

Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020

Submission to the Office of Strategic Legislation and Policy,
Department of Justice

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to comment on the Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020 (the Bill).
2. While the premise of the Bill, to reduce Court backlog, is welcomed, and many of the measures contained in the Bill are supported by the ALA, we are concerned that there are many instances where this Bill appears to be a poorly considered 'band-aid measure' that will not achieve its aims or unfairly deprives defendants of their rights. Examples are outlined below.

Criminal Code assault (s184 Criminal Code)

3. The ALA is concerned about the failure to make Criminal Code assault (s184 Criminal Code) an indictable offence that can be tried summarily.
4. The experience of our members is that this crime overwhelmingly attracts a non-custodial sentence, and where custodial sentences are imposed they are generally for a duration of less than three years (which is within the new sentencing threshold granted to magistrates hearing and sentencing persons for indictable crimes under this Bill).

Reforms to preliminary proceedings

5. The reforms to preliminary proceedings – insofar as they include complainants in aggravated assault, wounding and grievous bodily harm, and unlawful acts intended to cause actual bodily harm within the definition of 'affected person' – are disappointing. This is because an 'affected person' can only be cross-examined in exceptional circumstances. Frequently, cases involving the crimes identified can involve issues of identification or self-defence. Permitting cross-examination of these complainants is essential to ensuring fairness in the trial process as it allows defence lawyers to test the strength of any proposed defence and to make judgments about the strength of the Crown case, including on issues of reliability and credibility. In turn, weak defence cases are prevented from proceeding to trial and adding to the growing criminal trial backlog.

Stalking and bullying, and perverting justice

6. Stalking and bullying, and perverting justice should not be a matter of election for both parties, but rather the sole election of the defendant. By requiring input from a prosecutor, this will again result

in the overwhelming majority of stalking and bullying, and perverting justice matters being committed to the Supreme Court.

Disclosure of police evidence

7. The Bill does not address the ongoing systemic problems associated with the disclosure of evidence by Tasmania Police, which is the *primary* cause of delay in the Supreme Court. Consequently, the Magistrates Court will become congested with cases that cannot proceed to preliminary proceedings in a timely manner due to insufficient disclosure. The Bill also fails to address the problem of defendants being committed for trial without complete disclosure. In effect, the disclosure problem that has congested the Supreme Court will proceed unabated.

Supreme Court bail applications

8. With respect to the changes to the Supreme Court hearing bail applications following a refusal to grant bail by a magistrate are concerned, the ALA submits that the imposition of a 21-day limitation period on the filing of applications would unfairly bar defendants from appealing against a refusal to grant bail after that period passes. Specifically, we note that the legislation is silent on the power of a judge to hear the application if it is filed later than 21 days. The ALA submits that this provision should be amended to permit a judge to hear a late application if leave is granted. This would ensure that meritorious albeit late applications for bail could still be heard.

Conclusion

9. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide these comments on the Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020.
10. In our view, to ensure that the Supreme Court backlog is overcome the Parliament must amend the Bill to address the problems identified above.



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