

scheme. These are scaled up to a maximum of \$120 000, with full compensation to the age of 25, declining by 1% per year until the age of 65 where compensation remains at 60% of the relevant sum.

Assessment is based on the 'whole person' approach developed by the American Medical Association and used by the Commonwealth and Victoria. Loss of any body part, system or function, loss of mental capacity, disfigurement and pain, in the context of the injured person's lifestyle, is assessed by a medical practitioner and reviewed by the GIO.

death due to transport accident. If death due to the accident occurs within three years, the dependants are entitled to a lump sum of up to \$80 000 less any amount paid under a permanent impairment assessment. Periodic payments may be made for up to five years for income support (assessed at 50% of (the lesser of) the lost income or average weekly earnings), funeral expenses and household assistance.

appeals and reviews. All appeals are initially assessed by a GIO review officer or an approved doctor. The legislation provides that questions of law, liability and administration be heard by the District Court and then, for questions of law only, the Court of Appeal. Disputes over medical assessments (eg permanent impairment) go before the Medical Review Panel only. Administrative avenues of review may also be available. A TransCover Review Committee is also established to monitor and review the effectiveness of the scheme and advise the Minister.

delays and fraud. The TransCover scheme aims to reduce delays and provide disincentives to fraud. Through prompt and ongoing payment to the

injured, payment directly to service providers and provision of extra resources provided by the District Court, delays are reduced. Similarly, exaggeration and fraud are discouraged through the 28 day reporting condition, three year limitation, use of objective medical tests, provision of penalties and removal of incentives for a 'pot of gold' mentality.

advantages. The NSW government claims that the advantages of Transcover include increased equity, an extensive range of benefits and ongoing support for the long term incapacitated, reduction in delays and minimisation of potential for fraud.

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odds and ends

• *copyright discussion paper.* Although a ring pulley might not strike a beholder as a work of art it may, if it is a reproduction in three-dimensional form of a design drawing, attract the extensive protection given by the Copyright Act 1968 to artistic works rather than the lesser and perhaps more appropriate degree of protection given to articles produced from designs registered under the Designs Act 1906. Manufacture of the ring pulley not authorised by the owner of the copyright in the drawing might also constitute infringement of copyright, even though the manufacturer did not use a copy of the design plan. These possibilities result from the operation of the Copyright Act, in particular the width of the definitions of 'artistic work' and 'drawing', the interaction of the Copyright Act and the Designs Act and decisions of the courts on what constitutes copying. Their existence may well result in increased costs to manufacturers and

users of some industrial and commercial products. They also raise questions as to what is the appropriate degree of protection for design drawings.

These problems are among those outlined in a discussion paper entitled 'Copyright Protection for Artistic Works Industrially Applied' released by the Attorney-General's Department in April 1987.

Other problems highlighted in the paper are uncertainty in the interpretation and operation of the legislation, inequitable effects of its operation and the determination of an appropriate degree of protection for products of the new technology (for example, integrated circuits).

The discussion paper also reviews developments in the United Kingdom and New Zealand and details a number of policy options, the aim being to develop a legal framework which will provide a balance between protecting the results of research or endeavour on the one hand and, on the other, not unduly inhibiting competitors from using information and ideas for the purpose of further innovation in a particular field.

The paper sets out five policy options for reform. They are: the 1973 Franki Committee recommendations, dual protection of individually applied artistic works, an unfair copying law, a broader designs registration system and the introduction of an unregistered design right. The Government is not committed to any of the options and has sought submissions and comment, especially from persons engaged in businesses directly involved with the design of original products.

• *update on proposed changes to the family court.* Earlier this year the Judicial System Committee of the Constitutional Commission published its preliminary views on the future of the Family Court of Australia. The options considered by the Committee and the response made to its findings by the Chief Justice of the Family Court, Justice Elizabeth Evatt, were reported in the last issue of *Reform* ([1987] *Reform* 69-71).

The Committee came to the preliminary view that a family law division of the Federal Court should eventually be created and that such a division should hear all major contested family law cases. However, in the Committee's view it would not be feasible immediately to transfer the jurisdiction and structure of the Family Court completely to the Federal Court. Rather, it was of the view that before any final decision could be made about transferring jurisdictions, specific action must be taken to fix the difficulties currently being experienced by the Family Court. It therefore stated that

the Commonwealth should commit itself to the renovation of the Family Court, by equipping it with staff and conditions appropriate to a federal superior court, while taking steps to limit its workload to the major contested cases.

The gist of the Committee's views, in respect of renovating the Family Court, has been taken up in proposed amendments to the Family Law Act announced recently by the Attorney-General, Mr Lionel Bowen. While opening the new Family Court complex in Brisbane he announced that the government would be enacting legislation designed to

- devolve to Registrars the authority to deal with undefended divorces and approved maintenance agreements
- provide for Masters of the Court to deal with less complex matters and procedural matters now handled by Judges
- confer jurisdiction on State and Territory Magistrates in undefended divorces and property disputes and
- enable the Federal Court to transfer to the Family Court matters pending before the Federal Court in bankruptcy proceedings, consumer affairs proceedings under Part V of the Trade Practices Act, applications under the Administrative Decisions (Judicial Review) Act and income tax appeals.

Mr Bowen stated that he believed the proposed changes would provide some relief for family court judges 'from the pressures of family law cases which involve such difficult personal and emotional issues'. He also felt that the changes and additional jurisdiction would 'prove more attractive to potential appointees to the Court'.

• *surrogate motherhood.* A pioneering report on Australian community attitudes to surrogate motherhood was published in May by the New South Wales Law Reform Commission.

Last November the Commission conducted a national sample survey of Australian public opinion on the most significant aspects of surrogate motherhood arrangements. The survey was made possible by a substantial grant of financial assistance by the Law Foundation of New South Wales and was

carried out by the Roy Morgan Research Centre Pty Ltd on the Commission's behalf.

The critical aspects of surrogacy arrangements on which public opinion has been obtained are

- approval of surrogate motherhood itself
- payment of the surrogate mother
- intermediaries in surrogacy arrangements
- the enforcement of surrogacy arrangements
- disclosure of the identity of the surrogate mother
- availability of surrogacy to persons other than married couples
- use of surrogacy by persons for reasons other than medical difficulties.

The survey questions were designed by the Commission and its consultant statistician.

Mr Russell Scott, Commissioner-in-charge of the Commission's reference *Artificial Conception* and Deputy Chairman of the Commission, said

I believe that the report on this survey is a major contribution to public knowledge. It provides the first broadly-based, reliable information about Australian community attitudes on the difficult issues for society posed by surrogate motherhood. We are aware of no comparable report in this country or elsewhere.

The principle results of the survey indicate that 51% of Australians are not opposed to surrogate motherhood (express approval was given by 16% and 'non objection' indicated by 35%). The disapproval rate was 33%, while 13% said that they needed 'to know more'.

There is clearly support among Australians for providing some form

of payment to surrogate mothers. Forty percent would pay the surrogate mother her medical expenses plus an agreed fee. Seventy four percent would be prepared to pay her medical expenses only. Only 17% thought there should be no payment at all. Commissioner Scott said:

We are beginning to see the emergence of hard information about community attitudes to surrogate motherhood. This should assist informed public debate and enable us to move away from conjecture and uninformed speculation. The more that information of this kind can be produced, the more likely it is that parliaments and the public will develop confidence about the right paths to follow in dealing with unprecedented medical and scientific developments in human reproduction.

The extensive analysis in the report shows the trend of opinions within age groups, within groups of married and unmarried persons, across a variety of religions, by reference to federal voting intentions and by reference to personal experience of infertility. Special attention was paid to the opinions of residents of New South Wales and young persons. A total of 2 476 people aged 14 and over were surveyed in all states of Australia.

On the most controversial question of all, namely whether a surrogacy agreement should be enforced against a surrogate mother who changes her mind and refuses to surrender the child, over one-third of the population took the view that the commissioning couple should have first claims to the child. Support for the surrogate mother was slightly less at 26% while 25% considered that a court should decide the matter.

The Commission's Report forms part of its project on on surrogate motherhood which in turn is part of

its major inquiry into all aspects of human artificial conception. The Commission's Report on human artificial insemination was published in July 1986. It expects to publish a major public discussion paper on in vitro fertilisation in a matter of weeks and a similar paper on surrogate motherhood in the near future. After a period for public consultation, reports on both subjects will be produced by the Commission.

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correction

In the previous issue of *Reform*, the following sentence appeared in the second column of p 63:

The former Opposition spokesman on Communications Mr Ian McPhee also wants a more regulatory controlled approach to media ownership.

It should have read:

The former Opposition spokesman on Communications Mr Ian Macphee attempted to secure a more controlled approach to media ownership.

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letters to the editor

This letter was received from Mr Tim Rattenbury, Co-ordinator of Legal Research, Law Reform Branch, Office of the Attorney General, New Brunswick, Canada.

Before making two very small points of criticism of your publication, I would like to congratulate you on the consistently high quality of 'Reform'. I find it interesting and informative, and consider it in many ways the most useful document that I receive on a regular basis.