



**EXTRACT FROM  
PARLIAMENTARY DEBATES**



***HANSARD***

**LEGISLATIVE COUNCIL**

**24 MARCH 2022**

**Mr Melhem**

***Western Metropolitan***

**Speaking on a Bill**

**JUSTICE LEGISLATION AMENDMENT (TRIAL BY JUDGE ALONE AND OTHER  
MATTERS) BILL 2022**

**Mr Melhem** (Western Metropolitan): I rise to speak on the Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022. Basically, the bill will reintroduce or extend temporary measures. It is designed to assist the justice system to continue their response to the challenges presented by the COVID-19 pandemic. The bill has five key points: the first is the reintroduction of judge-alone criminal trials and special hearings on a temporary basis, which has been in place for a while now; the second is the deferral of the commencement date for the de novo summary appeal reform; the third point this will address is the extension of part 16 of the Occupational Health and Safety Act 2004; the fourth is the extension of the provisions requiring an accused adult in custody to attend a summary contested hearing or a committal hearing by audio-visual link by default to reduce the need to transfer the accused person to court; and the last point the bill deals with is the extension of provisions under the Children, Youth and Families Act 2005 to continue allowing attendance at a youth justice unit or reporting to occur by audio-visual link.

If I can address some of these points in some detail, and I know previous speakers have gone through some of the aspects of the bill, really this bill is to deal with technical issues—issues we had to introduce because of COVID-19 and the pandemic. It is quite interesting hearing some of the speakers, particularly from the other side, criticising this bill and what we are doing and forgetting the purpose of this bill. When we faced the pandemic back in January 2020, two-and-a-bit years ago, no-one predicted that we were going to be dealing with a massive pandemic, where the cases now go into the thousands—10 000 cases and still counting—and now we have got the son, or the grandson of omicron and winter is coming. God knows what we can expect going forward in the coming winter. The good thing is that whilst we have a high level of cases, life is getting back to some normality in Victoria and the other states. A lot of the restrictions have been lifted. The number of cases presenting in hospital is around 200 or under 200, which is a good thing. Unfortunately, a lot of people are still dying from that horrible disease, even though in the last few days I do not think we have lost any lives because of it. I have not checked or double-checked the figures for today, but it is great news if we have not lost any lives in the last few days. But unfortunately, the anticipation is that that horrible virus is going to be with us for a while yet.

To deal with it we need to make sure we have got an efficient justice system operating in a very productive manner, make sure we are delivering justice to victims and giving a fair trial to people who are facing the justice system and make sure that everyone is given a fair go. We also need to take some pressure off the court system and judges and all the people working in the legal system. In my view they have done a tremendous job, considering what we have been through in the last two years. The ability to move from face-to-face trials to online trials I think is a credit to the people working in the justice system, and I want to commend the Attorney-General for the good work she has done in that space and the huge investments she has made on behalf of the government to make sure we have got an efficient justice system in the state of Victoria, which is under strain because of COVID-19.

Judge-only trials, as I said, were introduced in April 2020, and they are going well. They are basically not dissimilar to a lot of cases. There are a lot of civil cases and other cases that are tried by a judge alone instead of a jury. The current system requires consent from the parties to accept a trial by a judge only. There have been several precedents that can now guide the judiciary going forward in relation to how these criminal cases can continue to occur or be done by a judge only. There is a lot of experience there.

My understanding is that there were about 60 applications for judge-alone trials in the County Court, of which 51 were granted, and six applications in the Supreme Court. So, things are going reasonably well, and I want to commend the judges and the practitioners, whether they were representing defendants or the prosecution, who have been working cooperatively to make sure we continue operating an efficient and a fair trial system in Victoria.

The second point, which I have touched on, is in relation to the de novo appeals. Maybe I will go through that briefly. Currently if a person is found guilty by a Magistrate or Children's court then appeals that conviction, the court must hear all the evidence again and reach a new decision. Essentially appeals are a new—or de novo—hearing, basically going through the whole thing again and again. This system places significant stress on victims and witnesses who are required to repeat their evidence during appeal proceedings. It also places significant cost and resources pressures on the County Court. The reforms that were introduced by the Justice Legislation Amendment (Criminal Appeals) Act 2019 replace de novo

appeals with new processes for conviction and sentence appeals which streamlines the appeals process. These reforms were originally scheduled to commence in July 2021 but have already been delayed to 1 January 2023. Again, the reason for the delay is because of COVID-19. We had no choice but to delay the changes. Getting feedback from the various stakeholders, there was a need to basically look at reviewing that decision again to make sure that when we implement these changes everyone is ready to actually operate under the new changes. A further delay until 5 July 2025 will allow the court and others in the justice system to maintain their focus on managing the impacts of COVID-19 and addressing the backlog of cases in the system, and this is a priority. We want time and resources to remain focused. I think everybody understands why that delay is taking place, and that is based on the feedback from the stakeholders in the justice system.

The opposition talked about how we should have put more resources into the justice system, which we have, so it is not about resources. It is about making sure we deal with the current cases in an efficient manner as people are getting used to a new system. Can I just say for the record: in the last budget alone the government invested \$210 million? That is \$210 million in addition to the current investment to actually deal with that. That comes on top of over \$80 million previously invested to help the court cope with COVID-19 and address the backlog as well. So if you do the sums, 210 and 80, that is nearly \$300 million that we put into the system. Various other changes have been put in place as well to assist the courts to actually do their job. I will leave my contribution on that issue there.

The other one is the Occupational Health and Safety Act, and this bill also will extend the operation of part 16 until 26 October 2022. Again, that was introduced as a result of COVID-19 and was due to lapse in April 2022. Now, I have heard some comments from the opposition in relation to why we are doing that. First of all, the reason we actually introduced these changes was to allow WorkSafe Victoria inspectors to do their job in light of COVID-19 restrictions. A lot of the things cannot be done face to face, so they will be able to get things done online and to do things electronically to make their lives easier and to make sure there is full compliance with health and safety in workplaces, whether they are small, big or medium, and to protect not just the workers in industry and the operators but also protect consumers and the general population. That was the whole purpose of giving WorkSafe inspectors the additional—not powers as such, because they had these powers already—but really clarifying that inspectors can deal with issues

relating to COVID-19 enforcement, like any other regulations or laws we have in place which relate to health and safety in the workplace.

That is what this bill, simply, is doing. It is clarifying that. The truth is COVID-19 is still here, and it looks like it is going to be with us for the rest of this year at least and is not going to disappear anytime soon. That is the purpose of that, and I cannot believe that even the opposition is making noise about, 'We don't want to extend that'. Where they would like to see WorkSafe is basically having no powers whatsoever. Going back, it is almost this ideological argument, and it comes from the opposition, that is conservative in relation to self-compliance. If they get their way we will not have WorkSafe. We will not have any people enforcing occupational health and safety laws. They would say, 'Oh, okay. Well, all employers are good people'—which they are most of them are good people— 'and they can do self-compliance and we don't need anyone to enforce'. Well, I have got news for you: that does not work in real life. We need to have enforcement, and that is why it is the WorkSafe inspector's job to do that, and we have to make sure that they have the right tools to be able to do their job and make sure that all the obligations imposed by the Occupational Health and Safety Act are complied with. The Department of Health provides guidance regarding compliance with pandemic orders and related COVID-19 directions that everyone in the state, whether you are a small business, a medium-sized business or a large business, must actually comply with, because you have got that obligation to comply with the health department's direction.

Some comments were made about, 'Oh, they're going to issue fines; they're going to send them broke'. Well, I have dealt with a lot of health and safety inspectors over the years. Safety inspectors, their first line if there is a problem is, 'How can we fix it? How can we put things in place to make sure that place is safe?'. Even if they find that something is unsafe, the first discussion with the employer is, 'Can we fix this and make it safe?'. There is cooperation and then a process put in place to fix the problem. They do not just simply put a notice there and say, 'Okay, we're going to shut you down because you've got a particular part of your business that's not safe. We're going to shut you down and issue you a fine'. Issuing a fine is the last resort. It has been used by WorkSafe since its inception, so this trying to scaremonger that that is going to give WorkSafe more tools to basically send businesses to the wall is absolute rubbish, really.

The other two points in my last 10 seconds, I will not go through them as they have been covered by previous speakers, but with these comments I commend the bill to the house, and I hope the bill will pass because it is important that we continue these arrangements while we are still under COVID-19 conditions.