

multiculturalism and the law

For he might have been a Roosian,
A French, or Turk, or Proosian,
Or perhaps Ital-ian!
But in spite of all temptations
To belong to other nations,
He remains an Englishman!

WS Gilbert, *H.M.S. Pinafore*

As part of the National Agenda for a Multicultural Australia the Australian Law Reform Commission has been asked to consider whether Australian family law, criminal law and contract law are appropriate to Australia's multicultural society.

This is the first time that such a comprehensive review of the principles underlying these laws and the way that disputes about them are settled has been conducted within the context of multicultural policies.

public consultation. The Commission has received 150 submissions in response to an issues paper and is conducting an extensive consultation process throughout Australia which includes meetings, discussions and public hearings.

Consultations have taken place in Sydney, Melbourne, Canberra, Adelaide and Perth and will take place in other major cities in 1991.

An important element of the consultation process has been the meetings conducted with representatives from government and non-government agencies many of whom are employed in the social welfare, health, interpreting, legal and counselling sectors.

linguistic and cultural barriers. During the consultations the Commission has heard ample evidence of the sorts of problems that many Australians experience in their dealings with the legal system especially when they face linguistic and cultural barriers.

need for interpreters. A major concern that has been expressed throughout the Commission's consultations has been the need to provide adequate interpreting services for non-

English speakers to ensure equality before the law.

the nuclear family. Other issues raised have dealt with values expressed in Australian society which may differ from the values that have shaped Australian Law. Many submissions and consultations have indicated that the nuclear, parent/child concept of family which currently underlies the law is not sufficiently broad to accommodate adequately the range of family arrangements found in Australia's multicultural society. Families may include grandparents, aunts and uncles and cousins, who may not be part of the actual household and may even be overseas.

different marriage laws. The Commission has also heard examples of problems which arise when customary laws are not recognised in Australian law, such as, couples who have married according to local customary law in other countries and regard themselves as married. In the cases reported to the Commission, they have described themselves as married in immigration documentation. They have been, for all practical purposes, married. In the absence of a marriage certificate, their marriage has not, however been recognised as a marriage for the purposes of relief under the Family Law Act. This means that they cannot be formally divorced and that it is not possible to take maintenance and property proceedings under the Act.

Vietnamese people and family law. The Commission also decided to take an in-depth look at one ethnic group, and their relationship with family law. It commissioned a social worker to explore issues of concern for Vietnamese people, and the types of problems that they are having in resolving their family disputes. She reports:

The complexity of issues of concern to any ethnic group is enormous, and moving into another community to get a sense of their experiences and needs is always difficult for an outsider. Nevertheless, I found the Vietnamese people whom I consulted extremely helpful, and willing to share and

discuss ideas. Family issues are a very touchy subject for this community and they seem to be experiencing a difficult transition into using the family law system and mainstream services. However, the community and social workers are enthusiastic about moves to create services and mechanisms which are appropriate and accessible to Vietnamese people.

For many Vietnamese, the idea of consulting 'outsiders' about family problems is very alien, and to expose the family in a forum as public as the court would be extremely shameful. Consequently there are significant barriers to using existing services. However in the absence of extended families and community elders who would have been used to resolve disputes, this community is beginning to recognise the need to take up other options such as counselling, mediation and legal remedies. From our side we need to create services which are 'bridges' between the traditional world, and the contemporary system. Given the diversity of values, needs and individuals, this will require careful thought, planning and close consultation with workers on the ground who are in touch with the people's needs.

should the law be changed? The ALRC's approach to the inquiry was described in Issues Paper No 9 (published in January 1990). The ALRC is examining the three sets of laws separately. It is looking at the written law, the way judges and magistrates apply the law, how police, bureaucrats and others use it and its impact on people. In each case it is asking

- what are the main values reflected in the law?
- what are the cultural values that are not protected, or not well enough protected by the law?
- how can the law be changed to take these values into account?
- should the law be changed?

accommodating other cultural values. The most difficult step will be to decide if the law should be changed to take into account other

cultural values. In deciding if it should propose change, the ALRC is asking

- is the change consistent with the basic structures and principles of Australian society, including the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language and equality of the sexes?
- is it consistent with the international agreements which Australia has signed, especially the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all forms of Racial Discrimination?
- what developments have occurred in the law and society of the places from which a culture came to Australia?

testing reform. The consultation process has also provided the ALRC with the opportunity to test the options for reform that it is considering. These will be outlined in future discussion papers which will be available from the Commission.

future discussion papers. The discussion paper on family law will be released in early 1991 and will be followed by discussion papers on criminal law and contract law.

The Commission will be calling for responses to the discussion papers which can be made through written submissions or by giving evidence at the public hearings which will continue to take place in 1991.

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family mediation

All happy families resemble each other; each unhappy family is unhappy in its own way.

Tolstoy *Anna Karenina*