

Legal Aid

There has been much publicity given already to the Federal Government's proposed cuts to legal aid. True it is, that those in society who are least able to carry it will be burdened further. True it is, that they will be likely to suffer injustice. True it is, that the justice system itself will become even less accessible than at present - even more the preserve of the well-off.

I have contributed to the public fuss with comments from the point of view of the prosecutor - the representative of the whole community in criminal matters (including but not limited to legal aid contenders).

Dietrich's case will require some cases to be adjourned, some to be stayed temporarily and some permanently. One must accept that at least some contenders for legal aid are guilty. Whether guilty or not, some will be imprisoned for longer awaiting trial and some will be released on bail or unconditionally with possibly undesirable social consequences.

With a cap on funds for trials some accused will manufacture longer hearings. There being no legal aid for retrials, some will seek to manufacture jury disagreements. Jury tampering may increase.

There will be pressure on the Crown to enter inappropriate charge bargains. If that is resisted (as it should be) pleas of guilty will decline. Delays will increase, with all the adverse consequences they bring.

Litigants in person present additional problems for all other participants in the proceedings, especially the tribunal. District Court appeals are really trials by judge alone. The Court of Criminal Appeal and the High Court interpret the law for all courts. If proceedings in these courts become one-sided contests the whole criminal justice system will be at risk of becoming skewed.

The Europeans refer to "equality of arms" in legal contests. That means lawyers for both sides, especially in serious criminal cases.

Governments must ensure that occurs so that the essential public service of the justice system can operate effectively. Legal aid is a necessity.

This is not just an issue for the Federal Government. It is our tax money that must be applied for our benefit, whichever government actually writes the cheque.

Jury Survey

There is presently under way, with the approval of the Attorney General, a survey of juries who are unable to agree on verdicts. The Bureau of Crime Statistics and Research will report the results in due course and is conducting the survey with all appropriate safeguards.

The principal aim of the survey (as I understand it) is to obtain data on the jury split. In the debate about majority verdicts a great unknown at present is whether hung juries divide 11:1 or any other way with any frequency. Obtaining such information will lead, hopefully, to a debate that is at least better informed.

Summary Prosecutions

On 1 July 1996 my Office took over from the Police Service the functions of police prosecutors at the Campbelltown and Dubbo Local Courts.

The pilot schemes at both courts are running well. They are being evaluated by the Premier's Department, assisted by Mr K Waller (retired Coroner). The Police Royal Commission is keeping a close eye on events.

I have made no secret of the fact that I intend to see this function transferred from the Police Service to my Office where, as a matter of principle, it belongs. The Royal Commission has received submissions supporting that view from, inter alia, the Bar Association, the Law Society and the Local Court. All that remains is to work out the "how" and "when".

Victoria and Western Australia are closely watching events.

It could be that barristers may have a role as counsel briefed to prosecute at country sittings of the Local Court. This is one issue being explored in the evaluation which is looking at the whole process statewide from charge to final disposition.

Be that as it may, the transfer of function will release 234 officers back to their core duties of policing. □

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