

Reforming court proceedings

A move has been made by the NSW Attorney-General, Mr Dowd, to reduce delays in civil proceedings by reforming the procedural rules for civil cases in the Supreme, District and Local courts. Mr Dowd introduced the Court's Legislation (Civil Procedure) Amendment Bill during the last session of Parliament.

Solicitors to be penalised for delaying proceedings

The Bill provides for the Supreme and District courts to penalise a solicitor whose serious neglect, incompetence or misconduct delays proceedings. The penalty will involve an order as to payment of costs, for example, an order disallowing costs between the solicitor and his client. This will ensure that a negligent solicitor, rather than his client, bears the cost of delays caused by his inefficiency and encourage solicitors to ensure there are no avoidable delays. The courts currently have to hold a separate inquiry into a solicitor's conduct before imposing cost sanctions, a process which obviously results in further delay.

Juries in civil matters

NSW and Victoria are the only jurisdictions in Australia which still use juries in civil matters. The Bill changes the rules relating to the use of juries in civil proceedings by providing that civil proceedings in the Supreme and District courts are to be tried without a jury unless the court orders otherwise in the interests

of justice or the proceedings arise from a course of action based on fraud, defamation, malicious prosecution or false imprisonment. The Government changed these rules because

- delay in jury trials is far greater than in non-jury trials,
- such delays can be used to tactical advantage by the defendant to induce a plaintiff to settle,
- jury decisions are generally lower and far less consistent than judicial awards,
- judicial decisions are more easily scrutinised on appeal and jury trials are more costly for the parties and the public.

Order for interim payments in proceedings for recovery of damages

There is currently no provision for the Supreme or District courts to make interim payment orders in general common law claims, unlike provisions in the Workers' Compensation Act (compulsory weekly instalments of income support) and the Motor Vehicle Accidents Act (out-of-pocket and

rehabilitation expenses as incurred). The Bill makes provisions for the court to order the defendant, in certain circumstances, to make one or more interim payments (provided the defendant is insured, is a public authority or will be able to make the payments without undue hardship). The court can make an order for an interim payment even if liability has not been established, but only if it is satisfied that if the action proceeded to trial the plaintiff would obtain judgment for substantial damages against the defendant. The Bill specifically provides that the making of an interim payment is not an admission of liability by the defendant. The amount of interim damages must not exceed 'a reasonable proportion' of those damages which the court believes are likely to be recovered.

Interest on damages

Section 94 of the Supreme Court Act and s 83A of the District Court Act provide for the court to order the payment of interest to the plaintiff when an award of damages is made. The Bill pro-

vides that the plaintiff is not entitled to interest if he or she rejected an offer of settlement which was within 10% of the damages finally awarded, unless special circumstances warrant the making of such an order. This provision is designed to encourage reasonable pre-trial settlement attempts.

Civil jurisdictional limits

The Bill raises the limit on the District court's civil jurisdiction from \$100 000 to \$250 000. This reflects inflationary changes and will ensure that only the more

complex work will end up in the Supreme Court. The general limit on Local Court civil jurisdiction is increased from \$10 000 to \$25 000 (from \$20 000 to \$50 000 in motor accident cases). □

Criminal investigation

A bill providing a maximum period for which a person arrested may be held for questioning before being taken to a magistrate was passed in federal Parliament on 10 April 1991. The bill's provisions are in line with the ALRC's recommendations in its Interim Report, *Criminal Investigation* (ALRC 2).

The Crimes (Investigation of Commonwealth Offences) Amendment Bill 1990 amends the Crimes Act 1914 by setting a time limit for police custodial investigation of no longer than four hours or, in the case Aborigines, Torres Strait Islanders and under-eighteen-year-olds, two hours. The allows for one extension of the investigation of eight hours.

Lawful, adj. Compatible with the will of a judge having jurisdiction.
Ambrose Bierce, *The Devil's Dictionary*, 1911