

Defeating court delay - the challenge

It has been suggested by some learned academics that delay has been endemic and perennial in the common law system for eight centuries.

Take the *Magna Carta* Chapter XXIX: "We will sell to no man, we will not deny or defer to any man either Justice or Right." (We have also tried to overcome delay for a similar period)

Then there is the London Public Record Office's records of litigation in the mid-twelfth century which documents Richard of Anstey's five year action to recover lands left to him by his uncle.

What about Shakespear's play *Hamlet* where "the law's delay" is bracketed with: "Th' oppressor's wrong, the proud man's contumely, the pangs of despis'd love" and "the insolence of office."

Two centuries later the Court of Lord Eldon, the Lord Chancellor was described according to Sir Robert Megarry as "the great cunctator of equity".

This random precis of early history is not an attempt to comfort us. It is an indication of how difficult the problem may be to overcome.

The Law Society's Access to Justice Committee is looking at ways of improving the efficiency of the litigation process.

The Committee was established to review court rules and procedures and suggest changes designed to increase speed and

efficiency. The Committee comprises Mr Alan Lindsay (convenor), Mr Richard Coates, Mr Ian Morris, Mr Duncan McConnell and myself.

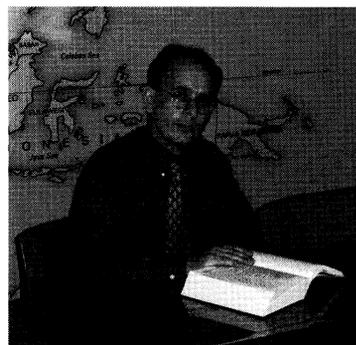
Justice Riley also attends meetings of the Committee as an observer. His Honour's presence at the meetings is welcomed and we are pleased to have the benefit of his learning and experience.

The committee has identified numerous causes of inappropriate delay. All these factors have a varying impact on delay from time to time and may or may not be a factor depending on the state a proceeding has reached. Some delay is necessary for the litigation system to work properly and justice to be achieved.

Further, some delays are court induced while others are practitioner induced.

It is also important to note that delay does not usually result from a single event but from an accumulation of events; it is an accumulation of little bits and pieces, so to control delay it is necessary to control the whole and not just parts.

Part of the solution is identifying and fixing the responsibility for reducing delay. If there is any consensus among researchers in other countries it is that basic to the reduction of delay is a commitment by the courts to move matters along and a willingness on their part to apply pressures to achieve this.



Steve Southwood, President

Any solution must be related to its social setting - to its informal practises and procedures and to the attitudes and interests of practitioners and regular litigants. Reducing delay requires the making of reasoned policy choices; rushing from spot to spot with buckets of water is not the way to proceed. It is vital that delay is tackled as a broad front and there must be recognition by the legal profession of the need to alter its traditional pattern of work behaviour.

Such matters can be achieved by judicial management aimed at overcoming any delaying and by a change in the legal culture towards delay. Order 48 is a very good start however, it must be remembered that the order itself is a tool and for efficiencies to be achieved, the tool must be used.

Further, the Committee supports the courts imposing sanctions on practitioners who are responsible for inappropriate delay and will be developing education programs for the public and the profession aimed at enhancing efficiency in litigation.

On other matters I thank the practitioners of Alice Springs for their input into the issues concerning the National Legal Market. The Law Society's Legal Structure Committee will now begin the hard work of developing recommendations to put to government.



Alice Springs practitioners had their say on the future direction of the legal landscape at a seminar in Alice on the National Legal Services Market. From left, Max Horton, Nardine Collier, Kathy Perry, Peer Schroter, John McBride, Annabelle Havelock, John Stirk and George Cooper. Steve Southwood rides in comfort in the front with Chris Turner.