

Unrepresented Defendants

Terms of Reference

In 1973 the Commission was invited to consider and report on the desirability of any alterations in the procedures of the Courts of Petty Sessions in cases involving unrepresented defendants.

Background of Reference

The reference arose because of a number of problems caused by the position of unrepresented defendants in the Courts of Petty Sessions. It was recognised that unrepresented defendants may sometimes plead guilty to charges they do not understand and that this had occurred in circumstances where the defendant might not have been convicted if a lawyer had presented all the facts to the court on their behalf. There was also concern that unrepresented defendants, when found guilty, may be unable to make a satisfactory plea in mitigation. The risk that unrepresented defendants may be treated unjustly was a primary consideration.

In 1981 the Commission acknowledged that the extent of these problems had possibly changed since 1973 because of the rapid developments that took place in those years in the area of legal aid. The formation of the Western Australian Legal Aid Commission and the Aboriginal Legal Service and the operation of the Duty Counsel Scheme alleviated many of the problems. It was recognised, however, that increasing the availability of legal aid would not necessarily solve the problems covered by this reference. Many unrepresented defendants in the Courts of Petty Sessions may be able to afford a lawyer, but do not appreciate the desirability of representation. In order to determine the effectiveness of these legal aid initiatives the Commission prepared a number of detailed surveys, in consultation with the Australian Bureau of Statistics. These surveys were to be distributed to various persons operating in the Courts of Petty Sessions system, including Duty Counsel, the Aboriginal Legal Service, Magistrates, Justices of the Peace, Police Prosecutors and private legal practitioners. The Commission planned to issue a working paper when the surveys and remaining research had been completed.

Reference Withdrawn

The reference was withdrawn in 1982. It was decided that the Commission should deal with the subject matter of this reference as part of the comprehensive reference on the *Justices Act 1902 (WA)*.¹

¹ Law Reform Commission of Western Australia, *Justices Act*, Project No 55 (referred 1974).