



Critical Policy - 5 JUSTICE REFORM - ADVANCED LEGAL SYSTEM

EUROPEAN INQUISITORIAL LEGAL SYSTEMS – Brief Extracts

It has become the role of The Federal Party of Australia to ensure that our nation is delivered Natural Justice through the introduction of an Advanced Legal System which our Federal Constitution defines in this manner:

“Advanced Legal System” means the Australian Legal System when modified to meet highly acceptable international standards through the introduction of key elements within the European inquisitorial (investigative) legal models.

Now let's take a look at some brief extracts of European inquisitorial (investigative) legal models which apply to civil and criminal courts. We will then look at the building blocks that the Federal Party needs to put in place to construct Australia's own Advanced – investigative – Legal System.

Civil Courts

- A **'Reporting Judge'** oversees the compiling of evidence from both sides.
- This **Dossier** of evidence continues to build as witnesses' statements are introduced during a series of **Hearings**.
- Three (3) judges preside at Hearings headed by a **President**.
- Notes made intermittently by the judges also go into the Dossier.
- Hearings are repeatedly adjourned as the evidence builds within the Dossier giving all parties the opportunity to reassess their position. Usually no more than an hour per Hearing.
- No exclusionary rules of evidence. If it is of some relevance it goes into the Dossier.
- Of the three judges, the President examines witnesses. Similar to our Inquiries (e.g. Royal Commissions).
- Not all witnesses are called to give oral evidence. Their written evidence goes into the Dossier which is open at all times to the opposing parties and their lawyers.
- Counsel (lawyers) may examine those witnesses who are called, but under the strict guidance of the President – no theatrics – truth only.
- Cross-examination as such is not allowed. The President is only interested in getting to the **truth**.
- Most civil cases will take no more than a day overall to resolve. Many within hours.

Criminal Courts

- An '**Investigating Judge**' builds up a Dossier of all relevant evidence for and against the suspect and may also issue warrants and subpoena expert witnesses..
- This Dossier of evidence is made available to the suspect's (defendant's) lawyer. There is no element of surprise. If considerable doubt can be cast on the veracity of evidence in the Dossier then the matter is brought to an end.
- At trial, **twelve jurors** sit at the Bench with three judges.
- Guilty pleas are not accepted. The judge(s) and jurors are obliged to find the truth for themselves.
- Antecedents (i.e. past criminal history, character descriptions and life circumstances) of the accused are presented at trial.
- The Investigating Judge uses the Dossier to question witnesses. Lawyers for the prosecution and defence can only question witnesses through the Investigating Judge. This technique eliminates the possibility of polluting the truth.
- Witnesses may give their evidence as a narrative, not just Yes-No answers.
- There are no 'voir dires'. This means that juries are not dismissed while lawyers and prosecutors present legal argument to the judge as to whether or not certain – at times vital – evidence should be exposed to, or withheld from the jury.
- Judge(s) and jurors reach the verdict and determine the penalty together, and provide their supporting reasons.
- Irrespective of the verdict it will automatically go to an appeal court for review.
- No double-jeopardy rule. An accused can be recharged and retried for the same crime if further evidence is uncovered in the future.
- Three judges and **twelve jurors** also sit in appellate courts.
- A convicted person has the right to appeal more than once if fresh evidence is uncovered proving innocence.

Comparing the two Legal Systems (Pro-truth vs Anti-truth)

- The Pro-truth (investigative) system has trained judges who gather and present facts. The Anti-truth (adversarial) system has well-paid lawyers and barristers who gather and present their version of facts.
- Pre-trial filters help to ensure that the innocent are not charged in an investigative system.
- The pre-trial Dossier remains open to the accused's lawyer and prosecutor.
- A second pre-trial filter occurs when the prosecutor decides to proceed. The Dossier then goes to a court which assesses that decision. This court also acts as a pre-trial court of appeal which hears submissions from both parties.
- Public confidence is higher in countries with an investigative system.

- Lower acquittal rates. 95% of accused are jailed compared with 50% in an adversarial system. Many of *our* criminals buy their way back onto the streets.
- Fewer unjust convictions. The innocent are delivered justice in an investigative system, whereas in Australian courts somewhere between 1% and 5% of innocent defendants are jailed.
- Both civil and criminal cases are dealt with far more expediently in an investigative system, often within a day. The Australian adversarial system can take weeks, months, or even years.
- Costs can be reduced to a third of the cost compared with the adversarial system. Civil cases even more so.

The Transition

- Australia would need three times the number of judges.
- The number of lawyers required would be substantially reduced.
- Surplus lawyers and barristers could be trained as judges.

“As an interim step, lawyers can be made judges and, along with existing judges, given control of evidence. Both can then put rules of concealing evidence out of their heads. It will be a novel experience, and they may get to like it.” Evan Whitton’s ***A Corrupt Legal System***.

- The fundamental academic approach of Law Schools would need to be modified. The techniques employed in searching for the truth and the procedures to be adopted in the lead up to, and during, Judicial Proceedings would become the most notable changes.

Fortunately, our Australian Legal System has been infiltrated with forms of Investigative Justice which will make the building of an investigative Legal System (i.e. Advanced Legal System) far easier. We are on our way; what we now need to do is accelerate the process. So let’s look at the five building blocks that need to be systematically put in place. “Building an Advanced Legal System” explains these building blocks.