfect, but it fairly balances the rights of witnesses with that of an accused person who has a fundamental right to understand the case they are facing and to be able to properly prepare their defence. This is important considering the lengthy periods of imprisonment that may be imposed on those convicted of serious criminal offences. The Government should reconsider its proposals given that the current system is already designed to limit when complainants and witnesses give evidence, and to ensure that they have robust protections when they do so.

