

# COVID-19 and Fair Trial Principles in Australia Criminal Proceedings



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## Foreword

This research is the result of law internship program hosted by Institute for Criminal Justice Reform (ICJR) and facilitated by Australian Consortium for 'In- Country' Indonesian Studies (ACICIS). This partnership aimed to increase students' awareness of legal issues that are being discussed in the host country, Indonesia, through a comparative approach with the best practice in Australia.

The effects of COVID-19 have been felt worldwide, and in every thread of the fabric of our society. Legal systems, and more specifically criminal justice systems, have had to adapt to the changing circumstances and restrictions invoked by the pandemic. Fair trial principles are paramount to ensuring that all actors to criminal proceedings have equality before the law. The universality of these principles demonstrates their necessity.

This research paper analyses the way in which Australia's criminal justice system has adapted to challenges brought on by COVID-19, so as to uphold and transplant principles of fair trials in criminal proceedings and on technological platforms. The traditional Australian justice system will be juxtaposed to the new COVID-19 friendly measures adopted, in an analysis of whether or not these changes improve or inhibit the achievement of open justice.

Divashna Govender

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## Chapter 1 Introduction

The effects of COVID-19 have been felt worldwide and in every thread of the fabric of our society. Legal systems, and more specifically criminal justice systems, have had to adapt to the changing circumstances and restrictions invoked by the pandemic.<sup>1</sup> This research paper analyses the way in which Australia's criminal justice system has adapted to challenges brought on by COVID-19, to uphold and transplant principles of fair trials in criminal proceedings onto technological platforms.

Fair trials are paramount in achieving justice and codify a number of values which promote impartiality and legitimacy in the criminal justice process.<sup>2</sup> The Australian legal system is underpinned by common law and statutory measures that aim to prevent the abuse of power and ensure that parties are appropriately equipped for their criminal proceedings. Some characteristics attributed to fair trials include the right to access an *independent court* in having their matter heard, accompanied by a *lawyer*, to *have that communication remain confidential*, and an *interpreter* if necessary.<sup>3</sup> More so, parties have the right to a *public trial without undue delay*.<sup>4</sup> The defendant holds the right to be *made aware of the charges against them*, the *presumption of innocence*, the right *not to incriminate oneself*, and the right to *examine witnesses and test evidence said to prove their guilt*.<sup>5</sup> The concept of a fair trial is arguably a practical concept, where the concern is to avoid circumstances that may lead to injustice.<sup>6</sup> The rule of law demands fair trial measures be adhered to, as the liberty and fundamental interests of parties are at stake.

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<sup>1</sup> Kylie Evans and Nicholas Petrie, 'COVID-19 and the Australian Human Rights Acts' [2020] 45(3) *Alternative Law Journal* 175, 175.

<sup>2</sup> 'A common law right', *Australia Law Reform Commission* (Web page, 31 July 2015) <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/10-fair-trial/a-common-law-right-7/>>.

<sup>3</sup> 'Attributes of a fair trial', *Australia Law Reform Commission* (Web page, 31 July 2015) <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/10-fair-trial/attributes-of-a-fair-trial/>>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

Although this paper will primarily focus on the trial process, it is important to note that the criminal justice process extends beyond the legal scope; and includes rehabilitation and reintegration measures.

The newly adjusted means of interacting with the legal system need to coexist with the principles of open justice. The physical courtroom layout is symbolic of the rule of law and greatly reflects the relationship between all parties to the proceedings.<sup>7</sup> The formalities of such an environment 'convey the role and status' of powerful actors such as the judge, it 'emphasise the principles of equality before the law', while the 'symbolism and formality of the physical aspects of courts combine to convey the solemnity of the legal process'.<sup>8</sup> There is no doubt that the authority derived from the physical courtroom is difficult to imitate in an online forum, however, it is of great urgency that reverence is maintained and the principles of fair trials are upheld.

The second chapter of this paper introduces the structure of the justice system on which this analysis will be based. Then, the Australian; and more specifically the Victorian, court hierarchy is detailed with the original and appellate jurisdiction held by each one. The last element of this chapter draws on the international and domestic law obligations that require the principles of fair trials, with the minimum guarantees of criminal trials as established by the High Court of Australia. These guarantees are taken into consideration during criminal trials, attempting to ensure consistency, fairness, and equal footing for all parties entering the justice system.

The third chapter will expand on the specific measures that the Australian legal system has embraced in each facet of the justice process. Changes to access to affordable legal counsel and service delivery, court hearings, juries and the rules of evidence will be analysed to the extent in which they replicate or improve on open justice. It has been suggested that prior to COVID-19, Australia was not as quick to integrate technological alternatives into its trial

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<sup>7</sup> Joe McIntyre et al, 'Courts and COVID-19: Challenges and Opportunities in Australia', *Australian Public Law* (Blog Post, 4 May 2020) <<https://auspublaw.org/2020/05/courts-and-covid-19-challenges-and-opportunities-in-australia/>>.

<sup>8</sup> Ibid.

process as other countries were; and merely utilised them as emergency circumstances demanded with some document portals and assistant mechanisms being translated online.<sup>9</sup> With online courts being around for decades, it could be that the delay in adopting virtual courtroom measures prior to COVID-19 had hindered a new form of delivery of justice that may have been available years ago.<sup>10</sup> Nonetheless, the present circumstances greatly accelerated this deficit. The rapid modification to the legal system left open a broad question of what justice will look like in the technological era, and whether or not traditional justice will be redefined by present modernity. It appears that some modifications are likely to remain, even if current circumstances improve and the transition to in-person courts is made. A policy consideration for future cohesion would be the coordination of commonality among the means, processes, and shared knowledge in such systems.<sup>11</sup> A sense of universality in overarching values will likely act to reinforce consistency with the delivery of open justice.

A plethora of resources ranging from journal articles to amended legislative provisions have informed the composition of this paper. The Australian courts regularly produced practice notes<sup>12</sup>, practitioner's fact sheets<sup>13</sup>, and user guides<sup>14</sup> to inform legal practitioners and the public of updates to processes and measures. Practice notes and directions have informed practitioners about the court's response to the pandemic in the form of changed listings, hearings of bail, and summary hearings.<sup>15</sup> Practitioners' fact sheets have often provided checklists on a number of matters; including etiquette in remote hearings and protocols in the virtual courtroom.<sup>16</sup> User guides specified direction on the use of the technological platforms used by the courts to conduct the virtual hearings, made tailored to the knowledge already held by practitioners, members of the court, and self-represented defendants.<sup>17</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> 'Practice notes', *County Court Victoria* (Web page) <<https://www.countycourt.vic.gov.au/practice-notes>>.

<sup>13</sup> 'Fact sheet: The virtual courtroom', *Supreme Court NSW* (Web page) <[https://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Fact%20Sheet%20-%20Practitioners\\_20200430.pdf](https://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Fact%20Sheet%20-%20Practitioners_20200430.pdf)>.

<sup>14</sup> 'Virtual hearings', *Supreme Court Victoria* (Web page) <[https://www.supremecourt.vic.gov.au/sites/default/files/202008/eCourt%20WebEx%20guide%20for%20Court%20Users\\_final.pdf](https://www.supremecourt.vic.gov.au/sites/default/files/202008/eCourt%20WebEx%20guide%20for%20Court%20Users_final.pdf)>.

<sup>15</sup> 'Practice notes' (n 12).

<sup>16</sup> 'Fact sheet: The virtual courtroom' (n 13).

<sup>17</sup> 'Virtual hearings' (n 14).

Further, community legal centres and some private firms produced content in the form of information brochures, podcasts, and articles about their experiences interacting with the legal system during constantly changing time, including tips on keeping up to date and aware of the new procedures. Since stringent restrictions have relaxed, community-based organisations have submitted a number of reports on the major barriers they have faced since COVID-19 in the delivery of their legal services. Thus, a significant portion of the information discussed is derived primarily from the directions provided by the court and local initiatives.

The author volunteered at a family law assistance program run through a community legal centre prior to the drafting of this paper. Having volunteered prior to and during COVID-19, there were a number of changes made to the delivery of legal services, so as to accommodate the fluctuating circumstances. The delivery of advice took place primarily through digital platforms, which meant that a plethora of other processes had to be shifted to a technological platform as well.

## **Chapter 2    Overview of Australia**

Australia comprises six States and two Territories, each with its own adversarial legal system; with the High Court being the next court of appeal from all State Supreme Courts. Chapter 2 will provide a glimpse into the Victorian legal system, expanding on the traditional practices of legal aid, criminal justice, and the jury system. This informative chapter will provide a foundation on which the analysis in Chapter 3 will ensue. This section will also address the sources of fair trial principles and make reference to the relevant domestic or international law sources.

### **2.1 Overview of the Victorian legal system**



Victoria adheres to State and Federal law as well as the Constitution; with the courts adopting a mixture of common law and interpretation of statutory provisions in hearing matters.<sup>18</sup> Courts may have original or appellate jurisdiction. Original jurisdiction is the power vested in the courts to hear certain matters; whereas appellate jurisdiction is the power to hear appeals on certain matters.<sup>19</sup> The original and appellate jurisdiction vary with each court.

As per the diagram below extracted from the Victorian Law Foundation, the High Court is the highest court in Australia's hierarchy; and decides matters of federal significance, constitutional validity, appeals, and other cases under its jurisdiction.<sup>20</sup> The Federal branch consists of the Federal Court and the Family Court, followed by the Federal Circuit Court; with the Administrative Appeals Tribunal being a tribunal within this branch.

The Victorian State legal system has the Supreme court at the pinnacle of the hierarchy. The Supreme court has the jurisdiction to hear serious criminal cases, complex civil cases, and has two divisions, the Court of Appeal and the Trial Division.<sup>21</sup> The Court of Appeal hears appeals from other courts and tribunals, whereas the Trial Division deals with major criminal matters such as murder, and complex civil matters where large sums of money are involved.<sup>22</sup>

The County Court follows, and has jurisdiction over civil and criminal matters, including but not limited to drugs, robbery, dangerous driving, and sex offences.<sup>23</sup>

The original jurisdiction of the Magistrates Court is to hear less serious criminal offences; such as traffic offences, minor assault, and property damage.<sup>24</sup> The first branch of the Magistrates Court is the Drug Court, which handles cases in which the defendant has a drug or alcohol

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<sup>18</sup> 'Victorian Legal System', *Law Institute of Victoria* (Web page) <<https://www.liv.asn.au/LIV-Home/For-the-Community/Victorian-Legal-System>>.

<sup>19</sup> 'About the Court's appellate jurisdiction', *Federal Court of Australia* (Web page) <<https://www.fedcourt.gov.au/law-and-practice/appeals/from-courts/appellate-jurisdiction>>.

<sup>20</sup> 'Victoria's legal system', *Victoria Law Foundation* (Web page) <[https://content.victorialawfoundation.org.au/wp-content/uploads/2019/09/victorias\\_legal\\_system.pdf](https://content.victorialawfoundation.org.au/wp-content/uploads/2019/09/victorias_legal_system.pdf)>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> 'Victorian Legal System' (n 18).

<sup>24</sup> 'Court processes in the Magistrates' Court', *Victims of Crime* (Web page) <<https://www.victimsofcrime.vic.gov.au/going-to-court/types-of-courts/court-process-in-the-magistrates-court>>.

addiction; which may have contributed to their participation in the criminal activity they are being charged for.<sup>25</sup> Often, the outcome for defendants in the Drug court are Drug Treatment Orders as opposed to jail; focusing on rehabilitation rather than incarceration. The second branch is the Assessment and Referral court list which hears cases where the accused has a mental illness or cognitive impairment; penalties will likely be adjusted accordingly.<sup>26</sup> The Koori court specifically deals with crimes committed by Indigenous Australians, where the various cultural factors and disadvantages that may increase a defendant's vulnerability is a key consideration in the approach to defendants.<sup>27</sup> The last branch is the Neighbourhood Justice Centre, which hears less serious offences.<sup>28</sup> The cases can be heard summarily, with no jury and one judicial officer.<sup>29</sup> This branch combines community support services and programs, to attempt to reduce crime by tackling the root of deviancy. Here, defendants receive assistance for employment, mental health, drugs, and alcohol issues.<sup>30</sup>

The last tier of the hierarchy consists of Tribunals, namely the Victorian Civil and Administrative Tribunal (VCAT) and the Victims of Crime Assistance Tribunal (VOCAT). VOCAT provides monetary compensation for Victorians who have experienced injury or death as a result of a violent crime that occurred in Victoria and is a component of the criminal justice system.<sup>31</sup>

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<sup>25</sup> 'Victoria's legal system' (n 18).

<sup>26</sup> *Ibid* [18].

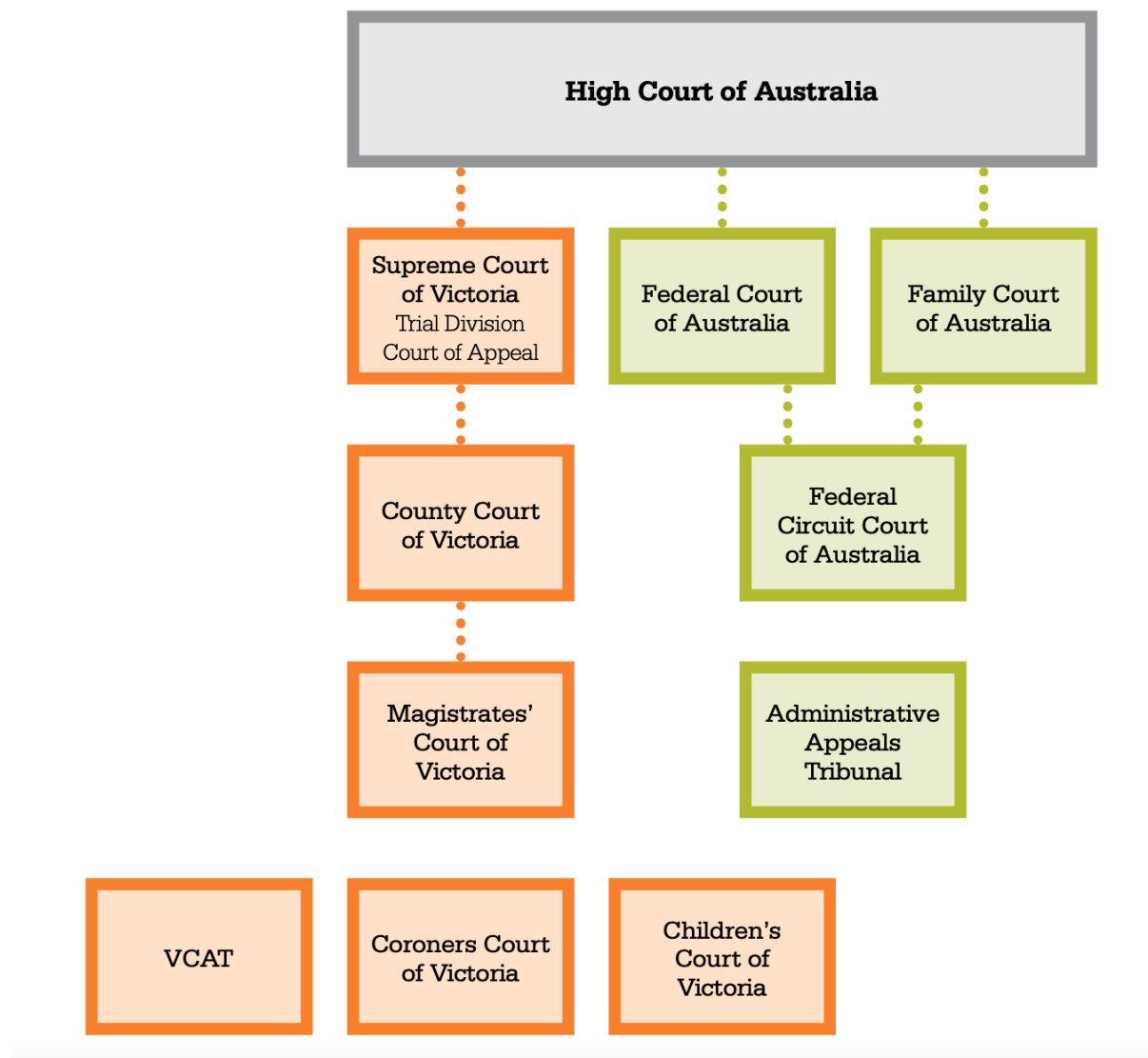
<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid*.

<sup>30</sup> *Ibid*.

<sup>31</sup> *Ibid* [23].



### 2.1.1 Criminal law in Australia

In Australia, an offence occurs when the accused contravenes a law which states that doing so will warrant a criminal charge. Criminal offences can be divided into summary and indictable offences.<sup>32</sup> Summary offences are less serious offences and can include minor assaults and traffic violations.<sup>33</sup> Indictable offences are more serious in nature, and can include

<sup>32</sup> 'The Court Process', *Office of Public Prosecutions Victoria*, (Web page)

<<https://victimsandwitnesses.opp.vic.gov.au/court-process/process>>.

<sup>33</sup> Ibid.

murder, manslaughter, and rape; these cases can be heard summarily in a lower court.<sup>34</sup> The State (Prosecutor), alternatively known as the Crown, brings the case on behalf of the people, against the accused (Defendant). The burden of proof is essentially who has to prove the case and the standard of proof is the threshold that must be satisfied. Thus, the burden is on the Prosecution to prove their case beyond reasonable doubt.<sup>35</sup> In some criminal cases, a jury of 12 citizens will be empanelled after being randomly selected from the electoral roll. They will reach a verdict of guilty or not guilty, after which, the judge will administer an appropriate sentence or sanction.<sup>36</sup>

Criminal trial processes depend on whether the case is a summary or indictable offence, and on which court the matter is being heard in.<sup>37</sup> The diagram below provides further insight into the map of various stages of the process.

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<sup>34</sup> Ibid.

<sup>35</sup> 'Victoria's legal system' (n 18)

<sup>36</sup> Ibid.

<sup>37</sup> 'The Court Process' (n 32).

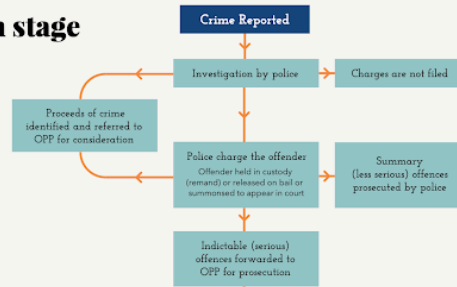


OFFICE of  
PUBLIC PROSECUTIONS  
VICTORIA

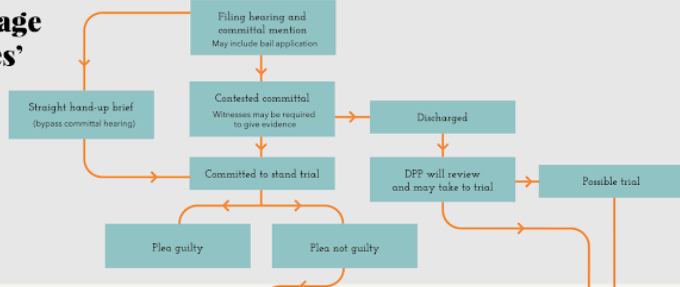
# The Court Process

Victims and witnesses are supported throughout the prosecution process.

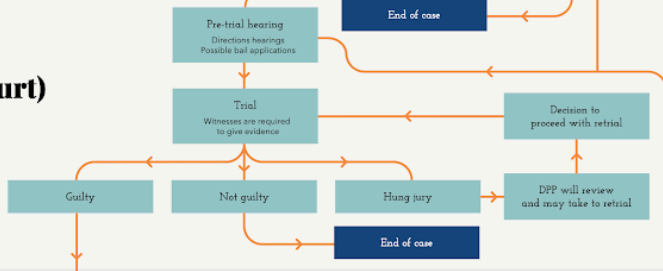
## Investigation stage



## Pre-trial stage (Magistrates' Court)



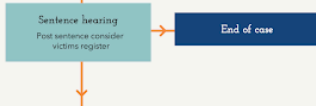
## Trial stage (County or Supreme Court)



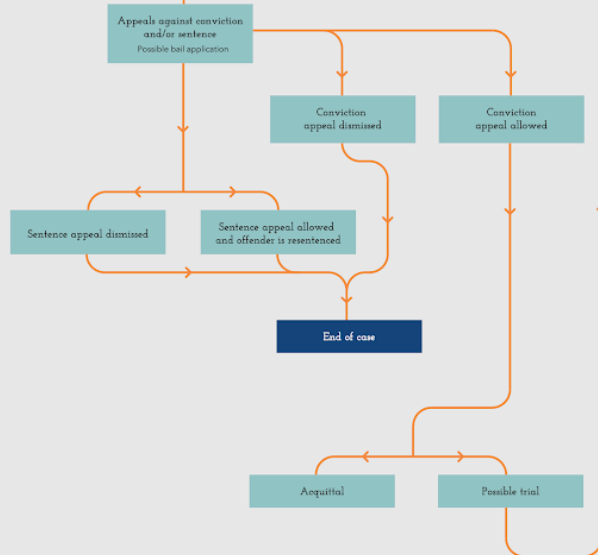
## Plea stage (County or Supreme Court)



## Sentence stage (County or Supreme Court)



## Appeal stage (Court of Appeal or High Court)



### 2.1.2 Legal assistance

Community Legal Centres (CLC's) are independent community organisations that provide free legal services to the local area over which they preside. There are a number of them in each State in Australia, with 48 in Victoria.<sup>38</sup> CLC's have been the backbone of providing legal advice to marginalised individuals and communities, who might find private legal services otherwise much too expensive. This sector attempts to ensure free, equitable access to justice for vulnerable people and provide services ranging from assistance to advice and acting on behalf of the client. All three of these services can be distinguished from each other. Legal advice is, as the name suggests, information to the client on the way in which to deal with their matter, informing them of their options should they choose to take further legal action. The lawyer or paralegal will likely take no further action, and if the matter is too complex for the capacity of the legal centre at the time, the client will be referred to another service with capacity or to a private lawyer. The client may then be given a 30-minute free session with a private lawyer or the matter may be taken on pro bono. Legal assistance is where the client receives direction on how to file documentation, the lawyer or paralegal will often draft up letters and paperwork for the client to pass on to the relevant party or file with the court; but the client will remain self-represented. Should the legal centre have the capacity and resources to take on a matter, the lawyer will take on the case of the individual, complete relevant paperwork, and liaise with relevant actors that the client might be in dispute with or require representation. This becomes an ongoing case for the legal centre, and the client will remain in close contact with the lawyers until their matter is resolved or the matter becomes too complex and requires private legal support.

Alternatively, individuals can initially seek the advice, assistance or representation of private lawyers regarding their matter and pay such a fee accordingly.

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<sup>38</sup> 'A just and equitable COVID recovery', *Federation of community legal centres Vic* (Web page) <[https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19\\_Inquiry/Submissions/101a.\\_Federation\\_of\\_Community\\_Legal\\_Centres.pdf](https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/101a._Federation_of_Community_Legal_Centres.pdf)>.

### 2.1.3 Jury

The introduction of a panel of jury members in determining the guilt of a defendant is entrenched in the principles of a representative and responsible government. The four foundational pillars include governance, communication, research, and capability.<sup>39</sup> Public participation on the criminal justice system allows for accountability through the direct participation of ordinary citizens and prevents the absolute power of the State in administering justice.<sup>40</sup> The jury in a criminal trial is composed of 12 citizens randomly selected from the electoral roll and provided with a summons to be a juror.<sup>41</sup> The name, occupation, and physical appearance of the individual is also brought to the knowledge of parties; and in some instances, the juror is called a number, and their identity is not disclosed.<sup>42</sup> A person is eligible to be a member of the jury if they are above 18 years of age, are enrolled in the electoral roll, and are not otherwise excluded by provisions of the Act.<sup>43</sup>

A person may be ineligible to serve as a juror if they are a lawyer, a police officer, or have served in certain other public roles.<sup>44</sup> More so, a person may be excused from jury service if they have ill health, live too far from the courts or are mentally incapacitated, among other exceptions.<sup>45</sup> When potential jury members are presented to parties, the defendant and prosecution have the option to challenge the choice of jurors. According to section 37 of the *Jurors Act 2000* (Vic), the person arraigned, and the Crown have the benefit of unlimited challenges for cause in a criminal trial.<sup>46</sup> Such challenges can be used if one of the parties personally knows someone on the jury panel and may thus not be able to reach a decision without bias. More so, a juror can be discharged if it appears that the juror is not impartial, the juror becomes ill or the juror becomes incapable of acting as a juror.<sup>47</sup> Section 38 permits

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<sup>39</sup> Paul Dore, 'The juror experience' [2020] 161 *Precedent* 28, 29.

<sup>40</sup> Law Council of Australia, 'Principles on jury trials in the context of COVID-19' [2020] *Law Council of Australia* 1, 2.

<sup>41</sup> 'Selecting a jury', *Judicial College Victoria* (Web page) <<https://www.judicialcollege.vic.edu.au/eManuals/VCPM/27606.htm>>.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> 'Jury Service (Vic)', *Go to Court* (Web page) <<https://www.gotocourt.com.au/criminal-law/vic/jury-service/>>.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Jurors Act 2000* (Vic).

<sup>47</sup> *Jurors Act 2000* (Vic) s 43.

the Crown to stand aside up to 3 jurors without reason; this decision is to be made prior to the juror taking their seat.<sup>48</sup> Section 39 allows the person arraigned up to 3 peremptory challenges without cause.<sup>49</sup> On being empanelled, the juror swears an oath or makes an affirmation that they will 'faithfully and impartially try the issues between the Crown and the accused in relation to all charges brought against the accused in the trial and give a true verdict according to the evidence'.<sup>50</sup> Affirmations quintessentially require jurors to swear a similar declaration.

Traditionally, a jury requires a minimum of 10 people to proceed in a trial and need to reach a majority verdict of guilty or not guilty.<sup>51</sup> Therefore, if the jury consists of 12 members, 11 members need to agree on the verdict for it to constitute a majority verdict. Should the jurors not reach a conclusion after a reasonable time of deliberation, the court may discharge the jury or take a majority verdict.<sup>52</sup>

In an overarching analysis, the inclusion of juries in the criminal justice process has its benefits and drawbacks. Whilst jurors provide representation in an atmosphere that is otherwise secluded from direct community participation, there a number of variables that may inhibit the effectiveness of their participation. Bias may be particularly present in high-profile cases, where the media has spun a number of perspectives on the facts of the case; thus, prior to the trial commencing, it increasingly difficult to be able to create an environment to eliminate such bias.<sup>53</sup> More so, personal bias influencing decision-making diminishes the quality and impartiality that a fair trial ought to have. The court does not assume that the jury has a deep understanding of the legal system and its processes, and thus provides jurors with preliminary information. Such absence of knowledge and specialisation may be perceived as the key deciders missing an integral part of understanding that is supposed to inform their decision-making.<sup>54</sup> Consequently, the need for a jury is determined on a case-by-case basis.

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<sup>48</sup> Ibid s 38.

<sup>49</sup> Ibid s 39.

<sup>50</sup> Ibid Schedule 3.

<sup>51</sup> Ibid s 46.

<sup>52</sup> Ibid s 46(2).

<sup>53</sup> 'The juror experience' (n 39) 29.

<sup>54</sup> Ibid.



## 2.2 Obligations under international and domestic law

Fair trial obligations exist in domestic and international law.<sup>55</sup>

International law obligations are derived from the International Convention on Civil and Political Rights, to which Australia is party to. Article 9(4), 13, 14, 15, and 19 require persons to be equal before courts and tribunals as well as a trial without prejudice; among other requirements.<sup>56</sup>

Domestic law obligations stem State and Commonwealth legislation. The Evidence Act 1995 (Commonwealth), Crimes Act 1914 (Commonwealth), and Crimes Act 1958 (Victoria) are some of the essential legislative materials that hold a standard of rules of evidence applicable to proceedings and clearly define criminal offences.<sup>57</sup> Section 68 of the Judiciary Act 1903 (Commonwealth) outlines the jurisdiction of State and Territory courts in criminal cases.<sup>58</sup> The Administrative Decisions (Judicial Review) Act 1977 allows for the review of decisions that may be procedurally unfair.<sup>59</sup>

The High Court has outlined a set of guidelines listing the minimum guarantees in a criminal proceeding.<sup>60</sup> If such conditions are not met, the right to a fair trial may be questioned. The minimum guarantees include:

- to be informed promptly of the charge

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<sup>55</sup> 'Fair trial and fair hearing rights', *Australia Government Attorney-General Department*, (Web page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights#where-do-fair-trial-and-fair-hearing-rights-come-from>>.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> 'Minimum guarantees in criminal proceedings', *Australia Government Attorney-General Department*, (Web page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/minimum-guarantees-criminal-proceedings>>.

- to have adequate time and facilities to prepare a defence and to communicate with counsel
- to be tried without undue delay
- to be tried in person
- to legal assistance and to have legal assistance assigned to the accused, where the interests of justice so require, and without payment, if the accused is unable to pay for it
- to cross-examine prosecution witnesses and to obtain the attendance and examination of witnesses on behalf of the accused on the same conditions as the prosecution
- to have the assistance of an interpreter
- to be free from self-incrimination
- to have a conviction and sentence reviewed by a higher court
- to be paid compensation where a criminal conviction has been overturned or where a person has been pardoned in situations involving a miscarriage of justice
- not to be tried or punished more than once.<sup>61</sup>

Some of the instances in which the minimum guarantees in criminal proceedings need to be considered include:<sup>62</sup>

- regulates aspects of criminal trial procedure, including the filing and serving of charges, and content of charge sheets, access of the accused to witnesses, information and evidence, pre-trial disclosure, timetables for preparing for trial and giving notice of hearings
- affects the capacity of investigators and prosecutors to prepare for trial and of courts to conduct trials, for instance, by allocating resources
- affects eligibility for legal assistance in criminal matters
- affects legal representation, including the right of the accused to select a legal representative of his or her choice
- affects the law of evidence governing the examination of witnesses<sup>63</sup>

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

It is vital to note that this list is not exhaustive and is open to expansion depending on the case at hand.

### **Chapter 3     Australia's legal system response to COVID-19 in upholding fair trial principles**

This chapter will assess the modifications made to the criminal justice processes as a result of COVID-19. Provided technology has been the foundation for all further changes that have been made to the court process, the effectiveness and viability of changes to the delivery of justice will be analysed. This will be examined in the context of the justice system as a whole, access to legal aid, the jury, and evidentiary practices. Thus, on the onset, the new changes introduced will be described, followed by insight on their ability to efficiently uphold the essential requirements of open justice.

#### **3.1 The Victorian legal system and COVID-19**

Like many other nations around the world, Victoria's legal system had to be reimagined to function concurrently with the COVID-19 restrictions imposed by the State. COVID-19 accelerated Australia's transition to technological mediums as limited movement, public gatherings and physical interaction meant that the traditional characteristics of the criminal justice system had to be transplanted to technological platforms. It is important to note that without the use of technology, the justice system would likely have come to a halt during the pandemic.<sup>64</sup>

Whilst working online, the court took into account a number of extraneous variables that may have impacted witnesses, parties, and practitioners, such as the COVID-19 restrictions at the

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<sup>64</sup> 'Open justice in Australia: A silver lining to the COVID-19 cloud?', *Doughty Street Chambers* (Web page) <<https://insights.doughtystreet.co.uk/post/102g8dq/open-justice-in-australia-a-silver-lining-to-the-covid-19-cloud>>.

time, accessibility of necessary materials, as well as if parties were caring for the elderly or their children.

Hearings were conducted with participants attending remotely and new jury trials were suspended for a number of months.<sup>65</sup> Exceptions were made on a case by case basis. Filing of documents occurred through online court portals, and access to legal advice and assistance primarily transpired through telephonic and technological avenues.<sup>66</sup> Courts attempted to emulate key qualities of the trial process online as cases conducted were still accessible to the public and media reporters, maintaining the principle of open justice.<sup>67</sup> It may be that the accessibility awarded by having trials on technological platforms increased transparency and provided a safeguard for the impartiality and the public's confidence in the integrity of the court.

### **3.2 Access to justice**

#### Community legal centres.

Legal issues that may have arisen out of COVID-19 induced circumstances or been exacerbated due to the nature of current circumstances have placed a heavy burden on individuals and legal service organisations. Whilst normal circumstances may have been put on hold, family violence, tenancy and infringement issues have continued to grow. CLC's appropriately received an additional \$14 million in State and Federal funding to assist Victorians with their increasing legal issues.<sup>68</sup>

CLC's have had to alter their practices in the following ways:

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<sup>65</sup> 'Courts and COVID-19: Challenges and opportunities in Australia', *Australian Public Law* (Web page) <<https://auspublaw.org/2020/05/courts-and-covid-19-challenges-and-opportunities-in-australia/>>.

<sup>66</sup> *Ibid.*

<sup>67</sup> 'Coronavirus and the courts', *Judicial College of Victoria* (Web page) <<https://www.judicialcollege.vic.edu.au/resources/coronavirus-and-courts#Victoria>>.

<sup>68</sup> Federation of Community Legal Centres Victoria, Submission No 101 to Victorian Government's Response to Covid-19 Pandemic, *PAEC Inquiry into the Victorian Government's Response to Covid-19 Pandemic* (01 October 2020) 1, 5.

### Verification.

Verification of the identity of the client traditionally took place upon the client's attendance at the office and was important so that advice was given to the appropriate person. Identification documents such as drivers' licences or letters were generally produced during the course of the interview, allowing for further validation of the client's identity. However, granted appointments were conducted telephonically, contact and permission forms were sent to the clients via email prior to the appointment. Clients were then required to fill out the relevant details, sign and return it to the CLC. Then, when clients were called, they were asked to provide their first and last name, confirm the appointment time and state the matter they were seeking advice on.

### Advice.

Having been physically present with the client in the room prior to COVID-19, lawyers and accompanying paralegals were able to extract all relevant information from the client and provide them with advice and support services on the spot. Advice was given orally over the telephone, and often, a follow up letter with the relevant details and a summary of the facts and the case were emailed to the client. Along with the benefits of using technology, the pitfalls were also present. Some clients were unable to connect via telephone, and others did not attend. There were instances where poor telephonic connection meant that clients were unable to clearly hear the advice given, and thus grew frustrated. However, similar issues would arise when these appointments were conducted face-to-face, thus it is not a new challenge.

Given that the lawyer and paralegal could not be physically present with the client, it was not possible to monitor who was around the client when they were receiving the advice. This allowed the potential of comments made under duress to seep in, especially in some family violence cases that had entered the criminal justice system. This meant that the lawyers and those delivering the advice had to be very cautious and vigilant to look out for any signs that might indicate that the client was uncomfortable or uneasy. In one instance, the lawyer and

paralegal heard a voice speaking to our client halfway through the appointment, which made them realise that the client was not alone. Upon further questioning, it was discovered that the client was with a friend, to which the client was asked whether or not she consented to another person being present for the session. Whilst this is something that could be checked up on, having someone else with the client that might make them uncomfortable or put them in a bad situation is not something they could regulate, and thus they had to ensure that everything said was within the confines of not putting the client in further danger, should they already be.

Engaging an interpreter is a common practice of CLC's, as many clients come from culturally and linguistically diverse backgrounds. This practice usually occurred with the client in the room, the interpreter was then called and translated the information between lawyer and client. Not having the client physically present in the room meant that a lot of conversation overlapped, making it difficult for the interpreter to communicate to each party. The absence of physical cues of when the client had stopped speaking led to the lawyer and interpreter having to anticipate communication. This often led to a disjointed conversation.

Transitioning to online delivery of legal advice has increased the scope of access for individuals to obtain representation and aid. It has provided a means by which marginalised groups, people living in remote areas and individuals with lower socioeconomic backgrounds can access legal advice. Due to the limited funding awarded to CLC's, catchment areas were allocated to each CLC; with the limitation that they could only take on legal matters from clients who lived in certain postcodes. Such stringent restrictions have been relaxed during COVID-19, as CLC's have received an overwhelming number of requests for assistance.

Nonetheless, it is important to note some of the disadvantages of providing legal advice solely online. Digital exclusion is a problem faced by individuals who do not have access to technological devices necessary for access to legal assistance.<sup>69</sup> These circumstances have

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<sup>69</sup> 'Courts and COVID-19: Challenges and opportunities in Australia' (n 65).

exacerbated such challenges and have outlined the need to maintain some form of face-to-face legal service. More so, building trust and rapport between a client and legal adviser is paramount to the relationship, as some clients might not divulge certain levels of information unless they feel as though they have assurance that the legal advisor will act in their best interest.<sup>70</sup> This is not always achievable through telephonic or audio-visual means because key indicators such as body language and facial expressions are not present. Additionally, individuals without technological literacy may be particularly susceptible to digital exclusion, especially if the restrictions imposed do not permit the individual to receive assistance from another individual more familiar with the technology. This limitation may also extend to individuals with varying forms of disability who might find it difficult to receive the support they need during the pandemic; and other marginalised citizens who may be pushed further down the pipelined of access to justice.

### **Online legal resources.**

Due to the overwhelming increase in legal issues, CLC's did not have the capacity to accommodate all clients needing assistance. As aforementioned, access to private legal services<sup>71</sup> were particularly challenging for those who did not have the funds or who had lost their jobs. Ultimately, citizens had to be autonomous in actively seeking legal solutions to their legal complexities.

On the onset of COVID-19 restrictions, web traffic on legal intervention, information and assistance sites increased by 181%.<sup>72</sup> With the state of COVID-19 varying greatly in severity based on the government's attempts to control and manage the spread, rules and regulations were in a constant reformation and thus legal procedures and practices were constantly having to tweak their services, sometimes ever so slightly, with the various stages of

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<sup>70</sup> Pauline Wright, 'Access to justice and COVID-19' (2020) *Law Council of Australia* 1, 3.

<sup>71</sup> 'COVID-19: The law offices of Andrew Williams are open', *Andrew Williams* (Web page) <<https://www.andrewwilliamslawyer.com.au/covid-19%E2%80%94the-law-offices-of-andrew-williams-are-open.html>>.

<sup>72</sup> 'Insights from our May COVID-19 response', *Justice Connect* (Web page) <<https://justiceconnect.org.au/our-insights-from-responding-to-high-legal-need-during-covid-19/>>.

restrictions. It was recorded that self-help, self-representation and court update information resources were among the most sought-after materials.<sup>73</sup>

The spike in online searches for legal advice and assistance may be indicative of the challenges posed to accessing legal resources. Therefore, it was absolutely pivotal that organisations such as Justice Connect and other CLC's kept their websites and other tools constantly updated so as to equip the reader with the necessary knowledge. It is important to note that this channel of information also opened the possibility of misinformation to spread easily if the sources that citizens are accessing are not legitimate and reliable ones; and they are unaware of it.

Other than information sources, some legal aid websites provided users with templates for letters and other necessary documents relative to their legal issue.<sup>74</sup> Users could then download the template of the letter, fill in their requisite detail, obtain further advice from the website itself and then attempt to resolve their own legal dispute. A COVID-19 resource hub<sup>75</sup> was created specifically to serve the interests of the community members who were seeking advice on matters of accessing courts, filing documents and preparing for virtual court hearings. More so, these resources were tailored to the developments in each State, adhering and acknowledging their laws while touching on the most prominent issues faced by citizens.

### 3.3 Transition to virtual courtrooms

Virtual courtroom attempted to not only emulate defining qualities of the traditional courts, but also aimed to transform the delivery of justice. As restrictions increased and the workload of the criminal justice system increased with it, courts began to suspend in-person trials on the basis that 'We are living in an unprecedented and unpredictable atmosphere. The

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<sup>73</sup> Ibid.

<sup>74</sup> 'Resources for people affected by COVID-19', *Justice Connect* (Web page) <<https://justiceconnect.org.au/help/covid19/>>.

<sup>75</sup> 'COVID-19 Hub', *Law Institute of Victoria* (Web page) <<https://www.liv.asn.au/Professional-Practice/Supporting-You/COVID-19-Hub/Information-from-Courts>>.



potential consequences of [the court's] refusing the adjournment, in my view, outweigh any prejudice arising from the delayed sale of the property. Fairly, senior counsel for the applicant said she could not identify any specific prejudice (other than general delay) that would arise from the adjournment'.<sup>76</sup> The transition to technological platforms was not entirely new for Victoria, as eFiling and other online court mechanisms existed within the system prior to COVID-19. Nonetheless, practitioners had to adapt to conducting similar communications through Zoom, Whatsapp and Skype.<sup>77</sup> As familiarity with technology grew, so did the confidence and expansion of sophisticated platforms.

Criminal hearings, pleas, sentence appeals, bail applications and variations were all conducted through Webex.<sup>78</sup> Webex is a tool that facilitates online meeting, videoconferencing, calling and messaging between a number of participants; and is the dominant platform used by the criminal division, along with Videolink.<sup>79</sup> Lawyers, barristers and solicitors were provided with court images to use as a background for their video calling, consequently attempting to embody the experience of a physical court.<sup>80</sup> More so, clients as well as practitioners were provided with thoroughly detailed user guides on how to use the Webex, Zoom and Videolink.<sup>81</sup> These guides further included virtual courtroom etiquette, technology prerequisites and means of using these tools based on the device at hand.<sup>82</sup>

Whilst there have been mishaps in representation due to technological errors, for the most part, these platforms have enhanced the safety of victims and witnesses, reduction in delay and accessibility of people in custody.<sup>83</sup> It has been recommended that the court retains some of the processes post-COVID so as to further ensure the safety of vulnerable participants in

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<sup>76</sup> S.I Strong, 'Procedural law in a time of pandemic: Australian Court's response to COVID-19' [2020] 20(38) *University of Sydney Law School* 2, 2.

<sup>77</sup> 'About virtual hearings', *Supreme Court of Victoria* (Web page) < <https://www.supremecourt.vic.gov.au/law-and-practice/virtual-hearings>>.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> 'Virtual hearings and trials', *County Court Victoria* (Web page) < <https://www.countycourt.vic.gov.au/going-court/virtual-hearings-and-trials>>.

<sup>81</sup> 'Virtual hearings' (n 14).

<sup>82</sup> *Ibid.*

<sup>83</sup> Federation of Community Legal Centres Victoria (n 68) 8.

the criminal justice process.<sup>84</sup> Whilst it may be too early in the reformation to adequately assess, privacy and security issues are still under review, as it is more likely than not that there are significant risks posed to the information if the platform used is being compromised.

A common concern regarding these rapid changes are whether or not the principles of fair trial are being adequately adhered to.<sup>85</sup> The Australian courts agreed that COVID-19 does not permit the dispensing of fair trial principles, and such proceedings must comply with the principle of open justice. Conducting remote hearings meant that the scope and diversity of attendees could be extended. Journalists and media outlets were able to access links to join proceedings, thus upholding the principle of open justice and transparency.<sup>86</sup> These online trials allowed for numerous participants to attend, perhaps arguably more than would have been permitted if held in a physical courtroom.<sup>87</sup> As mentioned, prior, special consideration was awarded to vulnerable groups who may be self-represented, individuals with health issues, and parties that might not have access to the required technology.<sup>88</sup>

### 3.4 The jury and COVID-19

The *COVID-19 Omnibus (Emergency Measures) Act 2020* and the *COVID-19 Omnibus (Emergency Measures) (Criminal Proceedings and Other Matters) Regulations 2020* are the legislative provisions that expressly directed changes to the jury during COVID-19.<sup>89</sup> In March 2020, the Victorian Supreme Court indefinitely suspended new jury trials on advice of public health bodies.<sup>90</sup> Nonetheless, this legislation permitted jurors to attend jury service by audio link, audiovisual link or other means by which the summons sets out.<sup>91</sup> The jury pool does not

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<sup>84</sup> Federation of Community Legal Centres Victoria, *A just and equitable COVID recovery, PAEC Inquiry into the Victorian Government's Response to Covid-19 Pandemic 101a* (2020) 1, 27.

<sup>85</sup> 'Justice system responds to COVID-19 crisis' (2020) *The Bulletin* 26, 26.

<sup>86</sup> David Tait and Meredith Rossner, 'Courts are moving to video during coronavirus, but research shows that it's hard to get a fair trial remotely', *The Conversation* (Web page) <<https://theconversation.com/courts-are-moving-to-video-during-coronavirus-but-research-shows-its-hard-to-get-a-fair-trial-remotely-134386>>.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> 'Selecting a jury', *Judicial College Victoria* (Web page) <<https://www.judicialcollege.vic.edu.au/eManuals/VCPM/27606.htm>>.

<sup>90</sup> Paul Dore, 'The juror experience' (2020) 161 *Precedent* 28, 29.

<sup>91</sup> 'Selecting a jury' (n 89).

need to physically be present in court or in the same room.<sup>92</sup> As juries are a vital part of the criminal justice system, and the circumstances induced by COVID-19 did not permit the continuation of new jury trials, judge-only trials were permitted.<sup>93</sup> However, as a matter of checks and balances, this could only occur if each of the charges was a Victorian offence, the accused consents, the court is satisfied that the accused has obtained sufficient legal advice and the court considers it in the interest of justice to make such an order.<sup>94</sup>

New jury trials were resumed from 16 November 2020, with relevant measures put in place to ensure proper hygiene, mask wearing, and social distancing. It has been noted that 'jury trials will look a little different, but they will continue to fulfil their essential role in our criminal justice system'.<sup>95</sup> Limited jury trials were held concurrently, with COVID-19 safety measures being imposed indefinitely. Some hearings are still held online.

These new measures are permissible so long as the right to a fair trial is maintained, and technology should only be used insofar as it preserves the delivery of a fair trial to all parties.<sup>96</sup>

### 3.5 Witnesses and evidence

#### 3.5.1 Legislative changes to evidentiary practices

Legislative provisions in some States have been amended so as to accommodate the COVID-19 changes. For example, section 22C of the Evidence (Audio and Audio-Visual Links) Act 1998 (NSW) included COVID-19 special provisions.<sup>97</sup> This piece of legislation permits the appearance of an accused, witness or legal practitioner in evidence and witness testimony to occur through the form of audio or audio-visual means if the court directs. It may be perceived

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<sup>92</sup> Ibid.

<sup>93</sup> 'Principles on jury trials in the context of COVID-19' (n 40).

<sup>94</sup> 'Summary: COVID-19 Omnibus Emergency Measures', *Judicial College of Victoria* (Web page) <<https://www.judicialcollege.vic.edu.au/sites/default/files/2020-10/JCV%20-%20COVID-19%20Omnibus%20%28Emergency%20Measures%29%20Act%202020%20Summary%20%28221020%29.pdf>>.

<sup>95</sup> 'Resumption of Criminal Jury Trials', *Supreme Court of Victoria* (Web page) <<https://www.supremecourt.vic.gov.au/news/resumption-of-criminal-jury-trials>>.

<sup>96</sup> 'Principles on jury trials in the context of COVID-19' (n 40).

<sup>97</sup> *Evidence (Audio and Audio-Visual Links) Act 1998* (NSW) s 22C.

that section 22C (6)<sup>98</sup>, which states that the court is to make direction under this section only if it is in the interests of justice; having regard to the public health risk and any other matter the court considers relevant, is a mechanism for the protection of fair trial principles. Thus, the court has controlled power in exercising its discretion, permitting an assessment on a case by case basis. More so, the prescribed period under this section allows for a time stipulation that this provision is to be monitored under, prohibiting an absolute use of power for an unspecified duration. It may be that this system of checks and balances prevents the abuse of such measures if the circumstances have improved as much as to permit the use of more appropriate witness and evidentiary measures.

### 3.5.2 Evidentiary practices

Cross-examining witnesses are absolutely paramount in criminal trials, influence the legitimacy of the trial, as well as direct the course of the proceedings. Further, the presence, body language, and demeanour of the witnesses in a physical sense also allows their character to be assessed, creating credibility or perhaps doubt regarding the individual's integrity.<sup>99</sup> This is a facet of the criminal justice process that has also been forced onto an online platform; with adaptations being necessary for audio or audio-visual testimonies to satisfy the evidentiary threshold. The looming concern is whether cross-examination by video would cause prejudice or prevent the ability for cross-examinations to be effectively conducted.<sup>100</sup> Cross-examination in person was found to 'show the solemnity or gravity' of the situation at hand, reminding the 'witness of their obligations', developing 'chemistry' between parties and fostering a better environment to observe witnesses.<sup>101</sup> Attempting to transfer all of these qualities online may not necessarily be as successful as hoped, as there are some qualities to the presence of the accused or witnesses that can only exist in a physical presence.

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<sup>98</sup> Ibid s 22C (6).

<sup>99</sup> Aaron Irving and Adam Zwi, 'Cross-examination by video in the COVID-19 context', *Law Society Journal* (Web Page) < <https://lsj.com.au/articles/cross-examination-by-video-in-the-covid-19-context/>>.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

Nonetheless, COVID-19 left the courts with no choice but to make this transition, with the goal of doing everything in its power to ensure that the principles of justice were upheld. The leniency awarded to courts to determine whether cross-examination, audio or audio-visual means are appropriate quintessentially means that if individuals are found to be at a disadvantage as a result of such practices, these effects can be mitigated. It appears to be the 'only practical alternative' for 'wholesale postponement' of hearing processes.<sup>102</sup> It has been proposed that less emphasis be placed on the importance of witness demeanour in proceedings; rather, the benefits of being removed from a stressful and confrontational environment need to be catered for in the assessment of the reputability of the individual.<sup>103</sup> Alternatively, should the demeanour of the witness remain cardinal, the use of technology may improve the quality of the testimony, particularly if the clarity that can be achieved through a laptop screen could not be with the witness sitting across the room in a witness-box.

A potentially detrimental constraint of witness testimonies being conducted in this manner is the potential of the witness to be coerced into providing a statement. Having the screen focus on only a portion of the witness and the environment the witness is in will continue to shadow the prospect of a witness under duress, as having these aspects occur in an actual court setting allows for greater transparency and may allow the witness testimony to be free from direct influence. Thus, this is still a barrier that needs to be mitigated. Overall, the pitfalls of witnesses and evidence through technological mediums can be overcome efficiently by effective communication collaboration, instant messaging and short adjournments where necessary. The instantaneousness of calling into a virtual courtroom will likely reduce any significant delays, although time should be allotted for technical difficulties. More so, large volumes of documentation can be sent to all parties via a dropbox, reducing the physical handling of such materials and ensuring that all parties have sufficient access.<sup>104</sup>

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<sup>102</sup> 'The impact of COVID-19 on witness testimony', *Norton Rose Fulbright*, (Web page) <<https://nortonrosefulbright.com/en-zw/knowledge/publications/54005c8c/the-impact-of-covid-19-on-witness-testimony>>.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

## Chapter 4 Considerations

Recommendations are quite challenging to produce given the disparities between Australia and Indonesia as a whole. Instead, below are some key considerations to factor into decision-making when assessing Australia's practices, prior to incorporating any recommendations in the Indonesian context.

### 4.1

The technological facet of this remodelling of the legal system is by far the most prominent change that has occurred. Therefore, the first consideration is whether or not the demographic at hand has adequate access to technology. These measures are generally feasible in Australia because a majority of the population have access to technology in some form or would be able to access it via libraries or other means. This is not to say that access to technology doesn't remain a challenge for Victorians and relative poverty is still present, however, it may be of great use to find alternative means of communication that are commonly used and find ways to incorporate this into the delivery of justice. The next step forward would be to make online resources increasingly available and obtainable to the general public; with constant updates on processes and means to obtain legal assistance

### 4.2

Vulnerable groups that might have limited access to technology may inhibit their access to justice. These groups have an increasing vulnerability due to a number of factors that might challenge their position and include but are not limited to culturally and linguistically diverse individuals, indigenous peoples, and the older population. Special consideration must be given to these individuals and their interaction with the criminal justice system.

### 4.3

The volume of services and funding also varies greatly between Indonesia and Australia. Victoria has 48 CLC's and has received funding to provide legal aid to more people. Victoria

itself only has a population of 6 million people and Australia only has 6 states and 2 territories so the channelling of resources may be reasonable given this. With the plurality of Indonesia's legal system, this may be more challenging.

Consequently, prior to implementing any recommendations, it is essential to consider the existing barriers to justice in the context of the nation and determine whether or not transforming practices to an online platform would remedy or exacerbate the limitations in open justice.

Nonetheless, adaptation is absolutely necessary with the changing times, and with the unpredictability of COVID-19, nations have had no choice but to consistently change the way in which they respond to every string in the fabric of our society. Without these measures, Australia's legal system would have come to a halt, and trials, justice and results would not be delivered; which would have been the greatest violation of open justice.

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## AUTHORS PROFILE

**Divashna Govender**, is a student currently in her final year of a Bachelor of Arts (Human Rights) and Law at Monash University in Melbourne, Australia. She is passionate about human rights advocacy, international development and indigenous rights, and hopes to pursue a career in the field in the near future.

## ICJR PROFILE

Institute for Criminal Justice Reform, abbreviated as ICJR, is an independent research institution that focuses on criminal law reform, criminal justice system reform, and general legal reform in Indonesia. One of the crucial problems facing Indonesia during the current transition period is reforming the law and its criminal justice system toward more democratic direction. In the past, criminal law and criminal justice were more used as a means of supporting authoritarian power, beside used as social engineering purposes. Now is the time for the orientation and instrumentation of criminal law from a tool of authoritarian move towards a pillar for the operation of a democratic political system that respects human rights. These are the challenges faced in the context of restructuring criminal law and criminal justice in the current transitional period. To answer those challenges, a planned and systematic effort is needed to answer these new challenges. A grand design for reform of the criminal justice system and law in general must be initiated. The criminal justice system as it is known have a very strategic place in the framework of building the Rule of Law and respect for human rights. Because democracy can only function properly if there is institutionalization of the concept of the Rule of Law. Reform of the criminal justice system which is oriented towards protecting human rights is a "*conditio sine quo non*" with the process of institutionalizing democratization in the current transitional period. Steps in transforming the law and criminal justice system to make it more effective are currently underway. But this effort needs to have wider support. The Institute for Criminal Justice Reform (ICJR) is trying to take the initiative to support these steps. Providing support in the context of building respect for the Rule of Law and simultaneously building a culture of human rights in the criminal justice system. This is the reason for the ICJR's presence.

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