LAW REFORM COMMITTEE

Inquiry into oaths, statutory declarations and affidavits for multicultural community

Melbourne – 1 August 2002

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Dr K. Laster, Associate Professor, La Trobe University.

The CHAIRMAN — Dr Laster, thank you for coming along to give evidence in relation to our inquiry. The committee has perused some of the material before it, but I understand you will speak to a number of points the committee is after. I invite you to proceed.

Dr LASTER — I thought I would follow your researcher's notes and just talk about four points: first of all, the changing context of the oath and really to set the scene for the history of the oath and some of the changes that have taken place. The second point, which I think is not quite in the committee's paper, is some distinction between the functions of the oath for different witnesses and their impressions depending on the role they perform in the court. There I think I will talk about categories of witnesses and also the role of the legal system itself. Thirdly — I think this is well covered and probably other people will have spoken to the committee about this — I might talk briefly about some of the problems of the oath that we have encountered accidentally in the course of other research. Finally, I shall just make some suggestions or some comments along the way about alternatives to the oath and some of the factors I think would be important to keep in mind if the committee was so minded to move away from the traditional oath.

I shall start with the changing context of the oath. My first point is that it is important to remember that the oath derives from the peculiarities of English legal history. Perhaps that is an odd comment to make because we are so familiar with it, but that point suggests there is something very ethnocentric about the oath because of its grounding in English legal history. Without going into all of that long English history, certainly before we had formal court processes there was trial by battle, trial by ordeal and — the one that is probably the most relevant — wager of law.

The CHAIRMAN — They are not currently part of the committee's terms of reference. It could be very interesting, nevertheless.

Dr LASTER — All of those systems largely involved supernatural forces, so that God would be on the side of the stronger party in battle; ordeal meant that you walked across hot coals and if you made it truth must be on your side. Wager of law was an interesting one because it was the more modern development and the one closest to the history of the oath as we have it. In civil disputes effectively a person would swear blind that they did not owe this debt, and they would bring a series of notable citizens to come and swear that in fact what this defendant says must be true because he is a good bloke, and we all swear we believe him, and so on.

The CHAIRMAN — You mentioned the phrase 'swear blind'. Is that another form of oath?

Dr LASTER — No, it is actually an Australian colloquialism. The idea was that the more people you could get to back up your integrity who would be prepared on your behalf to take an oath that you were a good and truthful person, the more reliable your evidence would be. Clearly there were a lot of problems of corruption in that system, but it was the beginning of the move away from the physicality of law — so you did not actually need to go through battle — to an oral system where character was the issue in dispute.

Having said that, let me say one word in defence of the traditional oath. I think it was legitimate, with the professionalisation of a formal court system closer to the one that we know, for a legal system to impose a cognitive test on the people that appeared before it — that is, addressing questions like, 'Is this person up to giving evidence? Is this someone who is intellectually and culturally sufficiently sound for us to rely on what they have to say?'. This is before the days of Piaget and before the days of psychologists and all their barrages of tests and so on. So it had a role in acting as a kind of shorthand test for saying, 'Is this a person on whom we should rely?'.

Obviously there are discriminations built into a system like that and the committee is obviously looking at the problem of Aboriginal people and the oath up until midway through the 20th century, when their evidence could not be accepted because they could not take the oath. Nevertheless, I think it is valid — however you do it you obviously want to minimise the

discriminatory effect — for a legal system to say, 'We will accept only certain people being subject to the court's truth-finding mechanisms', for a variety of reasons.

We obviously have different and better ways of ascertaining that now. This is an age of universal education, for instance. At the time that the oath was the major form of testing someone's cognitive capacities, the best you could hope for were answers to questions like, 'Have you been to Sunday School, do you know some of those stories, and do you accept the idea of life hereafter?', which was at least a bare minimum threshold test of education.

So perhaps moving from that history — and I can certainly provide some references to the committee if it is interested in the context of the modern oath or its history — the point is that I think it is sometimes forgotten how ethnocentric the development of the oath is to the peculiarities of common-law English history.

The gap that I notice in the current way in which the committee has formulated this paper is that I think we need to talk about differences in the effect of the oath on categories of witnesses. For instance, we have professional witnesses. Experts of varying sorts regularly give evidence. The oath is really part of a kind of rote ritual that they go through. They know it is expected, it does not perturb them in any way, and they can take the oath. I do not think they are sitting there thinking, 'I must be absolutely truthful'. They usually have a range of ethical obligations anyway, which impose on the sorts of ways they think about the job they are performing both in and out of court.

Police are another form of expert witness. Again, I think that after a time police who regularly and routinely give evidence recite the oath with a kind of peculiar combination of absolute sincerity and a sort of automatic quality. So they all hold up the Bible very high, much higher than any normal witness. They recite it very quickly, but the idea is — I think they are actually trained in this when they are taught how to give evidence — they are meant to look as though this is a very serious matter and they are here upholding the law. It has a slightly different meaning for police; it sort of orients them, but I do not think they are sitting there immediately saying, 'Oh gosh, this is a terribly serious matter and I may go to hell if I lie under oath'. So it has a different kind of role.

Then you have a number of very well educated witnesses who would be giving evidence in, say, a civil matter. They might be businesspeople or professionals themselves who are reasonably familiar with the procedures in court, or at least it does not appear to them to be alien. They might be very nervous for a variety of reasons, but if they are native English speakers and they are well educated it is part of the ritual of going to court. Again I do not think it can be separated out from the idea that this is a major event, usually where money or some such thing is involved. So the matter is serious in and of its own right; the oath is part of the seriousness of the issue rather than a specific event that needs to be separated out from the context of giving evidence.

The group that I think the committee is most interested in is the novice, inexperienced witnesses. These might be accused or defendants, likely as not, probably, children in some instances, and in other cases people whose native language is not English, but in general anybody who is not familiar with the court process. It is really here that I think we have some difficulties with the way in which we conceive of the role of the oath. For these witnesses the whole thing is terrifying. The emotions at the beginning are probably quite overwhelming. Whether or not taking the oath, and a religious oath, makes that more or less overwhelming I do not know; we do not know what that effect is. But it is certainly true that the language of the oath — it is a point I will return to in a moment — if in fact it is translated, does not make all that much sense. Arguably if we think about the wording of the oath instead of hearing it as a familiar term, it is closer to an incantation than a common language, and deliberately so because of its history.

Given that the oath has a different meaning for different individuals and different classes of witnesses, it is really something that the legal system itself is very tied to. It has a role and meaning for lawyers and for judges. They see it as a marker, as an important ritual part of the preliminaries that set the frame and terms of legal proceedings for individual witnesses, and they

see it as a legitimation of their role. It may have been — this is to return to the history — that once upon a time when the courts were new and trying to break with those religious elements that may have been very important. I do not think the courts any longer have a problem with saying, 'We are a powerful agency of state, or independent agency allied to the state. We take ourselves very seriously and we expect everyone who appears before us as well as the general community to take us seriously'. So if the only purpose of the oath in its current form is to somehow lend majesty to the law for the purposes of the legitimacy of the law, I do not think that is really as significant as it once might have been.

There are a range of new pressures on the court systems which have changed them from having to assert their ritual forms as successfully. I think there is a paradox here. For instance, we now have debates about whether or not lawyers should be robed in the higher courts.

It seems to me the more informal the higher courts become probably the more you need to preserve some other elements of ritual. If you preserve some elements of ritual and formality in other parts of court proceedings, like the buildings and robing, the formal oath itself is not as vital as a marker of that symbolic role for witnesses having to tell the truth. The authority of the court is already invoked just by its physical presence — the semiotics of the courtroom.

The other pressures on courts, and I am specifically thinking of the lower courts but obviously it also reverberates in higher courts, is what some people call managerial justice or technocratic justice. We are no longer investing in the ritual forms in the courts but rather they are modern, efficient organisations that have to proceed with matters as quickly as possible. Case flow is one of the catchcries even in the higher courts. One of the difficulties is the tendency for judges and lawyers to balance those ritual elements which set it aside from just being any other sort of business or administrative hearing into something that makes it special. The oath and a range of other issues serve, in part, to do that.

Nevertheless, the technocratic pressures are real — for example, if you cannot get an interpreter quickly enough. The wording of the oath talks about it being as practicable as possible. That suggests, 'If it is too much trouble, we will not delay court proceedings as a result'. If we really regard this as significant we should be prepared to say, 'Technocratic justice or managerialism be damned, this is something we heavily invest in'. If we are not and if we are compromising on that for some sections of the community, there is an equity problem there. One needs to make an in principal judgment about how significant the oath is. If its really significant, you must do everything along the way to recognise that you want to give full effect to it for all Australians.

It is appropriate to talk a little about some of the problems of the oath. I am sure other witnesses have spoken at length about this. I do not know whether you have had a chance to read in detail some of the material, but a colleague at La Trobe University, Roger Douglas, and I were doing some work about 10 years ago in the summary jurisdiction. We went around interviewing magistrates on quite unrelated matters, and we heard a lot of stories. The first of two that I particularly liked was about a country magistrate who had a Buddhist witness and asked for a candle and for the blowing out of the candle as part of the oath ceremony. The clerk of courts, who had not been in court, heard this request and came to the back of the court and said, 'We can't find a candle, Your Worship, would a torch do?'. There was clearly an attempt to accommodate but there was neither the resources nor the knowledge to do that properly. That is another issue.

If we take the oath question seriously, a lot of logistical questions follow. Would one be able to accommodate all the varieties of religious belief and deal with them appropriately? If you cannot do them properly, the suggestion is that maybe it is not a good way of going. If there cannot be equity across different denominations and different religious groups, it may be too hard.

The other story that speaks to the changing significance of the oath was that apparently a clerk of courts confessed late one Friday afternoon over drinks to a country magistrate that the holy Bible had disappeared several weeks earlier. They had been trying to get another but they could not. In

the interim witnesses had been sworn in on the *Shorter Oxford Dictionary* and whether that would be a problem. Fortunately, under the legislation it was not a problem. Obviously the clerk was significantly worried for two weeks to make a point and feel guilty about it, but nevertheless these things had occurred. This happened 10 years ago; things may have changed, but I do not know. They were revealing stories along the way. We were not in any way asking any of the magistrates about those sorts of questions.

There are logistical and fairness issues. My anecdote about the fairness issue was that when I was admitted to practise, if you took the oath you recited it in unison. A big group of us in Banco court all said it together. If, however, at the time — and this is admittedly some years ago — you wanted to affirm you had to take the affirmation individually. Everybody turned as the poor people who stood individually in banco court with a whole lot of ritual regalia and had to do it individually. Even then that was a courageous thing to be doing, because there is pressure to conform, even among highly educated, presumably very assertive people in their own right.

I wondered about this pressure to take the oath, whether or not you have any religious conviction and whether or not it is in fact the right Bible for you, and whether or not you want to single yourself out as somebody who is different. I am sure that other witnesses would have raised some of those questions.

Mr LANGUILLER — It questions the Australian character and larrikinism.

Dr LASTER — Sure. You need to have a certain kind of bravado to do it, there is no doubt about that. But that is the point: if we can see that that is something that people discussed and noted at the time for a particular group, it may well be a much more pressured environment for people who do not have those benefits to make assertions about their ethnicity or religious values. Some of the number of alternatives would have been flagged. A more secular universal oath is clearly one of the options. When I say 'oath', I mean some kind of statement attesting to the truthfulness of the evidence you are about to give. I suspect that that would be easier and would meet the logistical concerns. I suppose it would depend on what the Ethnic Communities Council has to say about that, but I suspect in other contexts those communities have accepted the idea of the universality of the law and legal system, and have not wished in significant ways to have special measures constantly being introduced.

I think the third thing would be to ask to what extent would those communities be prepared to support and assist in getting it absolutely right. Fourthly, if that were the case would the government of the day be prepared to resource the kinds of physical things that all courtrooms need to have, and the training that would need to go along with proper administration of specifically cultural appropriate forms of the oath?

If I were to ask how do all those sorts of factors play out in my assessment, it would be obviously more convenient and perhaps fairer to have some kind of universal secular oath. Having said that, there is a lot to be said for preserving some elements of ritual so that whatever form of words is chosen it should reflect the seriousness of it. And there should be poetry to it. I am not talking about a dull preamble where people cannot agree that there is right poetry to it, but the current oath does have in its alliteration and rhyme something that appeals viscerally rather than just the words themselves. That is the point. I am sure the committee is incredibly talented, but I would imagine some advice from wordsmiths would be useful. I think Ms Giles has extracted for you that quote from an interesting article on the development of the King James Bible that was also developed by a committee and actually proved to have long-term holding power as a piece of literature.

If there was a universal oath, it should be something that has wide appeal because of the way in which it is formulated. Having said that, it is extraordinarily difficult to translate poetry of any sort; that is the current difficulty with the oath. Some years ago I was working at the then Ethnic Affairs Commission trying to translate a number of documents about the legal process. There were mixed language group interpreters and they were asking me questions as a lawyer, saying, 'Can

we do it this way or that way?'. It was clear that the oath and many other common-law forms and common-law terms simply could not be translated into most of the community languages that we were working with at the time. It makes sense, given the history of it and given that it is an incantation, that you cannot expect a literal translation.

In the end we opted to go for sense rather than a literal translation. That would need to be made clear and there would need to be work done with various ethnic communities to see what that universal secular oath might mean and how it might need to be modified so that it makes sense in other languages, maybe even to recapture some of the intended poetry rather than the literal meaning.

The other issue that is not in your briefing issues paper is that another alternative is to not have the oath but allow the judge, as in the case of children, to make inquiries about whether this person understands, in the case of children, the duty to tell the truth and can respond rationally to questions. That is the alternative test of cognitive competence for children. We have removed the administration of the oath from the judge to court officers.

Another alternative is to go back the other way. If you are trying to involve the judge and impress upon people the seriousness of what they are about to do, maybe it is something the judge could do. He could say, 'Do you understand you are about to give evidence, that this is a court of law and that the law requires that you tell the truth?'. It becomes one of the few occasions where the witness has some direct dealing with the judge, and it becomes the judge who impresses the seriousness of the matter on the person. That is another alternative way to go. It would then be a discretionary issue for the judge to explain and perhaps work with an interpreter to make sure that both the witness and the judge were satisfied that they understood the process and the obligations of witnesses in a court of law.

Ms HADDEN — Would that also, in turn, mean the judge giving a warning about the consequences of not being honest in telling the truth?

Dr LASTER — Yes, if you are trying to assert the power and authority of the court, and it is coming not from God but from itself as an institution, that is completely appropriate. I have finished what I had written out as notes but I am happy to answer questions.

The CHAIRMAN — What do you think about the argument that swearing on the Bible as a principal form of oath is justified on the grounds that this is part of the cultural tradition still dominant in Australia today?

Dr LASTER — Cultural tradition is a complex idea. If you said it was part of the religious tradition, I would I say that is not the case. The Australian Bureau of Statistics figures suggest that while church going and belief in God is improving, it is not very strong compared with other societies such as the United States of America. When you say 'culture', if you mean religion I do not think that is the justification.

The CHAIRMAN — What is not very strong?

Dr LASTER — The argument of the definition of 'cultural tradition'.

The CHAIRMAN — In relation to religion in the USA, what is strong in the USA, for instance?

Ms LASTER — Going to church, for instance; people go to church, there is a high rate of church participation. They invoke not just oaths in court but God Almighty in a range of things — the way they recite the national anthem, with their hands on their hearts; 'God bless America' is commonly used not just as part of the anthem but generally. There it has more cultural resonance than it does in Australia

Mr KATSAMBANIS — Except when its Supreme Court intervenes, as it did recently.

Dr LASTER — Sure. The connection between state and God is very strong, and the connection between church and cultural beliefs and values is also very strong. It is one of the ways in which Americans have made the melting pot work, to subscribe to the combination of church and nationalism.

The CHAIRMAN — There is the establishment clause, though, that precludes the state from having a formal role.

Dr LASTER — Correct. My contrast is that in Australia that is not very strong at all. If we are talking about cultural traditions I do not think the Bible, Bible worship and Bible practice is particularly strong both as an objective fact but also as part of that cultural tradition.

If you mean cultural tradition in another way — for instance, people have certain expectations of what happens in courtrooms, whether or not they have been there — people often form an expectation based on television. The taking of the oath is one of the things they often show and people sort of expect it. If it is not there, they wonder, 'Am I being treated differently?' or, 'It's not what I was led to believe would occur'. That in itself is disconcerting. In another sense it is a cultural tradition not because the Bible is central but because people expect the Bible to be given to them. I draw that distinction.

Ms HADDEN — The state Evidence Act requires a witness to swear on the Bible unless they make an objection. In contrast, the commonwealth Evidence Act gives a choice to a witness. For example, in the Family Court, being a federal court, a witness does have a choice — they must either take the oath or make an affirmation before giving evidence. In your view, is there any impediment to why the Evidence Act should not be consistent with the commonwealth act?

Dr LASTER — There is no objection, it just raises another of those preliminary questions where you are asking a person to elect under very stressful circumstances. The question is: is it less stressful to assume it is the Bible and we go through this preliminary, than saying to the person, 'You have a choice, do you want this or that?'. In those circumstances it is difficult, as you are asking them to make an election, to be brave and to say, 'No, I want a Koran', or whatever. The other issue is that a range of questions is asked as part of preliminaries. They include, 'Do you consent to jurisdiction? Are you happy for this matter to be heard summarily?'.

Ms HADDEN — Those questions are usually put in the Magistrates Court to the defence counsel, not to the witness. The witness or the defendant would not even know what the questions were or what was going on.

Dr LASTER — That is interesting, because technically it is meant to be put to the defendant. Yet what you say is exactly what happens in practise.

Ms HADDEN — You have to know the magistrate to say, 'The person consents'.

Dr LASTER — That is right. The person is there and one can see it. If they are represented, the lawyer says, 'Say yes'. If they are not represented, somebody else in the court says, 'Yes', or they look bamboozled and there is a delay, then the judge goes through more of an explanation which the second time around probably is no clearer if the person is distressed. Then the person says, 'Yes', because there is some sort of very subtle body language that indicates to them they must say yes. I agree that this would be a fair elective, certainly for the class of witness I have identified. That option should be available for professionals and well-educated people, but if the group we are concerned about is the sort of novice, young or non-native speaker, very early on giving them some sort of right which has implications where they may find it more stressful than not to deviate may be a kind of tokenism. It is an empirical question.

I think one would need to have a look to see, 'Well what is the response?', and, 'Is it genuine in the federal courts?', and, 'How do people feel about that right?', and, 'Who feels in what particular ways about that option?'.

Mr LANGUILLER — I qualify my question and comments by indicating that I am not legally trained, and to be honest I am not sure at this point whether it happens to be an advantage or a disadvantage.

Ms HADDEN — He always says that.

Mr LANGUILLER — I always say that, but in this case I say it because of the following. The committee has heard all sorts of submissions, and we have had all sorts of discussions among ourselves. As a layman I feel that throughout its history the legal system has basically said to us as part of a community, 'You will tell us the truth, because if you do not we will punish you', whether it is by divine intervention and whether it is because of perjury, or whatever.

In other words, we are saying that the only way of extracting the truth and nothing but the truth from a human being is by threatening that human being with some form of punishment, of whichever type. I just wonder whether in the 21st century we should continue to have a system which essentially tells very little about people and human beings. It tells them, 'Look, we don't really trust you, but we will threaten you as much as we can; we will impress upon you that you will go to hell if you don't tell the truth', or, 'We will incarcerate you', or do something else to you. I am sure that in other centuries they were decapitated, tortured or stoned to death and so on and so forth. I am dramatising the case in order to make the point.

We hear 'control', 'authority' and 'rituals' — all of that language which I am not totally comfortable with. I wonder whether we could have a situation which says something better about the community we live in and the people we associate with. Paradoxically everyone says, 'But the majority of people tell the truth'. If the majority of people tell the truth, why does the system have to rely upon threatening people, however we put it, with some form of punishment? And is there not a form which is not as threatening which may well achieve the same but reflects better on the community and the witnesses in the box?

Dr LASTER — I agree. In all cultures we have always tried to invoke the authority of law. In the common-law system one of the early ways of doing that was to use the ultimate threat — eternal damnation was a pretty good threat, if one believed it.

I think people do lie in the witness box. I think professional witnesses lie. I know from experience that police lie. It does not make much of a difference to the people who want to lie. Whatever authority you invoke — whether it is God or whether, if they do not believe in it, it is the court and, 'You will be punished if we catch you', they think, 'Well they will never catch me', or, 'This is too important'. To that extent I take a slightly different view. I would say that the people who are going to lie are going to lie no matter what you say, because they have a vested interest — usually it is money or another worse form of punishment, or loyalty of Creon and Antigone; other reasons — for saying, 'I am now going to lie, and I know I am lying'.

Whether or not you want to have perjury as a punishment is for the committee to decide. In some instances, for those people who wilfully choose to lie under oath, how will you then say to them, 'You have done something terribly wrong and there is in fact a punishment'? They may not have had that as the primary motive and may not have even worried about that at the time, but how do you come back later? For instance, there were five police in the Stuart case who conspired to lie. How do you create an offence, as it were, unless at the time you say to them, 'This is in fact an offence and if you choose to do that there are consequences'? It may be for a very small group, but it means effectively getting rid of the crime of perjury. I do not know whether that is fair in the circumstances for those people who choose not to tell the truth.

Mr BOWDEN — If there were a legislative change where the religious-based oaths were dispensed with, could you help the committee by giving me your opinion of the impact of the dispensation of the religious-based oaths in favour of a broad universal affirmation? In your opinion what would be the effect on the legal fraternity and then, as a separate answer, the community at large?

Dr LASTER — You know lawyers are probably more conservative than the community. They like to preserve the rituals. Recently judges and lawyers voted to retain wigs and gowns in Victoria. For instance, there is resistance to getting rid of the title 'QC', even though in Sydney everyone is Senior Counsel and not Queen's Counsel. So the legal fraternity is conservative. It would need a good deal of consultation with it to say, 'There are reasons why we have adopted this course and we will still preserve for you the things the oath means for you'. I cannot help you with the form of words, but I refer to the points I made earlier about having something which does the job in a poetic way, because the other thing about the legal community is that they are word people, so it would be important that they are happy with the formulation. I think you would be well advised to talk to them about what they would regard as acceptable.

So change for them, for a variety of reasons, is complex. They see any change to the ritual forms adopted in court as the thin end of the wedge. They would think, 'Well, first this will go and then courts will be turned completely into technocratic, managerial committee rooms instead of courts of law'. There is that element to the way they think about small change.

As far as the community is concerned the reality is that most of the community does not actually know what really goes on in court. The point I made earlier about the popular understanding and community expectations of what actually takes place is based largely on hearsay — what they hear from other people and mostly what they get through popular culture, such as television and films.

Mr LANGUILLER — Have you conducted research on that?

Dr LASTER — Yes. I wrote a book, actually, on a collection of films about courtrooms, called *The Drama of the Courtroom*. It is on a series of films about courts. In the course of that work I was very interested in working out the meaning of the courtroom to ordinary people. It seems to me that it is very clear that they form their perceptions based on American trial procedure not Australian trial procedure. That is so true that even young lawyers have to be reprimanded very early on in their careers because they are purporting to introduce elements they have learned from television. Magistrates complain and say — —

The CHAIRMAN — Not *Judge Judy*, I trust?

Dr LASTER — Not *Judge Judy*, but they ask for a side bar, and say, 'Permission to approach the bench'. One thing that upsets the judges enormously is that they do not realise the etiquette of having to stand. In American courtrooms for rhetorical and dramatic effect the lawyers might start some of their address sitting down and then stand up. Well of course you cannot do that here; there must always be someone standing in front of the court. That is how pervasive the popular image of the courtroom is in the community. It is largely an American understanding, so I think we would need to invest in a lot more community legal education on saying, 'Well there actually are differences and these differences are meaningful'.

Mr LANGUILLER — Investment in the national film industry, if I may suggest?

Dr LASTER — That is right; that is the other dimension of it. I had this discussion with an Italian judge because the Italians were introducing changes to their constitution, quite significant ones, to make it more adversarial, moving away from many of the procedural aspects of the inquisitorial system which, to their minds, were also associated with fascism. They were liberalising it and making it more adversarial and providing more work for defence lawyers in the course of it. The judge in charge of the constitutional commission had to go around to all the

regions to try to sell the new procedures. They were very concerned that people would be upset. In fact, the biggest response when he went around was, 'Oh, you mean our courts aren't like in *LA Law*? Well, why not?'.

I suspect that when we talk about community issues it is much more a question of real education. It is also not to make it so frighteningly alien that people have no handle on the situation. I mean, one of the purposes of popular culture is to make people more comfortable, because they can experience things that they have not experienced first-hand vicariously. Providing you did not move too far in your wording and that there was some way in which people still felt, 'Oh, I kind of get what is going on here; somewhere in my mind I recall that this is what should occur', you would not get hostility. It would be a minor change, I think, in the wording. It may be that if you do not want the Bible, you may get people to put their hand on their heart or do some other physical gesture that to them seems some symbolic or a significant form of ritual.

Mr BOWDEN — The completing part of my question is: if the legislative process were to go to the point of parliamentary process, do you think there would be a massive reaction from the established religions to the concept of removing this from a long-established cultural part of our community?

Dr LASTER — I think the best indication was the response to the new preambles. The current preamble does make reference to God, and there was a strong view that the new preamble ought not to. Of course there was some reaction from the churches. The mainstream churches particularly have acknowledged the separation of state and church and law and church. I think there might be some sense that this is also another thin end of the wedge of the secular society, but I do not think you would get an overwhelmingly negative response. I am sure you could check to see the responses of the churches to the various preamble proposals. I would say that that would be your best guide.

The CHAIRMAN — To constitutional reform?

Dr LASTER — To constitutional reform — I am sorry, yes — of the Australian constitution to remove the current preamble and replace it with a variety of other forms of preamble.

Mr LANGUILLER — I would like your comment on the following. By way of example, I had to go to the Magistrates Court in Sunshine with a Muslim family. The case had to do with harassment, name calling and so on and so forth. When the witnesses walked into the witness box, one by one they had to raise the Christian Bible. I sat there and thought, 'There is something fundamentally wrong with this, because I know for a fact that they are not Christians of any persuasion but Muslims'. What do you think about that specifically? I know you have referred to it in general terms, but is it not effectively irrelevant to a whole range of people in our community?

Dr LASTER — Yes, I think it is. The other dimension is that if you were sitting in the courtroom watching this and thinking, 'That's odd; I don't think that is very good', it is bringing the legal system into disrepute. There would have been other people in those circumstances who would have also felt somewhat uncomfortable, that, 'This is a charade because it is so obvious in the case of people who are wearing different kinds of costume or dress that if they are taking the Christian Bible — and you know a little bit about that — that there is an incongruity here which the courtroom and the judge are tolerating'. I would look at it not just from the perspective of the individuals involved but also at what it does to our perceptions of the fairness of the legal process.

The CHAIRMAN — Thank you for your evidence.

Dr LASTER — Best of luck with your difficult brief.

Witness withdrew.