

# Judge 'gives up' on system

## Litigation process nightmare

Brad Crouch

THE civil litigation system has become a nightmare and shows little sign of improving despite 30 years of inquiries, Chief Justice John Doyle believes.

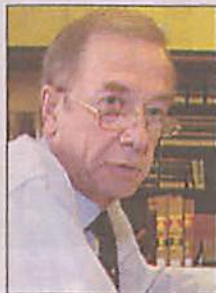
In a scathing assessment, the state's top judge said the situation was "totally depressing" with high costs, slow processes and no immediate signs of improvement.

"A lot of us, like me, in all honesty, have sort of given up and are saying we can't see the solution, and so are just on a day-by-day basis trying to manage our own cases as efficiently as we can," he said.

"The average person can't afford to get involved in substantial civil litigation, even a fairly well-off person; to me it would be an absolute nightmare personally to be involved in a significant civil case.

"It is totally depressing that people started to focus on this problem in the 1970s, but I don't really think we have advanced much at all, and I can't say things are happening that will make it better in five years' time."

In a speech yesterday to the Institute of Arbitrators and Mediators Australia - a group dedicated to finding alternative ways



### SPEECH:

Chief Justice Doyle ... "I don't really think we have advanced much"

to solve legal disputes - Justice Doyle said there had been too much focus on courts trying to fix the problem.

He noted there were already reams of largely forgotten inquiries into how courts can improve the situation, and instead called on lawyers and litigants to take action.

Justice Doyle used the speech to discuss the notion that an alternative dispute resolution (ADR) should be the preferred option to expensive litigation clogging the court system.

He stressed everyone had a right to their day in court and ADR could only be a preferred first option in some categories.

The court system should remain the first option for some categories of dispute, such as a debt collector chasing a debtor.

Other situations also warrant a

court hearing, such as cases that deserve the public gaze and those that bring recalcitrants to heel.

"I think we can reject (the) idea that initial resort to ADR should be the general rule, but accept the idea that there may be categories of litigation, with appropriate qualifications, (where) it can be a general rule," he said.

Justice Doyle also condemned the abuse of "discovery" where opposing lawyers can demand to see paperwork from each other.

He noted there were cases where judges saw a wall of papers but only perhaps 10 were relevant.

"My own belief is discovery has become a scourge. We have to rein it in if we can," he said.

In a blunt assessment, Justice Doyle admitted he did not have a neat solution to court problems.

"It is depressing that, despite the many inquiries and reports on civil litigation, we have been circling the problem for at least the last 30 years and no one has yet come up with a solution. I can tell you now you are not going to get it from me ... I don't know what it is," he said.

However, he suggested getting lawyers, regular litigants and associated parties, such as insurance companies and industry bodies, together might be a start.