



# Commission News

## Events and seminars

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In a move to increase public awareness about ALRC inquiries, the Commission held two seminars during NSW Law Week on expert witness and the role of the child in family dispute resolution. The success of these seminars has highlighted the need for more activities of this kind and the Commission will launch a seminar series early next year to facilitate discussion on aspects of the law under review.

The Commission and the National Institute for Law Ethics and Public Affairs co-hosted an important conference entitled *Beyond the Adversarial System: Changing roles and skills for courts, tribunals and practitioners* in Brisbane in July. With more than 220 people attending, the conference provided a valuable forum for debate surrounding the 'crisis' in Australia's legal system. It also provided the ALRC with a unique opportunity to consult with a broad cross-section of the legal community, as part of its inquiry into the adversarial system of litigation.

Immediately following the conference, the Commission held a seminar in Sydney with overseas guest Marcel Lemonde, a judge of the Court of Appeals, Versailles and former deputy director of the Paris branch of the *Ecole Nationale de Magistrature* (ENM) - the national school for the judiciary. Justice Lemonde provided an interesting insight into the inquisitorial system and the training and education of judges.

The Commission has continued to present a series of internal workshops to enhance the skills and knowledge of its staff. These workshops cover a diverse range of issues intended to brief our researchers on interesting and relevant international legal processes and procedures. Recent guests have included: David Chew - Magistrate of the Juvenile Court in Singapore; Nachum Rackover - Deputy Attorney-General of Israel; and Vitit Muntarbhorn, the Executive Director of Child Rights Asianet Law.

## Comings and goings

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- On June 26, 1997, Justice Ian Coleman was reappointed as a part-time member of the Commission until December 31, 1998. Justice Coleman is a judge of the Family Court of Australia and is working on the references into children and the legal process and the adversarial system of litigation.
- The terms of part-time Commissioners Professor Bettina Cass and Professor Peter Baume expired on August 18, 1997. Both were appointed as part-time members of the Commission on January 1, 1993. The Commission thanks them for their contributions to the work of the ALRC.

## Implementation of past ALRC reports

- The *Customs Amendment Act (No.1) 1997* (Cth) adopted the recommendations and draft legislation contained in the Commission's report *Customs and Excise* (ALRC 60) relating to licensing arrangements.
- The Crimes Amendment (Forensic Procedures) Bill 1997 is currently before federal parliament. It seeks to reform the procedures for taking forensic samples from people suspected of federal offences, and involves the balancing of delicate civil liberties issues. The Bill is a revised version of a 1995 Bill, which lapsed when the announcement of the 1996 federal election resulted in parliament being prorogued. If enacted, the Bill will implement the recommendations made in *Criminal investigation* (ALRC 2). The proposed legislation is based on a draft model forensic procedures bill, prepared by the Model Criminal Code Officers Committee, and has been supported by the Commission's draft recommendations paper on the children's reference *A matter of priority: Children and the legal process*.
- A response to the Commission's report on *Designs* (ALRC 74) is being prepared by the Australian Intellectual Property Organisation. Draft legislation is expected to be introduced to parliament by the end of the year.
- On August 25, 1997, the government announced it would reform nonsuperannuation collective investment schemes, to bring them into line with recent changes to the regulation of superannuation. This is a direct response to the recommendations in the Commission's report into collective investments (ALRC 65), and the Wallis inquiry of last year. A Bill, based on the draft exposure legislation released for comment by the previous government in December 1995, is expected to be introduced to parliament by the end of the year.

### ALRC comment

#### Privacy protection - swimming against the international tide

The federal government's recent decision not to extend privacy protection to cover the private sector in Australia is disappointing, compromising both individuals and businesses.

It flies in the face of the consensus reported on several occasions over the past two years that Australia needs a uniform, flexible privacy regime to apply to both the public and private sectors.

The Commonwealth's decision was made after the release of a discussion paper last year by the Attorney-General's Department, setting out a proposal for extension of privacy protection to the private sector. This proposal was fully supported by the Commission and is consistent with recommendations in several of its reports (ALRC 22, 70, 72, 77, 79 and 80).

By not proceeding with the proposed scheme, Australia is left uncharacteristically out of step with its OECD (Organisation for Economic Cooperation and Development) and European trading partners. It is also likely to result in the creation of individual State and Territory schemes. For businesses that operate across State or national borders, this will mean increased inefficiencies and bureaucratic red tape - exactly the problem the government was trying to avoid.

As well, the inability to clarify such an essential aspect as privacy to the growth area of electronic commerce will be a significant inhibition to Australian businesses wanting to take up a competitive stance in this industry on the world stage.

The government's preferred approach is to rely upon voluntary codes of practice. A consultation paper setting out proposals for voluntary schemes was released by the Privacy Commissioner in August 1997. The paper seeks to provide a viable self-regulatory option, designed to be compatible with existing Commonwealth privacy laws and any further legislation that might be considered necessary. The ALRC regards voluntary schemes clearly as a 'second best' option.

The lack of a legislatively backed scheme will leave consumers open to abuse by unscrupulous business operators who do not participate in the voluntary scheme, while freeloading on the reputations of those who do. International experience suggests voluntary, self-regulatory schemes tend to give the impression that all is well, and as a result limit scrutiny of privacy issues.

What is required is a uniform privacy structure, which applies across the private sector, and which will have teeth to deal with breaches of privacy principles.