

- 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.

* * *

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

to 'decisions of an administrative character made under an enactment', and some of these decisions are excluded from judicial review under the Act because they fall within the classes of decisions excluded from judicial review by the operation of Schedule 1.

proposed extensions of judicial review.

Among the decisions which the ARC considers should be included in the scope of the ADJR Act are

- certain non-statutory decisions of Commonwealth officers
- decisions of the Governor-General made pursuant to statutory powers
- decisions relating to security and intelligence
- certain decisions relating to taxation
- decisions under legislation regulating foreign takeovers
- decisions of the National Labour Consultative Council
- certain decisions relating to discipline in the armed forces
- decisions under the Customs Act relating to anti-dumping securities
- decisions concerning electoral redistributions.

further exclusions. At the same time, the ARC considers that certain decisions of the courts and similar bodies, which the courts have characterised as 'administrative' for the purposes of judicial review, should not be subject to review under the ADJR Act. They include

- decisions of the Australian Industrial Relations Commission
- decisions of magistrates in committal proceedings
- decisions of magistrates in extradition proceedings.

method of excluding judicial review.

At present, Acts and Regulations may exclude classes of decision from review under the provisions of the ADJR Act. The ARC has recommended

- that where Regulations made under the ADJR Act s 19 exclude a class of decisions from the operation of the Act, the Act should be amended to provide that the Regulations only have effect for a period of 12 months
- that Acts which exclude the operation of the ADJR Act should specifically amend that Act.

discretion to refuse relief where alternative review is available. The ARC recommended that legislation similar to the *Administrative Decisions (Judicial Review) Amendment Bill 1987* should be introduced. This would require the Federal Court to refuse to grant an application for review if it is satisfied that an alternative method of review of the decision is available to the applicant. However, it need not do so if the refusal would cause injustice to the applicant. The ARC proposes a slightly different wording of the amendment to overcome objections raised by the Senate.

a wider range of conduct subject to review. At present certain conduct of a person engaged in for the purpose of making a decision to which the ADJR Act applies is subject to review, but it is not clear that the 'conduct' includes conduct of someone other than the person who made the decision, such as a person who prepared a report for the decision-maker. The ARC has suggested amendments that would ensure that the conduct of the person who prepared the report would be subject to review. It has, however, recommended that some conduct of this general type is 'non-justiciable', and should not be subject to review.

The government has not yet announced its response to the Report.

* * *

police powers

Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on.

Robert F Kennedy,
The Pursuit of Justice, 1964

The Committee established to review the Commonwealth criminal law has recommended new procedures for investigating federal offences.

The Review Committee, chaired by the former Chief Justice of Australia, Sir Harry Gibbs, was established by the Attorney-General, in February 1987. The other Committee members are Mr Justice Ray Watson, of the Family Court, and Mr Andrew Menzies, retired Deputy Secretary of the Attorney-General's Department.

The Committee's report, *Detention Before Charge*, covers a number of issues involved in this difficult area, and makes several recommendations which should be of considerable interest to those organisations directly involved, and to the wider community.

The Committee has proposed:

- the tape recording of admissions and confessions by persons in custody;
- providing safeguards for persons in the custody of federal investigators, including the right to communicate with a friend, relative or lawyer and to be cautioned as to his or her right to silence. The right to an interpreter is also recommended;

- establishing conditions for the detention of persons in the period before a charge is laid and the limits of that period. This would limit the 'investigation period' to a maximum of six hours for offences carrying a penalty exceeding 12 months' imprisonment, or four hours, for offences carrying a lesser penalty. This limit, which may be extended upon a successful application, would allow for practical delays which could inhibit a reasonable investigation. This would include such contingencies as the necessity of arranging an interpreter, conducting an identification parade or consulting a lawyer, friend or relative.

The Report includes draft legislation implementing the Committee's recommendations.

* * *

new law on fences proposed

Every man is the architect of his own fortunes, but the neighbours superintend the construction.

George Ade,
Hand-Made Fables, 1920

The New South Wales Law Reform Commission has recommended major changes to the law governing the rights and duties of neighbours over fences between their properties. The Commission's report, *Dividing Fences*, was tabled in Parliament in May. In the report, the Commission proposes a completely new Act to replace the current Dividing Fences Act which was passed in 1951 but has its origins in the beginning of last century.

Commenting on the report, the Chairman of the Commission, Mr Keith Mason QC, said that the recommendations should make the law fairer and simpler. Mr Mason continued: