



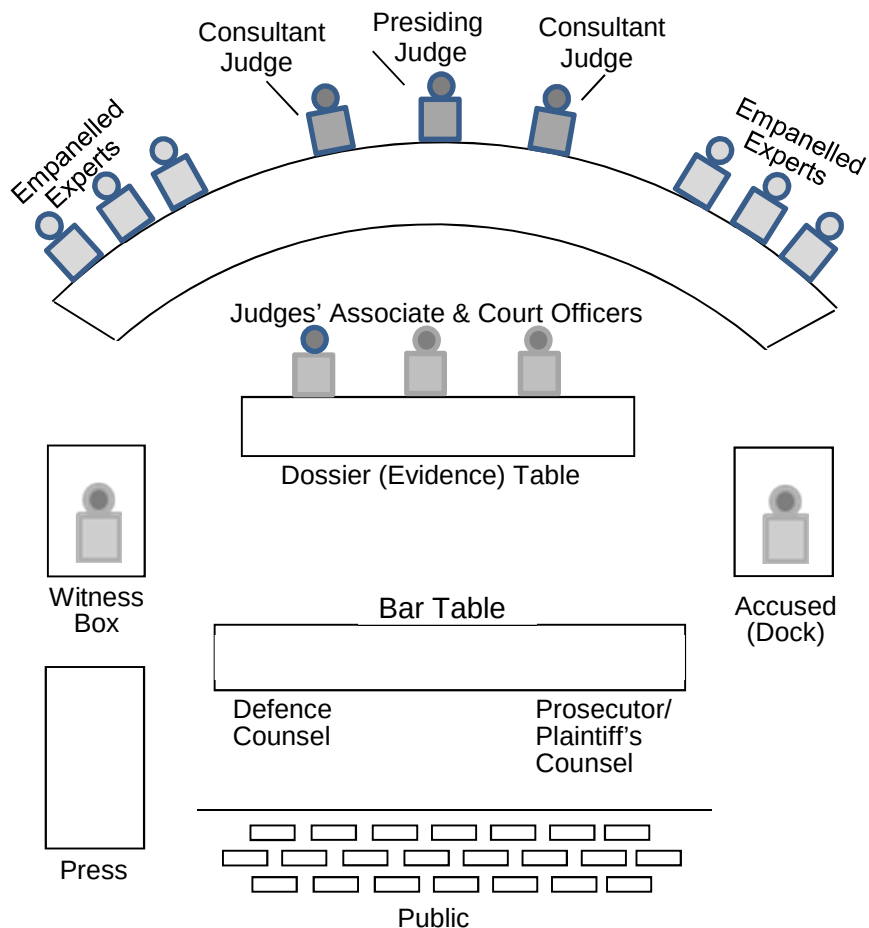
Critical Policy - 5
JUSTICE REFORM - ADVANCED LEGAL SYSTEM

SNAPSHOT OF AN ADVANCED LEGAL SYSTEM

As a preface to this extremely brief overview of Justice Reform, it needs to be said that Australia has, over the years, begun to amble into an inquisitorial (i.e. investigative) Legal System. However, the reforms advocated within The Federal Party of Australia's Federal Constitution are designed to accelerate the transition from our current, predominantly adversarial Legal System to that of one which is fully 'investigative'.

Below is a diagram and brief explanation of what will become a typical courtroom under a Federal Party government's Advanced Legal System.

AUSTRALIAN COURTROOM – Civil and Criminal Cases –



In essence, very little will be changed in the Configuration of Courtrooms within an Advanced Legal System. The Bench will not need to be curved. Empanelled Experts who cannot be accommodated at the Bench may sit where jurors once sat.

It is the process that will be visibly noticeable when entering a courtroom during trial, as described below:

The Bench

Extra seating will be provided to accommodate three judges and a maximum of six Empanelled Experts during the course of both criminal and civil trials.

Presiding Judge

The primary responsibility for the collation of all evidence will lie with the Presiding Judge. And it will be this judge who questions the witnesses, defendants, plaintiffs, and the accused (in criminal trials) under the guidance, in part, of the defence counsel, plaintiff's counsel, or prosecutor.

The Presiding Judge will also allow both Consultant Judges the right to question all parties to the proceedings on any matters that align specifically (or otherwise) with their own competencies; be it construction, mining, finance, intellectual property, entertainment, industrial relations, etc.

During the course of criminal trials the Presiding Judge may recess in order to confer with the Empanelled Experts (who replace a jury) and Consultant Judges on areas of complexity involving industry practices or forensic findings. It is important that these discussions take place particularly during criminal trials, solely because a decision as to guilt or innocence will need to be given at the end of trial, following final deliberations.

In civil proceedings, the reasons for a decision can follow in the days or weeks after trial. Expedient justice still being the hallmark of an Advanced Legal System.

Consultant Judges

The appointment of a Consultant Judge may occur from within that judge's own jurisdiction – County, District, Supreme or Federal Court – but may also occur from within the private Bar on a case by case only basis.

The primary criteria for selection and appointment of a barrister will be breadth and depth of legal experience along with specific competencies which marry with the industrial, academic, or forensic nature of the case – civil or criminal. Essentially, the same criteria will apply to the selection of existing members of the judiciary.

And all Consultant Judges – other than temporarily appointed barristers – will act as Presiding Judges on a rotational basis, ensuring that all Presiding Judges never become case hardened or prosecution-minded (as might be feared).

In truth, the power of a Presiding Judge will be limited to one of coordinating the court process – evidence collation, procedure, and examining parties to proceedings – and writing up the reasons for a decision or verdict after conferring with Consultant Judges following the submission of advice (i.e. recommendations) from Empanelled Experts. No one judge, Presiding or Consultant, will have final decision-making autonomy. The decision will be signed off by all three judges.

In attitude, a Consultant Judge may well be aligned with that of a Consultant doctor or surgeon – the highest authority – in a medical environment.

Empanelled Experts

These experts will, in the main, be drawn from a national Register of Competencies in which the names and disciplines of retired Australians are entered voluntarily. But some may be contacted for amicus curiae service from within industry and elsewhere.

The Federal Party of Australia defines the plural of amicus curiae as follows:

“Amici Curiae” (plural of Amicus Curiae) translated from Latin means “friends of the court”; persons, not being parties to the subject Judicial Proceedings, whose neutral role is to clarify – for the court – matters of complexity within industry, commerce, academia, the sciences, or the arts.

Amici curiae whose specific competencies are needed in a neutral capacity – neither for nor against any party to Judicial Proceedings – will sit at the Bench alongside the Presiding and Consultant Judges as Empanelled Experts, effectively replacing a jury and acting as impartial advisers to the court in specific complex matters.

This role will be restricted to ensuring that each judge is fully apprised of the facts involving forensic findings or industry practices but will not extend to deliberating on the innocence or guilt of an accused in a criminal court, or defendant in a civil court. The role is to assist the trial judges to make a decision beyond reasonable doubt or beyond the balance of probabilities.

Pre-trial Engagement of Expert Witnesses

Prosecutors and legal representatives (in criminal and civil jurisdictions) will continue to enjoy the right to engage expert witnesses who will examine certain evidence for the purpose of providing expert reports on whatever aspect of the evidence requires analysis. And these experts may also be Independent Experts (i.e. non-government), as defined in the Federal Constitution of The Federal Party of Australia:

“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.

And any government agency or wealthy litigant who believes that taking out a cheque book and paying handsomely for a heavily biased expert report will guarantee their success in a courtroom, will soon come to realize that bluffing judges and counsel is one thing; bluffing **Empanelled Experts** acting as amici curiae, sitting with trial judges, is very different. In fact, the corrupt technique of buying expert reports will become a futile practice from day one under an Advanced Legal System.

Pre-trial Selection of Amici Curiae as Experts

Prior to a trial date being set in civil or criminal jurisdictions, counsel and prosecutors will be given a time limit in which they must advise the court of the number and disciplines of experts they wish to empanel.

- If each of the opposing sides nominates their quota of three experts within say, the building industry: civil engineer, structural engineer, and architect for the defence, and civil engineer, structural engineer, and former senior executive within a medium size construction company for the prosecution (six experts in total), then the court will call for CVs (i.e. resumes) from a maximum of 12 experts embracing those disciplines and provide those CVs to both sides for evaluation.
- No contact with those 12 experts can be made. At this stage, only an analysis of the CVs can be made for suitability.
- If any of the CVs do not align with the requests of either side then further CVs will be obtained by the court.

- With both sides satisfied (which must occur well prior to the trial date) the court will notify the relevant experts and invite them to appear in court on the morning or afternoon of the commencement of trial.

Empanelling Amici Curiae as Experts

The Federal Constitution of The Federal Party of Australia defines Empanelled Experts as follows:

“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.

All prospective amici curiae will attend court on a voluntary basis (unlike former prospective jurors) and will be empanelled by counsel (barristers) or lawyers from opposing sides following the answering of a series of questions which are asked (judges included) to establish the suitability of their expertise and demeanour – CVs having already been made available – in relation to the complexity of evidentiary material which is pivotal to the case.

Of great importance is that either side can empanel an expert without that expert being ‘challenged’ or ‘stood by’. And each side will be allowed to empanel a maximum of three experts on the condition that if both counsel agree on any one expert then that expert will count as one of their three. And the experts to be empanelled will be advised following deliberations in their temporary absence from the court.

Consolidated Recommendations

Individual notes taken and made by Empanelled Experts during the course of trial will be consolidated after final deliberations; and these consolidated recommendations (advice) will be given orally and in written form to the Presiding and Consulting Judges before these judges reach a verdict, or before they publish their reasons for a decision/ judgment in civil proceedings.

Grounds for Appeal

And in the event that a verdict or judgment is delivered which is contrary to the advice of Empanelled Experts, and they believe the decision-making to be flawed (i.e. the judges have erred **‘in fact’** only) then these specific errings may form the grounds for review, correction, or appeal, along with any other erring in fact or **‘in law’**.

Accused

In criminal proceedings, the prosecutor may call the accused to give evidence under examination and the defence counsel can choose to cross-examine. In both, examination and cross-examination, it will be the judges who ask the questions under the guidance (and otherwise) of these legal practitioners. The right to silence will no longer exist. There will be no further need to protect the innocent – in front of a jury – against the manipulative tactics of adversaries. There will be no jury.

By abolishing the right to silence the conviction rate of known criminals – irrespective of wealth – will soar.

Dossier (Evidence) Table

All Court documents, including witness statements, will accrue as time passes. These documents will be held in a communal repository ("Dossier") which can be accessed at will by the judges and the legal practitioners who are party to the proceedings.

With 'discovery' and the associated cost building antics out of the way, the documentation available at trial will be greatly reduced along with costs.

Snapshot of Changes to Civil and Criminal Procedure

An Advanced Legal System will finally put an end to legal practices which are blindly endorsed by the Australian judiciary; practices (i.e. legal abuse) which too often result in the theft of client funds and the denying of justice.

The following changes are simply an overview... a snapshot:

- Civil Law (inquisitorial) procedures will now dominate our Common Law (adversarial) Courts.
- Multiple judges (Presiding and Consultant) will now sit with Empanelled Experts.
- Empanelled Experts will replace juries.
- Empanelled Experts confined solely to keeping judges advised. Not a decision-making role.
- Judges ask the questions and allow the answers to expose truth in narrative form.
- Lawyers/barristers guide the questioning only.
- Written pleadings replaced with oral pleadings.
- Discovery replaced with a Dossier of evidence.
- No exclusionary rules of evidence. Anything of relevance goes into the Dossier.
- Acts of buying biased expert reports, concealing or fabricating evidence, cost building, identifiable sophistry, or other breaches of Procedural Fairness will incur heavy penalties.
- Antecedents (i.e. criminal history of the accused) will be handed up to the judges at commencement of trial.
- Right to silence abolished.
- No double-jeopardy rule. An accused can be retried for the same crime.
- All judgments subjected to review. If necessary, in the first instance, judges will be ordered to correct any erring. Hence, appeals may never proceed.
- Judges who repeatedly err will be cautioned. Multiple cautions resulting in suspension.
- Multiple appeals allowed in light of fresh (new) and compelling evidence.
- Significant increase in judges required.
- Significant reduction in legal practitioners required.
- Cost of civil and criminal justice, and court time, greatly reduced.
- Miscarriages of justice reviewed by a Criminal Cases Review Commission (CCRC) – more later.