without being subjected to the strange and frightening courtroom environment or, in criminal cases, direct confrontation with the person accused of the crime. At the same time, the rights of the parties to the proceeding, particularly an accused in a criminal proceeding, must be considered. The procedure can only be used if the Magistrate considers that its use would not be unfair to a party.

A number of questions exist as to the impact of the technology. However, the Commission in consultation with the Government, the Magistrates Court and interested organisations and individuals concluded that the potential advantages of video link are sufficient to introduce it on a trial basis. This trial will allow the technology to be assessed for 12 months to determine its actual advantages and disadvantages and whether any modifications to the procedure are required. It may help resolve some of the questions such as children's reactions to the technology, its effect on the quality and impact of evidence given and its effect on the interests of the parties.

Justice Elizabeth Evatt, the Commissioner in charge of the project, said

> Our increasing awareness of the extent of child abuse has led to more and more cases being notified and brought to court. It is vital to protect children who are so vulnerable in our society and to ensure that justice is done to all concerned.
>
> The Commission believes that the use of video link is only one method of dealing with the problems arising from the need for children to give evidence in court proceedings. Child witnesses have already experienced multiple interviews, disruptions and delays and other 'strange' procedures before the court hearing occurs. While video link is a valuable aid at the hearing, there is a need to look at reducing or eliminating all forms of unnecessary harm that may be caused to a child from the investigative process through to the requirement that he or she testify.

* * *

review of the NSW court system

> Delays have dangerous ends
>
> Shakespeare, Henry VI, Pt 1, III

delays in NSW courts. Delays and inefficiencies in the court system prompted the NSW government to commission an independent inquiry to examine the issue and make recommendations. The review, undertaken by Coopers & Lybrand and WD Scott, was completed in May 1989. The proposals were welcomed by the government, however the Attorney-General, Mr Dowd, acknowledged that

> The positive side might be the reduction of delay in having matters dealt with but the negative side would be a possibility of penalising litigants for reasons beyond their control and related to the behaviour of lawyers.

The dilemma was put succinctly in an editorial in the *Sydney Morning Herald* on 29 May, 1989.

> There is no doubt that the greatest injustice at present is delay. The difficult task for the Government will be in preserving the fairness of the system as it hastens people through the courts.

extent and causes of delay. The average time taken from committal to trial in the Supreme Court is 9 months for those in custody and 12 months for those on bail. Delays in the District Court are even longer. In the Supreme Court non jury trials in civil cases are taking 40 months from the time the matter is set down until hearing. For cases involving a jury the

delay is 58 months. There are comparable delays in the District Court. The report identifies lack of adequate case disposition standards and case flow management as two of the principal causes of delay. In criminial cases the reduction in the guilty plea rate (falling from 48% in 1984 to 36% in 1988, at committal) was mentioned as a significant cause of delay. Declining settlement rates was one of the factors identified as contributing to delays in civil proceedings. Many of the recommendations are directed towards changes which would reverse these trends.

department's discussion paper. The Attorney-General's Department produced a discussion paper proposing reforms to the criminal justice system shortly after the Coopers & Lybrand Report was released. The purpose of the department's document is to seek comments on the reform proposals from interested persons. Naturally the two reviews covered some of the same ground and in many cases their proposals were similar.

similar proposals. Proposals in the area of criminal proceedings which were similar in both Papers included

- *committals.* Both reviews recommended replacing the existing form of committal procedure with a system which gives the Director of Public Prosecutions (dpp) a greater role in determining whether an accused should be committed for trial. The Department proposed that the decision be made by the dpp rather than a magistrate in all cases. The right to cross-examine a witness before a magistrate should be preserved in certain circumstances.The Coopers & Lybrand report recommended that

  > consideration should be given to abolishing committals and replacing them with a more effective and simplified procedure which protects the rights of the accused; this could take the form of effective screening by prosecution, with rights of reasonable discovery and a hand up brief to a trial judge for committal decision on the basis of a *prima facie* case being established by the paper brief.

- *plea bargaining.* The adoption of plea bargaining was recommended by both reviews. Plea bargaining is any agreement between the prosecution and the accused that the accused will plead guilty in return for some concession, generally a more lenient sentence. A significant difference between the two proposals was that the Department proposed that judges not be involved in plea bargaining whereas the Coopers & Lybrand report recommended that negotiations be conducted in open forum with judicial supervision.

- *pre-trial hearings.* To enable the court to make preliminary orders for the timely disposition of a case, formal pre-trial hearings in the Supreme Court were advocated. Both reviews foreshadowed the need for restrictions on appealing against any decision made at such a hearing.

further proposals by the department. The department's discussion paper included proposals for automatic pre-trial disclosure by both the prosecution and the accused in summary and indictable matters. Information to be discosed by the prosecution included

- the precise terms of the indictment or information
- records of interview with the police, whether written or taped
- statements of witnesses
- names of witnesses from whom statements were not obtained and the grounds on which the witness might be regarded as material.

The accused should be required to disclose

- the general nature of his or her defence
- the areas in which the prosecution case is disputed.

Some other proposals by the department were

- mandatory time limits on the commencement of a trial
- dispensing with the summing up on the facts in short trials
- restricting adjournments
- allowing police to read their evidence
- joinder of related summary and indictable offences
- written submissions to be served by both parties in all appeals against sentence
- the accused should be able to elect trial by judge alone in all criminal matters including indictable offences.

further proposals for criminal proceedings in the Coopers & Lybrand report. The audio and/or video recording of police interview was recommended as a matter of priority. The following recommendations were also made for changes to legal aid.

- The merit test should be applied consistently in all cases, both civil and criminal.
- Consideration should be given to the introduction of a system to limit the fees payable to private practitioners to a fixed amount or for a maximum duration, for each type of case, possibly through a voucher system, subject to this system being able to safeguard the rights of the accused to a fair trial and presentation of evidence.
- Consideration should be given to restricting the availability of legal aid, so that habitual offenders should not be able to claim aid after a specified number of offenced found guilty, within a specified period.

The final recommendation in relation to civil proceedings related to the imprisonment of fine-defaulters.

> [I]f the difficulties with the administration and enforcement of the Community Service Order scheme cannot be readily overcome at reasonable cost, following the present study being undertaken by the Department, then consideration should be given to amending the legislation to provide for custodial sentences for fine defaulters, in low security, periodic detention centres, instead of making Community Service Orders.

The proposals in relation to legal aid and Community Service Orders proved to be some of the most controversial issues in the Paper. The Sydney Morning Herald editorial referred to above commented that

> Abolishing legal aid for so-called habitual offenders may sound sensible from someone interested in case flow but it does little for notions such as the presumption of innocence and the right of all to be legally represented at a criminal trial.

coopers & lybrand recommendations for civil proceedings. Recommendations for civil proceedings included

- extenting the arbitration scheme, particularly in country areas
- mediated settlement conferences in personal injury cases where liability was not in issue
- increasing the number and use of Community Justice Centres
- eliminating jury trials in civil cases unless fraud or reputation are involved

- opening courts in the second half of January
- introducing second 'shift' hearings from 4.30 pm - 7.30 pm
- eliminating court transcription in Local Courts except for committals, appeals and 'stated cases'
- adjusting court fees so that they relate to the time the court takes to dispose of the case.

reaction to civil reforms. One of the most radical of the proposals for civil reform is that a 'user pays' system be introduced. The report recommended that

> In appropriate civil cases, particularly lengthy commercial cases, the aim should be to recover the full costs of the court, including judicial salaries and administrative services and overheads, for the time that the court is occupied on the case.

An article in the *Sydney Morning Herald* on 29 May 1989 noted that this proposal 'would raise the cost of legal proceedings enormously'. The costs of justice including lawyer's fees, court costs and government charges is the subject of a separate enquiry by the Senate Standing Committee on Constitutional and Legal Affairs. Many States, including Victoria and South Australia are also undertaking their own investigations into delays in the court system. No doubt they will face similar problems in attempting to reduce delays without compromising other aspects of a fair trial.

Comments on the Attorney-General's Department's discussion paper should be directed to the Secretary, Attorney General's Department, GPO Box 6, Sydney, 2001.

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reviewing government decisions

> Decide, v.i., to succumb to the preponderance of one set of influences over another set.
>
> Ambrose Bierce,
> *The Devils' Dictionary*

In 1988, the Senate failed to pass a Bill to amend the Administrative Decisions (Judicial Review) Act 1977 (Cth) ('ADJR Act'). The amendment would have given the Federal Court wider powers to refuse applications for review of administrative decisions if the applicant could have obtained review of the decision from a Tribunal, by internal review, or by complaining to the Ombudsman.

The Administrative Review Council (ARC) has now recommended a wider range of amendments to the ADJR Act: *Review of the Administrative Decisions (Judicial Review) Act: The Ambit of the Act*, Report No 32. These include extension of the power of the Federal Court to review administrative decisions, as well as extending the discretion to refuse applications for review.

constitutional right to review. The ARC acknowledges that the Constitution itself provides, in Chapter III, rights to judicial review of a large range of decisions made by the Commonwealth government and its officials. The ADJR Act codified and simplified the procedures for review, and the ARC concludes that

> Within the limits of the coverage of the [ADJR] Act, the judicial review facility placed in the hands of the Australian public by the Constitution has been made more effective.

Many areas of administrative activity in respect of which the Constitution provides judicial review are not presently covered by the ADJR Act. That Act extends only