

- the powers of the intervenor
- the finality of the decision
- the relationship between the parties
- any power imbalance between the parties
- costs
- remedies
- confidentiality
- cultural differences
- desire to settle
- neutrality of the expert
- the time of intervention.

adr: perspective from within the judicial system. In the third Session attention was focussed on ways in which Courts could use ADR techniques to reduce delay and cost in litigation. Among the views taken by Judges were that the court system was and should be seen as a system of compulsion and not as a social agency. Any approach to ADR should be in that context. There could be benefits in directing a mini-trial where the cost of a full trial would exceed the amount at issue. Because some people with large resources might not want to settle, it might be necessary for mini-trials to be compulsory. Another view was that there was no point in ordering people to mediate if they did not want it; they would not be satisfied and may incur higher costs. Compulsory offers of settlement, which could be used in determining costs could be a means of encouraging a realistic approach to disputes.

conclusions. There was no formal contribution from the Family Court, which has incorporated ADR methods into its procedure by legislation and rules of Court. Nor from the Australian Industrial Relations Commission, which has expertise in dispute resolution by means of Conciliation & Arbitration. The overall impression from this session was that ADR

was seen by the judiciary as something separate and apart from the judicial process.

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the cost of justice

Yet we should also not lose sight of the fact that legal fees do more than put another BMW in the driveway. They are indeed a disincentive to litigation, as many are saying in the public debate over the Magistrate's Court Bill. This seems to me a most useful function. Far from denying a person's right to his day in court, high fees keep many time-wasting affairs out of a system already clogged with a plethora of vexatious claims.

Noel Bushnell, *Australian Business*, 17 May 1989

The cost of legal services is an important issue in many countries. The previous article discussed alternative dispute resolution as one way of reducing the cost of justice. There is presently legislation before the Victorian Parliament providing that where the matter in dispute involves \$5 000 or less, the litigants are not entitled to costs. Besides concern about the cost of litigation there has been much debate about the cost of non-litigious legal services such as conveyancing. Lawyers say that their overheads are high.

On 10 May 1989 the Australian Senate gave a reference on the cost of justice to the Senate Standing Committee on Constitutional and Legal Affairs.

The Committee has been asked to inquire and report on

- the cost of legal service and litigation in Australia today, including:
 - lawyers' fees, charges and overheads,

- courts — delays, costs, listing arrangements, hours of operation and overheads, and
- Government charges,
- whether the cost of taking legal action is unacceptably high;
- the availability of targeting of legal aid; and
- whether there are any practicable alternatives to the present system.

The Chairman of the Committee Senator Barney Cooney (ALP, Vic) said in the Senate that

The Committee believes that most lawyers, like other professional groups, are genuinely hard working persons. For this reason, the Committee will be looking at lawyers' fees and charges not in isolation but in the context of the overheads involved in running their practices. In examining the overall cost of legal services, the Committee wants to consider aspects of lawyers' professional practice to gauge whether they have an effect on the cost of legal services and litigation in Australia today. Some such aspects include, for example, the two counsel rule or the split nature of the profession in some States.

Beyond the costs associated directly with lawyers, other factors may contribute to the cost of obtaining justice in Australia. Such factors include the listing arrangements in courts, the monetary jurisdictional limits of the courts, the awarding of costs, and legal representation in small claims jurisdiction or before certain tribunals, for example.

The Committee will ask whether there are ways of streamlining court procedures so as to reduce the costs of those procedures. It will examine, for example, whether measures such as longer sitting hours, grouped proceedings, contingency fees, or increased incentives for people to try alternative, informal, means of resolving disputes may be practical.

The Committee will also look at the factors that affect the cost of non-litigious legal work — for example, should conveyancing, or the incorporation of companies, be the exclusive province of lawyers?

Senator Cooney said:

One of the concerns the Committee has in undertaking an inquiry such as this is that the community's reasonable expectations of obtaining justice should not be unduly compromised. As far as the Committee is concerned, there is a balance to be achieved between an acceptable level of justice and an acceptable cost to individuals and to the community.

The Committee will also examine the availability and targeting of legal aid.

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dp: guardianship and management of property

outline. The ALRC's Discussion Paper No 39, *Guardianship and Management of Property*, was released in May. The paper examines the inadequate state of the present law in the Australian Capital Territory providing for guardianship of persons unable to manage their personal affairs. These are generally people suffering from a disease or disability such as senility, brain damage, mental illness, or intellectual disability. The Discussion Paper also examines the law relating to the management of property of such persons and makes tentative recommendations for reform of the law.

background. The reference was given to the Commission on 29 August 1988 by the Commonwealth Attorney-General. Prior to this, however, much work had already been done on the topic by the Attorney-General's Department including extensive public consultation and the