

Children

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Particular regard will be given to ensuring that children and young people are able to make their views known to the commissions and that they are given a real voice in the inquiry. A survey of high school aged children is currently being developed and will be distributed widely, mainly through schools, during 1996. A panel of young people will be asked for comments and ideas on a regular basis throughout the course of the inquiry.

In February 1996 an Issues Paper is to be produced. It will be followed by extensive consultations around the country in June and July of that year. A draft recommendations paper is planned for release in November 1996, and the final report is required by 30 June 1997.

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RETHINKING THE ADVERSARIAL SYSTEM

alrc begins major new access to justice review

On 29 November 1995 federal Attorney-General, Michael Lavarch MP asked the Australian Law Reform Commission (ALRC) to review Australia's current adversarial system of litigation. The ALRC will examine and report on what changes, if any, should be made in this respect to civil, administrative law and family law proceedings before courts and tribunals exercising federal jurisdiction.

The proposed reference will contribute to the package of recent and proposed reforms intended to make Australia's legal system simpler, cheaper and more accessible.

There is growing recognition that the adversarial system — where the parties, by their legal representatives, control the litigation and the judge is there only as an adjudicator — is unable to contend with the volume and complexity of modern litigation and to achieve the object of providing an acceptable structure for dispute resolution.

In his interim report *Access to Justice: Interim Report to the Lord Chancellor on the civil legal system in England & Wales*, Lord Woolf found that the unrestrained adversarial culture of the civil legal system is to a large extent responsible for

- the excesses of and lack of control over the system of civil litigation;
- the inadequate attention which the system gives to the control of costs and delay and to the need to ensure equality between the parties;

- the complexity of the present system; and
- the absence of any satisfactory judicial responsibility for the effective use of resources within the civil system.

He concluded that the cumulative effect of all these factors is to restrict access to justice.

Many recent reports in Australia have sounded similar concerns over the adverse effect the adversarial process has on cost, delay and complexity in our litigation system.

Some of these problems are being addressed through the introduction of case management and other procedural reforms in most Australian jurisdictions. However, case management alone will not cure fundamental defects in the adversarial system.

The ALRC's proposed review will build on the work of the Access to Justice Advisory Committee, the Litigation Reform Commission of Queensland and the various reforms being considered by courts in Australia. It will draw upon the rules and procedures of courts and tribunals in Australia and overseas including those in civil code jurisdictions.

A preliminary report on the conduct of civil litigation will be made by 30 September 1997 with the final report due a year later.

Philip Kellow