bunals. After this became public the Bar Association of NSW, which had previously decided not to take any action over Justice Staples, reversed its previous position and expressed concern for Justice Staples and for the independence of judicial officers.

conclusion. While only Commonwealth judges enjoy constitutional protection, the Staples case raises the question of whether other officials, especially those who exercise quasi-judicial powers of decision, may require similar guarantees of independence. Parliament has the power to abolish the Conciliation and Arbitration Commission and similar bodies, and by that means remove all members from office. If it does so, it must accept the political consequences. When it enacted the Industrial Relations Act 1988, it did not decide that Justice Staples or any other member should leave office. Parliament provided for a successor body, which was to continue the functions of the old Commission. It allowed for continuity of membership, but left the appointment of the members of the new body to the discretion of the executive government. The decision as to which of the members of the old body should be appointed to the new was an executive decision. The question remains whether such a decision should be subject to restraint or to review because it may conflict with an established convention, or other constitutional principles not expressly written into the constitution.

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court delays

> Battledore and shuttlecock's a wery good game vhen you an't the shuttlecock and two lawyers the battledores, in which case it gets too excitin to be pleasant.
>
> Charles Dickens, *Pickwick Papers*

It was reported in the *Sydney Morning Herald* on 10 February 1989 that one of the New South Wales Supreme Court's most experienced criminal law judges had resigned in protest over what he described as the 'scandalous' and 'obscene' delays in criminal trials. Mr Justice Adrian Roden, who presided over the Milperra massacre trial and the trial of former government minister Rex Jackson, told the New South Wales Attorney-General, Mr John Dowd, in his letter of resignation, that the criminal law should be stripped of much of its technicality and legalism. He went on to criticise the work practices of lawyers in criminal trials which added to the delays. He wrote 'I know you appreciate that our criminal trial backlog and the resultant delays do not just represent a management problem — they represent a human problem.' (*The Australian* 10 February 1989)

According to the *Sydney Morning Herald*, Mr Justice Roden is known to support a system of pre-trial procedures which would speed up cases while protecting individual rights. He has also advocated the separate administration of the Supreme Court's criminal division in the same manner as the Court's commercial division.

The delays about which he was complaining sometimes resulted in accused persons being held in custody before trial for a year or more, during which time they were all presumed to be innocent and may eventually be acquitted. Mr Justice Roden said that the extent of the delay was unknown in other Australian States and in the United States and United Kingdom. He attacked the court's summer vacation between mid-December and the end of January each year, during which time five or six Supreme Court rooms remained unused, as contributing to the delay. A further cause, he said, was the priority which the Supreme Court seemed to place on the resolution of commercial cases, at the expense of criminal trials, which, he thought,

was indicative of a society which placed more emphasis on money and property than the liberty of the individual.

chief justice of the high court. Mr Justice Roden's comments were echoed on 19 March 1989 by the Chief Justice of the High Court of Australia, Sir Anthony Mason, in a speech to the Society for the Reform of the Criminal Law . Sir Anthony said that the delays currently occurring in New South Wales could not be tolerated by any society which took pride in its sense of justice. According to Sir Anthony, the average time spent in custody by accused persons between committal and trial was 10 months in District Court matters and 9 months in Supreme Court matters. He said that such delays bred injustice, inefficiency and wasteful expense.They also reflected 'a breakdown in executive planning and the funding of law enforcement agencies and the court system'. Unfortunately, said Sir Anthony, the need to eliminate delays sometimes created pressure to alter or qualify traditional rules and procedures designed to protect the the defendant, for no good reason other than the desire to facilitate the prosecution case.

Sir Anthony laid the blame for the substantial increase in cases coming before the court on increases in population, and an upsurge in violent crime, in a society where the detection and investigation of criminal activity was more onerous and more costly than ever. Legal aid enabled the accused to contest all aspects of the prosecution case, which contributed to the increasing length of criminal trials. This was another cause of delay, together with the increasing complexity of many corporate and commercial crimes.

jury reform. In an attempt to resolve some of the delays and other difficulties associated with criminal trials, the New South Wales government is considering introducing majority jury verdicts for certain kinds of offences, including theft and crimes of violence. According to the *Canberra Times* of 6 February 1989, the New South Wales Attorney-General, Mr John Dowd, stated that he would ask the New South Wales Law Reform Commission to examine the possibility of majority verdicts in criminal trials. Mr Dowd said that his proposal would decrease the number of trials aborted because of one or two obstinant jurors who refused to make a decision on the merits of the case. He said that the composition of juries had changed in recent years and because they were more representative of society, they were more unpredictable. They also had no idea of procedures necessary for the conduct of meetings. This was because they had less experience of life and had less contact with the police, crimes and the courts. Mr Dowd thought, however, that the jury system generally worked well and was an essential part of the community's idea of justice.

The move toward a system of majority verdicts, although operating in Britain and the United States, as well as in Western Australia, South Australia and Victoria, has not been greeted with universal approval in New South Wales. In 1986 a New South Wales Law Reform Commission report recommended the retention of unanimous verdicts. Mr Paul Byrne, who was in charge of compiling that report, said that majority verdicts diminished the burden of proof on the prosecution. The *Daily Mirror* reported on 7 February 1989 that Mr Tim Robertson, QC, Secretary of the New South Wales Council of Civil Liberties criticised majority verdicts as being prejudicial to minority groups in a community. The real problem with jury trials, said Mr Robertson, was explaining the facts to juries in simple non-technical

terms which ordinary people could understand. Majority verdicts, he said, were a form of 'cheap and nasty justice.'

The Canberra Times of 6 February 1989 quoted the President of the New South Wales Bar Association, Mr Ken Handley, QC, as saying that although the Association favoured unanimous verdicts, it would be interested in studying the Law Reform Commission findings and assessing them on their merits. According to the same report, the immediate past President of the Law Society of New South Wales, Mr Bill Windeyer, took the same view. A spokesman for the NSW Law Society,Mr Daniel Brezniak, was also quoted in that report as saying that the society would approach with 'grave reluctance' any suggestion that jury verdicts should not be unanimous.

Delay is only one of the defects of the jury system which has been under scrutiny recently. A newspaper inquiry (*Sun Herald* 5 February 1989) revealed a number of serious defects inherent in the jury system itself. Interviews with a number of jurors indicated that:

- they often did not understand complex evidence, particularly in financial matters
- decisions were often hurried so that the jurors could go home
- juries did not understand the legal process
- in longer cases, jurors often slept through some of the evidence
- jurors were often bullied by strong personalities into making a decision in which they did not believe
- decisions were frequently made for reasons unrelated to the guilt or innocence of the defendant.

The same report revealed that criticisms of the jury system may also be derived from the composition of juries. After a major survey of jurors, Meredith Wilkie, senior legal officer at the New South Wales Law Reform Commission, concluded that if trial by jury was intended to be judgment by one's peers, under-representation of particular groups was a cause for concern. Thus, while half the people convicted of crimes are unemployed, unemployed people accounted for only 3% of jurors. The proportion of Aborigines, women, and persons of specific age groups serving on juries is often unrelated to the proportion of those persons in the general community. This could have significant effect on the verdict reached.

These defects have not been lost on the public, according to an opinion poll quoted in the *Sun Herald* article. In the atmosphere of public awareness of the confusion and emotion in the jury rooms at the Lindy Chamberlain, Norm Gallagher, and Lionel Murphy trials, the poll revealed that 40% of Australians had doubts about the jury system.

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dalkon shield: a h robins pays up

> Technology made large populations possible; large populations now make technology indispensable.
>
> Jospeh Wood Krutch, 'The Nemesis of Power,' *Human Nature and the Human Condition* (1959).

dalkon shields. The first Australian to receive compensation for her use of the Dalkon Shield contraceptive device, Mrs Elizabeth Williams, has received a cheque for $884.00. On the order of Judge Merhige in Richmond Virginia, the AH Robins company, which made the Dalkon Shield, set aside $3.46 billion after a ten year class action in the United States. Making the