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Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill

A brief introduction to the Bill

1. The Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill ("the Bill") proposes significant amendments that will fundamentally change the criminal justice system in Victoria.

2. Liberty Victoria is strongly opposed to the Bill.

3. The Bill seeks to amend the appeal system for criminal matters heard in the Magistrates' Court and Children's Court by, *inter alia*:

    (1) abolishing 'as of right' appeals to the County Court and introducing a system under which persons must apply for leave to appeal if they pleaded guilty or did not appear when they were convicted and sentenced;[1]

[1] Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill cl 254. Also see cl 254(3) which states that a person must not seek leave to appeal if they have not applied for a rehearing under s 88 of the *Criminal Procedure Act* or if their rehearing has not yet been heard.

(2) introducing a condition that, in addition to filing a Notice of Appeal, appellants must file a 'Summary of Appeal Notice' stating the general grounds of appeal within 28 days of the filing of the Notice of Appeal or their appeal will be taken to have been abandoned and may be struck out;[2]

(3) in relation to appeals against conviction, abolishing *de novo* appeals and primarily limiting the right of appeal to a reconsideration of the evidence given before the Magistrates' Court in the summary hearing;[3] and

(4) in relation to appeals against sentence, abolishing de novo appeals and primarily limiting the right of appeal to a reconsideration of the evidence given in the summary hearing and imposing a threshold condition that the County Court must only allow an appeal if it is satisfied that there are compelling reasons to impose a different sentence taking into account, *inter alia*, the presumed correctness of the decision of the Magistrates' Court.[4]

An unsatisfactory departure from evidence-based reform

4. At the outset, Liberty Victoria submits that it is completely unsatisfactory that such significant reforms have been proposed without evidence-based support.

5. The last significant investigation into the *de novo* appeals system in Victoria was undertaken by the Law Reform Committee of the Parliament of Victoria in October 2006. The findings of that investigation were published in a 270-page report entitled '*De Novo Appeals to the County Court*' ("the Report") which, notably, recommended that the de novo appeal system be retained.

[2] Ibid cl 266A.
[3] Ibid cl 256.
[4] Ibid cl 256A.

6. The Attorney-General has not referred this matter to the Victorian Law Reform Commission for consideration or investigation despite that body's role as the central agency for developing law reform in Victoria.[5]

7. Similarly, there has not been a reference from the Attorney-General to the Sentencing Advisory Council, which was created to, *inter alia*, provide statistical information on sentencing, conduct research and advise the Attorney-General on sentencing issues.[6]

8. The Attorney-General's claimed disadvantages of the *de novo* appeal system are discussed below.

The origins of the de novo appeal system

9. To properly understand the significance of the abolition of the de novo appeal system in Victoria and the importance of de novo appeals to the good operation of the criminal justice system, their origin, as well as the nature of the summary justice system, must be understood.

10. The origin of the de novo appeal system is discussed in greater detail in the Report,[7] however the establishment of the summary jurisdiction was an administrative necessity due to the significant increase in statutory offences during the 17th century.[8] The de novo appeal system arose concurrently as a 'trade-off' for an accused forgoing his or her right to trial. [9]

11. In *Sweeney v Fitzhardinge*,[10] Griffiths CJ stated:

> *The earliest instance of an appeal from a conviction by justices of peace was in Statute 22 Car. 2 c. 1, called the* Conventicle Act*, and the author says:- "That act, after authorizing a summary examination and recovery of penalties*

[5] *Victorian Law Reform Commission Act 2000* (Vic) s 1.
[6] *Sentencing Act 1991* (Vic) s 108C.
[7] Parliament of Victoria, Law Reform Committee, *De Novo Appeals to the County Court* (2006), pp.19-30.
[8] Ibid, p.21.
[9] Ibid, p.30.
[10] (1906) 4 CLR 716.

> *before any two justices, gave to the party convicted the privilege of an appeal in writing, to the judgement of the justices of the peace in their next quarter-sessions, upon which 'he may plead and make his defence, and have his trial by a jury thereupon.'" It is obvious that if the appeal was to Quarter Sessions with a jury the case must be heard de novo, and it would have to be heard in the ordinary way; by the taking of evidence and the jury giving a verdict.*[11]

12. In the above mentioned "trade-off", accused persons give up their right to trial by a jury of peers drawn from the community; what is regarded, at least in relation to indictable offences, to be a fundamental and significant right.[12]

13. The Report concluded that the historical justification for de novo appeals has continuing relevance today.[13]

The nature of summary justice

14. Today, despite the popular view of trial by jury as a predominant feature of the criminal justice system, the vast majority of offences are heard by way of summary hearing before a single magistrate in the Magistrates' Court.

15. There is a fundamental distinction between summary proceedings and trial upon indictment in the County Court or Supreme Court. In summary proceedings there is no jury of peers drawn from the community and an accused is convicted or acquitted by a single judicial officer. As the sole decision maker in criminal and related matters, the magistrate is responsible for making relevant evidentiary rulings, findings of fact, interpreting and applying the law, determining and imposing any sentence, and exercising any discretion involved in those tasks in a particular case. It is a formidable task.

16. Summary proceedings are also high volume and fast-paced. And the volume and pace are increasing. In the 2015-2016 financial year there were 683,709 listings of criminal

[11] *Sweeney v Fitzhardinge* (1906) 4 CLR 716, Griffith CJ at 728. See also Isaacs J at 728–9.
[12] See *Clayton v Hall & Anor* (2008) 184 A Crim R 440 per Kaye J at [33].
[13] Parliament of Victoria, Law Reform Committee, above n 7, p.29.

matters in the Magistrates' Court and 199,960 criminal matters were finalised.[14] In 2011-2012 there were 575,998 listings of criminal matters and 180,754 criminal matters were finalised.[15] The Court also has an incredibly high workload in other areas. For example, in 2015-2016 there were 122,909 hearings of application for Intervention Orders and 74,551 applications for Intervention Orders were finalised.[16]

17. It is not uncommon for Magistrates to hear 80 to 100 matters in a day.

18. This caseload places great pressure on all parties involved, including the magistrates themselves. Magistrates must engage in swift decision-making and the majority of decisions are given on an *ex tempore* basis. While a whole day may be devoted to hearing a plea in the County Court, a hearing in the Magistrates' Court may take as little as a few minutes.

19. The nature of legal representation in the summary jurisdiction is also very different to that in the higher courts. There is a significant proportion of people who are self-represented and the quality of legal representation is often compromised by the volume of cases heard by the Magistrates' Court, the speed at which they are heard, constraints on legal funding, and the fact that a significant amount of legal representation is done by relatively junior lawyers.

20. Clearly, some degree of error is inevitable in such a system and this was recognised in the evidence heard by the Parliament of Victoria, Law Reform Committee during its investigation leading to the Report.[17] Is it incontrovertible that the speed and relative brevity of hearings in the Magistrates' Court carries with it a greater potential for error in fact-finding and legal analysis than in the higher levels of the criminal justice system.

[14] Magistrates' Court of Victoria, *Annual Report 2015-2016*, p.74.
[15] Ibid.
[16] Ibid, p.82.
[17] Parliament of Victoria, Law Reform Committee, above n 7, p.113.

21. Moreover, while the limitations of summary justice have historically been recognised by restricting the jurisdiction to less serious matters, as is discussed below, in recent years the court's jurisdiction has grown to encompass serious alleged offences.

22. Liberty Victoria maintains that the right of appeal is particularly important in the summary jurisdiction where there are a large number of decisions, affecting a large number of individuals, often made, by necessity, quickly and with a degree of informality, in contrast to the courts of higher jurisdiction.

Why de novo appeals are arguably more important than ever

23. The Report succinctly summarises the key reasons why de novo appeals continue to be an important element of Victoria's criminal justice system:

> *The Committee believes that de novo appeals from summary conviction may be seen as providing an important counterweight to the fact that summary jurisdiction involves the discretion of a single individual.*
>
> *In summary matters the magistrate has three powers: fact finding, passing sentence and, in particular cases, exercising discretion in relation to both of the former. Notably, where a person is tried before a jury, it is a panel of representatives from the community who are entrusted with the fact-finding process and, in particular cases, with exercising the discretion that in summary matters is the province of the magistrate. In this sense, the jury has historically enabled the law to respond to the community that it serves.*
>
> *For these reasons, the Committee considers that the diminishing role of the jury within the criminal justice system may be seen as both a historical and contemporary justification for retaining de novo appeals from summary conviction.*
>
> *As the framers of the English criminal justice system apparently realised in the 17th century, de novo appeals are not a substitute for trial by jury, but they do provide an important counterweight to summary trial. For this reason, de novo appeals can also be seen as serving to enhance public confidence in the criminal justice system.*
>
> *Finally, for the reasons noted in chapter four — notably, the pressures faced by defendants to plead guilty in the Magistrates' Court — the Committee*

concludes that de novo appeals against sentence also provide an important safeguard for individuals and, ultimately, for the Victorian community.[18]

Ensuring efficiency

24. Liberty Victoria submits that the de novo appeal process contributes significantly to the efficient manner in which matters are able to be determined in the Magistrates' Court.

25. Judicial officers, advocates and individuals appearing in the Magistrates' Court can be succinct and to the point because there is a simple and effective remedy available should the need arise.

26. To remove the 'safety net' of *de novo* appeals also carries a real risk that accused persons will not consent to summary jurisdiction, resulting in a significant additional burden on the County Court, with significant additional delay and expense.

27. That the de novo appeal system is working well is demonstrated by the high workload met by the Magistrates' Court and the low rate of appeal. In 2011-2012, there were 2,378 appeals filed against conviction and/or sentence.[19] In 2015-2016 the figure remained low at just 2,988,[20] particularly when the increase in criminal matters finalised is accounted for. The rate of appeal increased from approximately 1.3% to just under 1.5%. And just 0.3% of criminal matters finalised in the Magistrates' Court were subject to appeals against conviction.

28. Further, the most recently published annual report of the County Court, for the years 2015-2016, found that appeals only accounted for 6% of a criminal division judge's

[18] Parliament of Victoria, Law Reform Committee, above n 7, p.202.
[19] Magistrates' Court of Victoria, above n 13, p.74.
[20] Magistrates' Court of Victoria, above n 13, p.74.

workload. The overwhelming amount of a judge's workload, 77%, was related to trial work.[21]

29. Significantly, the Report found that the abolition of the de novo appeal system would 'almost certainly reduce the efficiency of, and increase costs for, the Magistrates' Court'[22] and would make hearings in the Magistrates' Court longer and more complex. The Report also found that 'any anticipated gains in the County Court from the proposed change would be outweighed by additional costs in the Magistrates' Court'.[23]

30. In its conclusion, the Report found that de novo appeals maximise both the fairness and efficiency of the Victorian criminal justice system.[24] The following passage from the foreword of the Report is particularly pertinent:

> *While the implications of hearing appeals 'afresh' may involve an additional workload for the County Court, the Committee was not convinced that the potential efficiency gains would be realised in the whole justice system. Nor was the Committee convinced that alternative forms of appeal provide the same level of protection against errors made in rulings of the lower court. In addition, the Committee was concerned about issues of access to a fair appeals syste*m.[25]

An increasingly important counterweight to the increasingly serious offences that are being heard in the Magistrates' Court

31. The historical justification of de novo appeals as a 'safety net' or 'counterweight' for accused persons having their matter heard summarily is more important than ever because increasingly serious offences are being heard in the Magistrates' Court as a result of changes to the Court's jurisdiction in recent years which have increased the amount of indictable offences that may be heard summarily.

[21] County Court of Victoria, *Annual Report 2015*-2016, p.16.
[22] Parliament of Victoria, Law Reform Committee, above n 7, p.5.
[23] Parliament of Victoria, Law Reform Committee, above n 7, p.5.
[24] Parliament of Victoria, Law Reform Committee, above n 7, p.XV.
[25] Parliament of Victoria, Law Reform Committee, above n 7, p.xi.

32. Offences capable of being heard summarily in the Magistrates' Court include recklessly causing serious injury, intentionally causing injury, indecent assault, threats to kill, assault with intent to commit a sexual offence, and some forms of aggravated burglary, and carjacking.

33. It is trite to say that these are serious offences that seriously impact the rights of the individuals involved and may result in substantial terms of imprisonment.

34. The Report found the trend towards indictable offences being capable of being heard summarily to be a further justification for the retaining de novo appeals.[26]

The impact on disadvantaged and self-represented accused

35. A particularly concerning aspect of this Bill is that a greater number of self-represented accused persons, including those with only the limited assistance of a duty lawyer and those who cannot afford legal representation and who have been deemed to not satisfy the criteria for a grant of legal assistance by Victoria Legal Aid will face even greater barriers to appeal. Such people will often be amongst our society's most disadvantaged and most vulnerable.

36. Due to budgetary constraints, in 2012-2013 Victoria Legal Aid sought to reduce its expenditure by enacting more restrictive eligibility guidelines. This has resulted in fewer people having access to legal representation.[27] The 2015-2016 Magistrates' Court Annual Report states, "Victoria Legal Aid's changes to its eligibility guidelines has been a substantial cause of the increased number of self-represented accused.'[28] The changes to Victoria Legal Aid's guidelines have also placed a greater reliance on duty-lawyer services. Duty-lawyers have very high demands on their services and very limited time to prepare.

[26] Parliament of Victoria, Law Reform Committee, above n 7, p.xvi.
[27] Victorian Auditor General's Office, *Access to Legal Aid* (2014), p.xii.
[28] Magistrates' Court of Victoria, above n 13, p.14.

37. At present, Victoria Legal Aid will only grant legal assistance to accused persons with matters being heard summarily if, in addition to other criteria being satisfied including a means test, *a conviction is likely to result in a term of immediate imprisonment*. This is a subjective assessment usually made by a single solicitor. Significantly, if an accused person only *may* receive a term of immediate imprisonment then they do not qualify for a grant of legal assistance.

38. In relation to conviction appeals, the Bill seeks to enact an appeals system that is akin to that now existing in New South Wales. Putting the other significant disadvantages of such a system to one side for a moment, a factor of real significance weighing against the enacting of the Bill is that New South Wales has a less restrictive test for the grant of legal assistance by its Legal Aid Commission. To qualify for a grant of legal assistance in NSW, an accused need only be facing a *real possibility* of a term of imprisonment being imposed.[29] This is plainly a far less restrictive test than the Victoria Legal Aid test.

39. While appellants who have received a term of immediate imprisonment in the Magistrates' Court would most likely qualify for a grant of legal assistance on appeal, their chances of appealing successfully would be greatly reduced because their appeal would be determined on the basis of the evidence given before the Magistrates' Court in the summary hearing or, in an appeal against sentence, they must show a compelling reason to depart from the decision of the Magistrates' Court. The proposed s 255A in the Bill, which provides that appellant's must file a 'Summary of Appeal Notice' stating the general grounds of appeal within 28 days of the filing of the Notice of Appeal or their appeal will be taken to have been abandoned and may be struck out, provides a further barrier to the self-represented appellant.

The claimed justifications for the Bill

[29] New South Wales Legal Aid, Policies, Policy 4.3 Local Court Criminal Matters.

40. In his second reading speech for the Bill in the Legislative Assembly, the Attorney-General claimed the following were disadvantages of the existing de novo appeal system:

> *De novo appeals impose a significant 'cost' on victims and witnesses, as they have to give their evidence twice: first at the original hearing and then again, on appeal. This may re-traumatise the person and cause proceedings to be withdrawn if they are not willing, or able, to give their evidence again. On some occasions, appeals are used to harass the victim. These outcomes are inconsistent with the objectives of a modern criminal justice system.*
>
> *De novo appeals can also undermine the decision of the magistrate, which may indirectly affect public confidence in the administration of justice. Victoria's magistrates are professional, legally trained and independent. Providing parties with an unqualified 'second bite of the cherry' can no longer be justified, particularly where summary procedures and the laws of evidence have continued to evolve to maintain appropriate safeguards against wrongful convictions.*
>
> *On average, there are more than 200,000 summary criminal matters finalised in Victoria each year. These numbers continue to grow. The de novo appeal system is inefficient, because it duplicates the original hearing on appeal, has high rates of abandonment, and uses police resources inefficiently.*[30]

41. These claims are distilled and considered below. As will be shown, these alleged 'disadvantages' are either based on falsities, are without basis, or are, on balance, outweighed by countervailing considerations.

"De Novo appeals impose a significant 'cost' on victims and witnesses because they have to give their evidence twice"

42. This consideration needs to be balanced against the important countervailing considerations outlined in these submissions.

43. The Report found that de novo appeals originated to ensure that public confidence in a just and equitable dealing with criminal matters dealt with summarily is balanced

[30] Victoria, *Parliamentary Debates*, Legislative Assembly, 25 July 2018, 2333 (Martin Pakula, Attorney-General).

with the need to produce efficient and timely results for victims, the accused and the community.[31] Liberty Victoria ultimately supports the finding of the Report which states, relevantly:

> *In Victoria, the right of appeal is regarded as a key human right. In practice, this right is one which must carefully balance the interests of victims in seeing the swift application of justice, whilst minimising the possibility of miscarriages of justice because of errors at law or in fact. In essence, it is a key safeguard to ensure justice is done.*[32]

44. It is also relevant that, as has been discussed, according to the latest published figures of the Magistrates' Court in the 2015-2016 Annual Report, the rate of appeal in criminal matters is only approximately 1.5% and the rate of conviction appeals, in which complainant's and witnesses may need to give evidence again, is only approximately 0.3%.

"*On some occasions appeals are used to harass the victim*"

45. It is noteworthy that the Attorney-General did not produce any evidence to support this claim.

46. Liberty Victoria submits that the *Evidence Act 2008* (Vic) ("the *Evidence Act*") provides ample protection for complainants and witnesses at the hearing of an appeal. Those protections are the same as that at a summary hearing in the Magistrates' Court or at a trial in the County Court or Supreme Court.

47. Section 26 of the *Evidence Act* gives the court control over the questioning of witnesses. Specifically, s 26(a) gives the court power to control the way in which witnesses are to be questioned and s 26(d) gives the court power to make orders in relation to the presence and behaviour of any person in connection with the questioning of witnesses. These broad powers are further strengthened by s 41 which

[31] Parliament of Victoria, Law Reform Committee, above n 7, p.30.
[32] Parliament of Victoria, Law Reform Committee, above n 7,p.xi.

empowers a court to disallow improper questioning put to a witness in cross-examination. Section 41(3)(b) specifically includes harassing questioning within the definition of improper questioning.

48. The best way to prevent witnesses being exposed to harassing questioning is to ensure that appellants are represented by legal practitioners who have clear ethical duties to the Court and to all witnesses, and who are professionally accountable should those duties be breached. That is why, with regard to some categories of sexual offending and family law proceedings, there have been reforms made in order to mandate that parties must be legally represented in order to undertake cross-examination of certain vulnerable witnesses.

49. Further, pursuant to s 406 of the *Criminal Procedure Act 2009*, if the County Court is satisfied that an appeal was brought vexatiously or frivolously or as an abuse of process, the court may order that the appellant pay the respondent's costs of the appeal. In the Report, the Committee found that this mechanism provides an appropriate measure for the discouragement of unmeritorious appeals.[33]

"*De Novo appeals can undermine the decision of the Magistrate which may indirectly affect public confidence in the administration of justice*"

50. While it is not clear, Liberty Victoria takes this statement to be a claim that de novo appeals undermine public confidence in Magistrates. Notably, the Attorney-General did not explain how de novo appeals might do this and does not produce any evidence in support of such a claim.

51. There is no logical reason why a rehearing conducted on the evidence given in the Magistrates' Court, as proposed by the Bill, would remedy this purported impact.

[33] Parliament of Victoria, Law Reform Committee, above n 7, p.48.

52. In a de novo appeal the decision of the Magistrates' Court is put to one side and there is no consideration of whether or not the magistrate may have committed a specific error. This can be contrasted with a 'strict appeal' in which an error must be shown.

53. If anything, the reforms proposed by the Bill are much more likely to see individual magistrates criticised due to making specific errors that are then considered on appeal.

54. The Report found that the de novo appeal system neither detract from the status of the Magistrates' Court nor renders irrelevant those matters which are appealed.[34]

"Providing parties with an unqualified 'second bite of the cherry' can no longer be justified, particularly where summary procedures and the laws of evidence have continued to evolve to maintain appropriate safeguards against wrongful convictions."

55. Liberty Victoria submits that it is fundamentally wrong to characterise the de novo appeal process as a 'second bite of the cherry'. The purpose of appeals is to ensure justice in an individual case and to correct error. The context in which de novo appeals arose, and their purpose, is to be an effective counterweight to summary trial and the inherent problems of 'speedy justice'.

56. The Attorney-General's contentions are considered in detail in the Report which recommended the continuation of the de novo appeals system. The laws of evidence have 'not continued to evolve' to address those specific issues. Moreover, and pertinently, the Report notes that the tests of miscarriage of justice for conviction appeals and manifest excess for sentence appeals have evolved in a different context — that of trial by jury — to appeals from summary matters and concluded that:

> *… the adoption in the summary jurisdiction of tests which have evolved for appeals in relation to indictable offences could undermine the efficiency of the Magistrates' Court and of the criminal justice system as a whole. The Committee concludes that neither the miscarriage of justice test for*

[34] Parliament of Victoria, Law Reform Committee, above n 7, p.153.

> *conviction appeals nor the manifest excess test for sentence appeals would provide appropriate grounds of appeal from the Magistrates' Court.*[35]

57. There have not been any significant changes to the law which would address the concerns raised in the Report. Rather, over the last decade the law of evidence and sentencing has become ever more complex, with an ever-increasing potential for error and unjust convictions and sentences.

58. Conversely, as has already been discussed, given the increasing workload of the Magistrates' Court and the enlargement of the court's jurisdiction, there is more justification than ever for the retention of de novo appeals.

"*The de novo appeal system is inefficient, because it duplicates the original hearing on appeal, has high rates of abandonment, and uses police resources inefficiently.*"

59. In contradiction of this claim, the Report found that de novo appeals maximise both the fairness *and* the efficiency of the Victorian criminal justice system.[36]

60. The Report includes a comparative analysis of Victoria's de novo appeals system with the alternate forms of appeal, including the New South Wales model, and found the de novo appeals system to be both comparatively efficient and comparatively fair.[37]

61. As has already been stated, the most recently published annual report of the County Court, for the years 2015-2016, found that appeals only accounted for 6% of a criminal division judge's workload. The overwhelming amount of a judge's workload, 77%, was related to trial work.

62. In relation to the claim that de novo appeals have high rates of abandonment, in 2012-2013, the rate of abandonment was 30.3%. Significantly, only 16.2% of criminal

[35] Parliament of Victoria, Law Reform Committee, above n 7, p.58.
[36] Parliament of Victoria, Law Reform Committee, above n 7, p.XV.
[37] Parliament of Victoria, Law Reform Committee, above n 7, XV-XVI.

appeals were abandoned in court, with the remaining 14.1% having been abandoned before a Registrar prior to hearing.[38]

63. It should be noted that many of those abandonments before the County Court also demonstrate that de novo appeals can be dealt with very efficiently, with judges warning appellants that if they proceed then the given sentence may be increased. The practical experience of those practising in criminal law is that the de novo process can be very swift, in contrast to the lengthy and difficult drafting and presentation of legal arguments before an appellate court that is required to consider the record as to what occurred before the Court below.

64. De novo also appeals have higher rates of success than appeals to the Court of Appeal. In 2016-2017, the Court of Appeal allowed only 27.1% of sentence appeals and 25.9% of conviction appeals.[39] In contrast, in 2016-2017 51.8% of appeals to the County Court were allowed in full or in part.[40]

65. Indeed, the fact that about half of the appeals to the County Court were allowed demonstrates the need for there to be an effective safety net rather than additional obstacles placed before prospective appellants.

66. For completeness, it should be noted that police are only required to attend conviction appeals which is less than 20% of the total appeals heard by the County Court.

The evidence from NSW: a decline in access to justice and a reduction in efficiency

67. New South Wales has a de novo right of appeal in relation to sentence appeals, however, the Bill closely models the NSW system in relation to appeals against conviction.

[38] County Court of Victoria, *Statewide Summary 2001-02 to 2012-13*.
[39] Office of Public Prosecutions, *Annual Report 2016-2017*, p.15.
[40] Ibid, p.14.

68. The Report considered, in great detail, the system of appeal that operates in New South Wales and found that the 1999 changes in NSW (abolishing de novo appeals) have detracted from the accessibility, and therefore the fairness, of the right to appeal against conviction in that state.[41] The Report also found that while the changes may have increased the efficiency with which conviction appeals are handled in NSW, the Committee was not persuaded that this had not also led to a more than commensurate decline in the efficiency of summary justice in that state.[42]

69. The Report concluded:

> *… Victoria's system of de novo appeal is both comparatively efficient — when seen in the wider context of its place within the criminal justice system — and comparatively fair. In the Committee's view, Victoria's system of de novo appeal achieves a remarkable synthesis of justice and value for money.*

70. The rate of appeal in NSW from the Local Court to the District Court is significantly higher than prior to 1999 when de novo appeals were abolished and is far higher than the rate of appeal in Victoria.[43]

The difficulties assessing credit

71. In relation to conviction appeals, the proposed amendments would also impair a judge's ability to assess a witnesses' credit because in most cases they will only be provided with a transcript from the Magistrates' Court hearing. Such assessments are obviously crucial in many criminal matters.

Conclusion

72. For the above reasons, Liberty Victoria strongly opposes the reforms the Bill proposes.

[41] Parliament of Victoria, Law Reform Committee, above n 7, p.XV.
[42] Parliament of Victoria, Law Reform Committee, above n 7, p.XV-XVI
[43] New South Wales Law Reform Commission, *Criminal Appeals* (2014), p.51.

73. If you have any questions regarding this comment, please do not hesitate to contact Jessie Taylor, Liberty Victoria President (president@libertyvictoria.org.au) or Liberty Victoria Senior Vice- President Michael Stanton (michael.stanton@vicbar.com.au) or the Liberty office on 9670 6422 or by email (info@libertyvictoria.org.au).