

DISCUSSION

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I would like to say two things that are of concern to an English observer. The first relates to the role of the magistrate in committal proceedings. Although the role of the New South Wales magistrate differs in technical description from that of the English magistrate, nevertheless the government's proposals strike at a concept fundamental to both jurisdictions, namely the principle that committal for trial is a judicial act, or an act by an official acting judicially. Although English committal proceedings have been much modified, they retain this essential concept. The Government's proposals would change what is a judicial act into an administrative one — namely a decision by the Director of Public Prosecutions. That seems to be a retrograde step.

Although in England many committals are not proper committals, there still remains the Defence option to make a submission for judicial decision, whether done on the basis of the existing statements, or after hearing evidence.

The second concern relates to calling evidence. There is still concern in England about time-wasting in "live" committals where evidence is called. However, it is essential from the point of view of both Prosecution and Defence to be able in certain cases to call live witnesses in committal proceedings. The Roskill proposal, which has now become law, was that in serious fraud cases, where the transfer procedure was invoked, submissions could be made to the trial judge and he could leave as to whether witnesses should be called. There is current debate in England as to whether committal proceedings should be yet further modified. This could involve a general transfer procedure with a right to submit being reserved to the Defence, such submissions to be made either to the magistrate or the trial judge. The Criminal Bar Association has recently suggested that if such procedure were generally adopted, live evidence might be taken before the magistrate but legal submissions made to the trial judge if he further proposed that witnesses should be called at the option of Defence or Prosecution without the leave of the tribunal.

The permutations in a changed scheme are endless. However, what is essential in my view is to retain control of committal proceedings by a judicial act and to devise a procedure that concentrates everybody's mind on the issues at an early stage — including the mind of the person making the judicial decision.

¹ Contribution from the Floor by David Cocks, QC, former Chairman of the (English) Criminal Bar Association, at the public seminar entitled "Committal for Trial and Pre-Trial Disclosure", convened by the Institute of Criminology, The University of Sydney, 11 April 1990