

LAW REFORM GOES WEST

It's been a busy year for our colleagues at the West Australian Law Reform Commission. Peter Handford, Executive Officer and Director of Research, reports on the current crop of projects.

Police Act offences

The Commission released its Report on Police Act offences on 1 October 1992. It examines the offences in Parts V, VI and VII of the Western Australian Police Act 1892 and recommends which offences ought to be abolished and what changes ought to be made to those that are retained. Many offences that are clearly anachronistic and are destined for the scrap heap include firing cannons near dwelling houses, keeping pigsties, beating carpets in the street before 8am, having no lawful means of support, sleeping rough, consorting and being suspected of having evil designs. Other offences are simply unnecessary in the light of modern offences in the Criminal Code or elsewhere. On the other hand, there are key offences which should be retained and modernised. These include disorderly conduct, interference with the police in the execution of their duty, trespass, damage to property, and possession of weapons or property reasonably suspected of being stolen.

The Report made recommendations about the powers of arrest, entry, search and seizure found in the three Parts of the Act in question. A key recommendation in this part of the Report was that the present provisions about arrest (which in the Criminal Code limit police arrest powers to arrestable offences but in the Police Act are much wider) should be replaced by a single provision under which police are given power to arrest for any offence, but must proceed by summons rather than arrest unless summons would not achieve one or more of a number of stated purposes. A similar provision is in force in the ACT and has been recommended by the Review of Commonwealth Criminal Law.

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If the Commission's recommendations are accepted, the Police Act will disappear in its present form and be replaced by a Summary Offences Act (setting out the offences to be retained in a mere 28 sections) and a Police Administration Act, dealing with the provisions about organisation and discipline now found in the earlier Parts of the Police Act.

Limitation and notice of actions

The Commission has released a Discussion Paper on this topic. The major rules are contained in the Limitation Act 1935, although many provisions are to be found in other statutes.

The major problem with the *Western Australian Limitation Act* is that it is very out of date. It preserves the provisions of English statutes passed at various times between 1623 and 1893 — often reproducing them word for word. This means that the Act is complex and difficult to use because it is drafted in archaic language and contains many out-of-date provisions such as limitations on 'estates tail' (an obsolete means of keeping land in the family), 'coparcenary' (a bygone provision dealing with inheritance where there was no male heir), and 'menaces' (a form of action which disappeared in the middle ages). For some purposes, married women are still classified with 'infants' and 'lunatics' as having certain disabilities. Legislation on limitation of actions must inevitably be somewhat technical, but understanding the *Western Australian Act* requires a detailed knowledge of legal history and rules of procedure which have long been superseded.

The Discussion Paper contains a detailed review of the present *Limitation Act* rules, a review which covers contract, tort and various other actions, the law relating

to property in land, leases, equity, trusts, mortgages and deceased estates. It deals with the various special rules under which a limitation period is extended or postponed and it looks at whether the running of a period of limitation should extinguish the right in question or merely prevent the bringing of an action.

A particular problem arises when the plaintiff is unaware that he or she has a legal claim until it is too late to sue. This can happen in cases of latent personal injury such as asbestosis or mesothelioma. Most other jurisdictions have provisions allowing extension of the limitation period but in Western Australia such provisions cover only asbestos related diseases and not other problems of latent personal injury such as AIDS.

The Discussion Paper canvasses a number of alternative solutions to these problems which can be found in other jurisdictions. For example, some States' courts have a discretion to extend a limitation period where it is just and reasonable to do so. Another alternative is to have a *Limitation Act* under which limitation periods always run from the time the plaintiff discovered or could reasonably have discovered the damage.

The Commission has received a number of submission to the Paper already, and is due to report by the end of July 1993.

Effect of marriage or divorce on wills

The Commission has recently completed a report on the effect of marriage or divorce on wills.

Under Western Australia's Wills Act 1970, when a person makes a will and later marries, the marriage automatically revokes the will. The principal exception to the rule is where there is a declaration in the will that it is made in contemplation of the marriage. The Commission concluded that the general rule of revocation should be retained. However it has proposed reforms which would allow more flexibility in respect of wills made in contemplation of marriage.

Although marriage generally revokes a prior will, divorce does not. So when a married testator makes a will the spouse is usually the beneficiary of the estate if he or she survives the testator. If they thought about it, most testators who have been divorced would not want to benefit their former spouses under their wills, or at least not as generously as had been intended before the divorce.

The Commission recommended that the *Wills Act 1970* be amended to provide that on the divorce of the testator, any gift in the testator's will in favour of the former spouse should be revoked and to provide that property which would have passed to the former spouse should pass as if the former spouse had died before the testator.