



**Critical Policy - 5**  
**JUSTICE REFORM - ADVANCED LEGAL SYSTEM**

**BUILDING AN  
ADVANCED LEGAL SYSTEM  
(Australian - investigative - Legal System)**

5. **True Investigative Justice** – This final step will incorporate the balance of the best international legal practices and introduce a national CCRC.
4. **Evidence Collation Procedures** – Introduction of Dossiers and revocation of cost building procedures leading up to Judicial Proceedings.
3. **Judge(s) Alone Trials** – Introduction of a minimum of two judges or magistrates sitting with Empanelled Experts replacing a Jury.
2. **Abolition of Advocates' Immunity** – And all legal practitioners to be made culpable for breaches of Procedural Fairness prior to and during Judicial Proceedings.
1. **Investigative Law Creation & Enforcement** – Strict enforcement of penalties for breaches of Procedural Fairness prior to and during Judicial Proceedings.

**Block 1. Investigative Law Creation & Enforcement**

The system is mostly in place. There's no need to reinvent wheels within this building block; just remove the opportunity to breach Procedural Fairness by strictly enforcing penalties. After all, it is a criminal offence to obstruct justice or bring false accusation against another.

And yet, according to the Federal Party's research, rarely has anyone within law enforcement agencies or the Legal Profession been charged for acting criminally against an accused (defendant in criminal proceedings) or a defendant in civil proceedings. Have Lindy Chamberlain-Creighton's accusers ever been brought to justice for falsifying forensic findings, or destroying evidence, or fabricating witnesses' statements? And what about the concealment of evidence during Judicial Proceedings? And Lindy is one of a long list of innocent Australians who have been wrongly convicted and jailed.

If it's true that only 1% of those currently in our jails are innocent, then that's still approximately 300 innocent Australians whose lives are being destroyed. Many say 5% is the true figure. That's approximately 1,500; and who is being brought to account?

The following criminal charge and penalty will be introduced by a Federal Party government and enforced rigorously. It is one of our 18 Objectives in Rules 6.1–6.18 of our Federal Constitution:

## 6.12 Breaches of Procedural Fairness

Notwithstanding the introduction of an Advanced Legal System, the Organisation will act vigorously to ensure that criminal charges are brought against any offender who, solely or jointly, prior to or during criminal or civil Judicial Proceedings is found to be responsible for:

- (a) improper forensic testing; or
- (b) improper compiling of forensic reports; or
- (c) introducing improper or wilfully fabricated forensic evidence; or
- (d) tampering with evidence to be exhibited; or
- (e) coercing witnesses; or
- (f) fabricating sworn statements; or
- (g) discarding or withholding evidence vital to the cause of any party to Judicial Proceedings; or
- (h) giving false testimony (perjury) in written or oral form; or
- (i) knowingly acting on improper or fabricated evidence in whatever form; or
- (j) wilfully defrauding or causing a disadvantage to another by engaging in the malpractice of abusing legal processes; and

where such breaches of Procedural Fairness have been for the purpose of bringing false accusation and thereby causing any person to be charged with an offence alleged to have been committed in any one or more of the States and Territories of Australia

**or**

where such breaches have been for the purpose of causing any person or corporation a financial disadvantage in civil Judicial Proceedings, then the following penalty will apply:

**Penalty:** (Based on s.131 of the Queensland Criminal Code)

- i. If the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for life; or
- ii. if the offence is such that a person convicted of it is liable to be sentenced to imprisonment, but for a term less than life, the offender is liable to imprisonment for 14 years; and
- iii. in any other case, be it criminal or civil, the offender is liable to imprisonment for 7 years.

Section 131 – “**Conspiracy to bring false accusation**” has been lying dormant, within the Queensland Criminal Code and its counterparts in other States and the Commonwealth Crimes Act 1914, for decades, and understandably. Government agencies are loath to turn on their own and accuse them of breaching Procedural Fairness. Criminal conduct is conveniently disguised as human error, and the matter is normally dismissed.

But the **Justice Enforcement** division within a Federal Party government will independently investigate the conduct of all government officers, their associates, and legal practitioners suspected of breaching or conspiring to breach Procedural Fairness. And charges will be brought and penalties vigorously enforced in our criminal courts.

The Federal Party's Justice Enforcement division will be independent of crime and corruption commissions in their varying Federal and State forms; it will confine itself to breaches of Procedural Fairness as partly defined in Rule 6.12 above.

This will be the first step in the first building block. And in time there will be the introduction of investigative procedures that will make it more than difficult to get up to tricks with the lives of innocent Australians in both criminal and civil jurisdictions; making the role of our Justice Enforcement division simply one of deterrent. For now, the enforcement of these harsh penalties should curb the criminal conduct of those who are intent on tearing up the rules when it suits them.

## **Block 2. Abolition of Advocates' Immunity**

In keeping with the need to bring criminal charges and penalties against persons for breaching Procedural Fairness we must firstly remove the protection enjoyed by barristers. This Federal Party Objective reads:

### 6.13 Abolition of Advocates' Immunity

While Australia still labours under an archaic law known as Advocates' Immunity, barristers in our nation will continue to enjoy indemnity from suit for negligence in the conduct of civil and criminal proceedings. The Organisation will act vigorously to abolish this immunity bringing Australian law into line with the United States, Canada, United Kingdom and New Zealand. And the protections offered lawyers will be lessened making all legal practitioners culpable for breaches of Procedural Fairness, in whatever form, prior to or during Judicial Proceedings.

Under a Federal Party government its Justice Enforcement division will have the power to override – where it deems necessary – the findings of State law societies and institutes, howsoever named, and commence its own investigations into complaints of alleged malpractice on the part of their members.

## **Block 3. Judge(s) Alone Trials**

Putting this building block in place will herald the onset of a new era; the beginning of true Investigative Justice within our Legal System. And it's a low-set hurdle that can be easily surmounted without disruption to the Australian Bench as it gets on with court proceedings. It would take less than two years to phase in the following Objective of the Federal Party, Rule 6.14 in its Federal Constitution.

### 6.14 Judicial Accountability

Councils of Judicial Review, established within the Organisation, will act vigorously to ensure that prior to an Advanced Legal System taking full effect:

- (a) Judicial Immunity be lessened to limit the protection of the Australian Bench;
- (b) the Australian Bench will be provided, when required, with written and oral testimony from Independent Experts and will sit with Empanelled Experts acting as Amici Curiae (in person or by electronic means), when required, during civil or criminal Judicial Proceedings at trial and beyond. (The term, "when required", applies to any matter before members of the Australian Judiciary which requires an understanding of industry, commerce, academia, the sciences, or the arts;

- (c) the Bench, during Judicial Proceedings involving committal, trial, and appeal, will be occupied by a minimum of two members of the Judiciary;
- (d) allegedly flawed judgments emanating from the Australian Justice System will be the subject of independent reviews;
- (e) in the event that fresh and compelling evidence has been discovered in favour of a convicted person who has had an unsuccessful appeal, then that person will be automatically entitled to a further appeal based on that new evidence;
- (f) each member of the Judiciary be made accountable to our nation for breaches of their professional conduct at the Bench, and in representing the Australian Bench internationally; and in all circumstances, be made accountable for personal acts of impropriety.

The Federal Constitution also defines “Independent Experts” and “Empanelled Experts” in this manner:

**“Independent Expert”** means a recognised non-government specialist within industry, commerce, academia, the sciences or the arts who may be commissioned from the Register of Competencies (or otherwise) by government agencies, corporations or individuals to provide expert reports on evidence arising throughout the course of Procedural Fairness prior to or during Judicial Proceedings. And an Independent Expert will not act as an Empanelled Expert in the same matter.

**“Empanelled Experts”** means a panel of recognised non-government specialists within industry, commerce, academia, the sciences, or the arts who may be commissioned from the Register of Competencies (or otherwise) to attend at the Bench – in a neutral advisory capacity as *Amici Curiae* – during the course of Judicial Proceedings at trial and beyond. And no Empanelled Expert will have been formerly called upon to act as an Independent Expert in the same matter.

The introduction of Empanelled Experts and Independent Experts will assist – among other matters – in curbing the appetites of judges who, at times, seem to hunger for setting precedents that favour the fortunes of the Legal Profession.

Evan Whitton is a distinguished journalist, Australian author, and well-known advocate of key elements within the European inquisitorial (investigative) legal systems. Years of his life have been dedicated to identifying the flaws in our adversarial system and delivering reliable, well-founded, investigative alternatives. In a recent book, *A Corrupt Legal System: Why Everyone is a Victim (Except Rich Criminals)* he very often quotes the words of eminent judges and academics within Australia and abroad. Here's one such quote that reinforces the Federal Party's Objective, Judicial Accountability; it is the words of Associate Professor Benjamin Barton, of the University of Tennessee College of Law, as he answers the question: “Do Judges Systematically Favor the Interests of the Legal Profession?” His answer was published in the *Alabama Law Review* of December 2007; and it is highly applicable to our own adversarial Legal System:

“Here is my lawyer-judge hypothesis in a nutshell: many legal outcomes can be explained, and future cases predicted, by asking a very simple question: is there a plausible legal result in this case that will significantly affect the interests of the legal profession (positively or negatively)? If so, the case will be decided in the way that offers the best result for the legal profession.”

Overall, Empanelled Experts will make it far more difficult (if not impossible) for judges to inject their biases into their decisions.

#### **Block 4. Evidence Collation Procedures**

We are now faced with the greatest challenge within our Justice Reform program. Moving this block into place will upset the sensitivities and coffers of Australian Law firms.

Introducing the European inquisitorial (investigative) models of collating evidence in a repository known as a **Dossier**, will be met with vehement objection from the legal fraternity and the Australian Bench. Curbing breaches of Procedural Fairness and eliminating the lucrative cost building manoeuvres in the lead up to Judicial Proceedings will prove highly unpalatable. The opportunity to take clients on the longest journey possible in an effort to extract more and more money from the innocent, will be an opportunity denied them. A Federal Party government will drive this block into place, irrespective of collateral damage to the Legal Profession.

The cost building antics of written pleadings, discovery, high-priced legal teams (barristers etc), well-paid expert witnesses and time-consuming adversarial dramas are eliminated in the investigative system. And judges are trained. They don't go to the Bench straight from having practiced the rapacious art of deception by concealing evidence and outsmarting their adversaries if the money's right, not to mention deceiving courts.

Again, from the pages of Evan Whitton's book, he writes on the corruption within our adversarial civil process:

Judge Learned Hand (1872-1961), said in 1921: "I must say that as a litigant I should dread a lawsuit beyond almost anything else short of sickness and death."

Civil litigation is like a cancer; it grows exponentially because lawyers can spin the process out. Trained French and German judges dispose of civil cases in a few hours. Justice Russell Fox wrote in *Justice in the 21st Century*:

... there is many a crack in the image of the ideal [of justice]. Mostly these arise from the practice of leaving the practitioner in charge of the collection and presentation of the evidence, which means that the judge may only hear incomplete or inaccurate or unreliable evidence; some of what is relevant may be deliberately withheld.

And for those who have been subjected to civil litigation, the following words from Evan Whitton will ring true. And even though some litigants would not readily admit that they have been party to dishonesty in their defences; they would, moreover, be incensed by the dishonest pleadings brought against them. In either event or both, lawyers rub their hands together in anticipation of protracted proceedings.

Written pleadings, the vehicle for the invention of the adversary system, are supposed to narrow the issues but are largely useless: as noted earlier, judges have allowed lawyers to lie in pleadings for five centuries. Speaking on behalf of the West Australian Law Reform Commission in 1998, Mullany, said:

The pleading rules 'stop short' of requiring the parties [and their lawyers] to be frank about what they allege. There is a tendency of parties to make allegations which they do not believe to be true ... and to deny allegations which they know to be true ... There is, in other words, a lack of 'truth' in pleadings.

Lawyers can go on lying in pleadings interminably in see-saw fashion: statement of claim, defence, reply, rejoinder, surrejoinder, rebutter, surrebutter, counter-claim, defence to counter-claim, reply ...

To continue, here is a damning assessment of written pleadings and the 'adversarial tradition' from another excerpt of Mr Whitton's book:

In 1998, the WA law reform commissioners – WA Bar Association President Wayne Martin QC, law professor Ralph Simmonds, of Murdoch University, and Crown Counsel Robert Cock QC – reported:

It is our opinion that for so long as the Australian litigation system is based on the adversarial tradition ... attempts to bring about *substantial* reform of the current system of written pleadings with a view to facilitating the more efficient administration of justice will fail.

They recommended a procedure which 'resembles most closely that prevailing in Germany'. In effect, they recommended a return to the oral method of pleading that obtained before the invention of the adversary system.

However, written pleadings are just the beginning of the unnecessary, time-consuming, and highly lucrative, dishonest games played within civil litigation. The art form known as 'discovery' would have to be the hallmark of an Adversarial Justice System designed to financially exhaust litigants. There is little, and at times, no beneficial purpose for litigants in this exercise.

Evan writes that Lord Justice Johan Steyn said in 1992:

[Discovery] contributes to the tyranny of modern litigation ... It is the experience of Commercial judges that usually 95% of the documents contained in the trial bundle are wholly irrelevant and never mentioned by either side.

Justice David Ipp, then of the WA Supreme Court said, in Part II of *Reforms to the Adversarial Process in Civil Litigation* (Australian Law Journal, 1995):

... the usual result is that the number of those documents that are critical to the result of the trial are substantially less than 50 [but] sometimes hundreds of thousands [are] discovered.

Discovery is undeniably a money-making practice engaged in by trial lawyers. Australians who have been through our adversarial civil courts would overwhelmingly agree. But just to drive the point home, here is a final excerpt that also applies to the conduct of Australian legal practitioners.

*The Economist* reported in 1992 that discovery accounts for 60% of the time and money spent on US lawsuits, and that in 1988 a Louis Harris survey showed:

... a big majority of litigators for both plaintiffs and defendants said that discovery is used as a weapon to increase a trial's cost and delay to the other side (nearly half said lawyers use it to drive up their own charges) ... In an IBM anti-trust [monopoly] suit, discovery took five years and produced 64 million pages of documents ... A partner at a big [US] law firm bragged to law school students about a long anti-trust case: 'My firm's meter was running all the time – every month for 14 years.'

The admissions indicate that many trial lawyers habitually use discovery to extort from their own clients.

The IBM case would be one of the largest on record, but the fundamental dishonesty of legal practitioners still underpins civil litigation, no matter how large or small the case.

It is little wonder that Australians embroiled in our civil courts often despair, when all they want is fair treatment and above all, justice. Denying them justice in this criminal manner (i.e. Legal Abuse) often causes suicide, illness and premature deaths.

An Investigative Justice System will put an end to the nonsense, cost building antics of written pleadings and discovery, and replace these corrupt processes with strict control over the collation and retention of evidence.

Smart legal practitioners will simply cut their cloth (financially) to accommodate a system of evidence collation that will contribute significantly to the delivery of Natural Justice.

“The slimmer the pickings for legal practitioners, the greater the harvest of Natural Justice for all Australians. And if this is an inflammatory statement to those who practice and apply law, then it must correspondingly be taken as truth.”

**Garth Eaton** – Federal President

## **Block 5. True Investigative Justice**

This final block is really the finishing touches to a Legal System on the brink of being predominantly investigative. It is this block that will ensure the final integration of the best of international legal practices; practices modified for Australia's Advanced Legal System.

In effect, Block 5 will see the final integration of the remaining key elements of Civil Law into our inherited Common Law procedure. It will be the balance of carefully selected Civil Law procedure taken predominantly from the **Napoleonic, Germanistic, and Scandinavian** codes which underpin the legal systems of:

France, Belgium, Luxembourg, **Quebec** (Canada), **Louisiana** (U.S.), Italy, Romania, the Netherlands, Spain;

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Germany, Austria, Switzerland, Greece, Brazil, Portugal, Turkey, Japan, South Korea, Taiwan (Republic of China);

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Denmark, Finland, Iceland, Norway, and Sweden.

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## **CCRC**

And to ensure the full measure of Natural Justice, a Criminal Cases Review Commission (CCRC) similar to Britain's, will be established to investigate criminal cases which may have resulted in miscarriages of justice.

At the moment, there is no mechanism within Australian law which seeks to reopen old cases; and yet, Britain has enjoyed this level of delivering justice for over 15 years with remarkable success and the gratitude of wrongly imprisoned persons.

The workload of this proposed Australian CCRC will naturally reduce considerably given the full implementation of an Advanced Legal System which will create far fewer (if any) miscarriages of justice. But the workload created by the past will see the Commission fully operative addressing cases relating to existing innocent prisoners and those who have been released over past decades.

It is anticipated that an Australian CCRC will be kept fully active into an unforeseeable future, rectifying injustices by ensuring that legal representation is provided during retrials, convictions are set aside, verdicts of acquittal are entered, and pardons and compensation are sought.

#### **And the End Result?..**

A Federal Party government will have given our nation global recognition for its development of a highly sophisticated legal system – an Advanced Legal System – which irrefutably delivers Natural Justice throughout the lives of all Australians.

**Time Taken: 3 years**