

Reform Roundup

The New South Wales Law Reform Commission

Provocation and Infanticide

The release of the Commission's report *Provocation and Infanticide* (Report 83, October 1997) concludes the Commission's work on partial defences to murder. An earlier report published in May 1997 dealt with *Diminished Responsibility* (Report 82). That report was substantially implemented in the *Crimes Amendment (Diminished Responsibility) Act 1997*.

In the more recent report, the Commission has recommended retention of the defence of provocation. In so doing, the Commission expressed the view that it is the community, as represented by the jury, which should make judgments as to an individual's culpability for killing where there is evidence of provocation. This will enhance public confidence in the criminal justice system as well as gain community acceptance of sentences imposed.

Under the existing law in New South Wales, provocation is a partial defence in that it reduces liability for murder to manslaughter on the basis that the killing resulted from a loss of self-control in response to provocation, in circumstances where an ordinary person could also have lost self control. In developing its recommendations, the Commission considered four key issues: the

ordinary person test; conduct amounting to provocation; degree of actual loss of self control required; and the scope of the defence of provocation.

The Commission's recommended formulation places greater focus on the subjective elements of the defence. It requires consideration of whether, taking into account all the characteristics and circumstances of the accused, he or she should be excused for having so far lost self control as to have formed an intention to kill or inflict grievous bodily harm or to act with reckless indifference to human life, such as to warrant its reduction from murder to manslaughter.

The Commission also recommended abolition of the offence/defence of infanticide.

The right to support from adjoining land

Would you build a house, knowing that the next door owner could dig away on his or her land, and suffer no liability if your house collapsed as a result? The recently released Report 84, entitled *Right to Support from Adjoining Land*, points out that this could happen to you. In contrast, if your digging neighbour caused your land to subside, then he or she may be strictly liable for the damage. This is without any proof of

negligence, a result at odds with legal development throughout the 20th century, which have linked liability to fault.

To remedy the shortcomings in this area of the law, the Commission's report recommends replacing the right to bring an action for loss support in nuisance, with a regime based on the principles of negligence, so that fault based liability will be introduced. The Commission's report also recommends that the right to support of land from water and reclaimed land should be created and regulated in the same way as that proposed for support from land.

Under the Commission's recommendations, neighbouring landowners can agree to modify the duty of care owed by one to the other, but this will have no effect on subsequent purchasers of the land, unless the agreement has been embodied in a registered easement for removal of support.

Concealment of serious offences

In New South Wales, it is an offence for a person who knows or believes that a serious crime has been committed to fail to inform the police without a reasonable excuse (section 316 of the *Crimes Act 1900*). The maximum penalty for the offence is two years - or five years if

the person gets a benefit for concealing the crime.

The Commission's Discussion Paper 39 points out that the law in NSW is out of step with other Australian States and England. Furthermore, s316 has been criticised on several grounds, including that it imposes a legal obligation to report serious crime revealed in confidence to priests, doctors, counsellors, researchers, family and friends. It is wide enough to impose an obligation to report serious offences on victims of crime.

The Commission's discussion paper puts forward three options:

- abolition of s316
- restrict s316 to situations where the person gets a benefit for concealing the crime; and
- maintain s316 but introduce specific exemptions to protect priests, doctors, counsellors and researchers.

Review of s409B of the Crimes Act

In sexual assault cases, NSW law currently prevents evidence being given of the victim's sexual reputation or previous sexual experience.

This law has been criticised by appeal courts, including the High Court, because it has prevented defendants from raising matters relevant to their defence, such as the fact that the alleged victim has previously made false allegations of sexual assault. In all States and Territories except NSW, there is a general discretion which may be

exercised by a judge to allow such evidence to be presented.

Options put forward by the Commission include:

- maintain the existing approach in s409B, which prohibits cross-examination about sexual experience, but increase the number of exemptions to overcome identified problems;
- introduce a new provision to make sexual experience evidence inadmissible, but give the judge the discretion to admit it.

In the pipeline

The Commission plans to publish six reports in the first half of 1998.

- **Review of the *Anti-Discrimination Act 1977***
This report will bring to an end a comprehensive review of the Act which has extended over several years.
- **Surveillance**
The Commission will report on its review of the *Listening Devices Act 1984* and the issue of the need to regulate the use of visual surveillance equipment.
- **Neighbour and neighbour relations**
The Commission will be publishing a report dealing with the problems between neighbours caused by trees and noise.
- **Circulation of legal advice to government**
This reference requires the Commission to consider whether and in what circumstances arrangements should be made for the circulation of legal advices received by agencies representing the Crown to other agencies.
- **Uniform succession laws**
The Commission will be publishing reports on wills and family provision as a consequence of its participation in the national committee working towards uniform succession laws. ☐

Queensland Law Reform Commission

Evidence of children

The Queensland Attorney-General has requested the Commission review the capacity of the judicial system, both in its criminal and civil aspects, to properly receive the evidence of children. To date, the Commission has received 47 submissions identifying issues relevant to the project.

A working paper was due to be released in March. The broad issues likely to be considered in this paper include:

- the competency of young people to give evidence;
- the use of out-of-court statements in court;
- videotaped evidence;
- the use of closed circuit televisions and screens to help young people in the presentation of their evidence;
- preparation of, and support for, young witnesses;
- pretrial hearings; and
- young witnesses with disabilities.

Evidence and technology

The Commission is investigating the capacity of the criminal and civil judicial systems to receive into evidence information stored and conveyed in electronic, magnetic or similar form.

Issues that are likely to be considered include the authentication of electronic documents, use of electronic simulations, and whether a transcript printed from a CD Rom (as opposed to a certified copy of an original transcript) should be admissible. A working paper was due to be released in March 1998.

Limitation of actions

Limitation legislation is generally seen as the province of litigation lawyers, of little interest or concern for ordinary members of the community. However, it involves significant and sometimes competing issues of public policy and has the potential to substantially affect the outcome of disputes that end in court action.

The Commission has been asked to review the *Limitation of Actions Act 1974* (Qld). Since the terms of reference were finalised in April, the Commission has produced an information paper and a discussion paper.

Issues under consideration include:

- whether there should be a single limitation period of general application;
- when the limitation period should commence;
- whether equitable claims should be included in a legislative limitation scheme; and

- whether the scheme should include a residual judicial discretion.

It is anticipated a report will be handed to the State Attorney-General in June.

Justices of the peace

An issues paper has been prepared on an inquiry into the role of Justices of the Peace (JPs) in Queensland. Topics to be addressed include the appointment of JPs, functions performed by them, the role of JPs in Aboriginal, Torres Strait Island and remote communities, and whether there is a continuing need for JPs.

Uniform succession laws

The Commission continues to lead and coordinate a reference to develop uniform succession laws for Australia. This reference is an initiative of the Standing Committee of Attorneys-General (SCAG). A national committee has been established to ensure the project maintains an Australia-wide focus, with the New Zealand Law Commission also represented. To date, the work of the committee has focused on the law of wills and on family provision. Reports in both these areas were presented to SCAG in December 1997. This year, the national committee will turn its attention to probate and administration of estates.

The law of wills

As a result of the work undertaken by the Commission on the law of wills as part of the uniform succession law reference, the Commission has presented a report to the State Attorney-General on the changes that would need to be implemented in Queensland to give effect to the recommendations contained in the report to SCAG.

Specific recommendations have been made about Queensland provisions that do not have a counterpart in the draft uniform legislation. The report also identifies the differences between the other sections of the *Succession Act 1981*

(Qld) and their counterparts in the draft uniform legislation and where relevant, explains why the draft provision is considered to be an improvement on the current Queensland provision. □

Law Reform Commission of Western Australia

Western Australian Attorney-General Peter Foss has given the Law Reform Commission of WA an important and challenging new reference on the criminal and civil justice system.

The Commission has been asked to examine and report on a number of specific issues, including the role of the legal profession and other dispute resolution professionals in the criminal and civil justice systems in WA. As well, the inquiry will investigate the increase in the demand upon resources. It will make recommendations as to what changes are necessary or desirable to provide a more accessible, less complex and cost-effective legal system. The inquiry is wide-ranging and the preamble to the terms of reference stresses that the standards of and requirements for a fair and equitable justice system must be maintained. The full terms of reference are available on the Commission's home page: <http://www.wa.gov.au/lrc>.

The reference was formally given to the Commission on September 22 last year and must be completed no later than November 30, 1998.

Two chief consultants have already been appointed: Ken Martin, QC, will handle the civil aspects, and Narelle Johnson will deal with the criminal side. Both are experienced members of the Western Australian Bar. The chief consultants, in association with the members of the Commission, will appoint further consultants to handle individual sections of the reference. It is expected that the Commission will hold a number of consultations and issue a number of papers dealing with various aspects of the reference.

As will be evident, this reference heralds a departure from the Commission's previous working methods, under which most of its research work was done by its in-house legal staff. The Commission has been restructured, and all staff positions have been abolished. Its library has been transferred to the Ministry of Justice. An administrative officer will shortly be appointed to coordinate

the administrative side of the Commission's activities.

In the next few months, the Commission will complete three of its remaining references. Reports on financial protection in the building and construction industry and the Sale of Goods Act are nearing completion, and the Commission will circulate a draft report on writs and warrants of execution to interested parties for comment before final submission. The only other outstanding reference - medical treatment for minors - has been on the back burner until recently, but the Commission intends in due course to publish an issues paper to obtain up to date comment on the desirability or otherwise of replacing the common law with a statutory scheme on the lines of that recently recommended by the Queensland Law Reform Commission. □

South Australia

Forensic procedures

The South Australian government has recently introduced the Criminal Law (Forensic Procedures) Bill. The aim of the Bill is to set a balance between a number of civil rights and liberties inhering to the individual citizen – in this case, notably the interests of privacy, the privilege against self-incrimination and bodily integrity – against the rights of the general community in the effective and efficient investigation of crime and bringing the perpetrator to justice. The Bill is based on the model Bill prepared for the Standing Committee of Attorneys-General by the Model Criminal Code Officers' Committee.

The provisions detailing the powers of South Australian police in relation to the medical examination of persons in custody are contained in the Summary Offences Act.

One of the reasons the provisions require amendment is that the law has lagged behind advances in science and technology, as well as modern legislative principles and techniques. For example, it is not clear why detailed protections apply to the taking of fingerprints and footprints, but not to medical examinations.

The current provisions are insufficiently comprehensive in relation to the powers of investigating police and the rights of persons suspected of committing crimes. The current police power to take some forensic samples is based

on a disputed interpretation of an old legislative provision, which was not designed for the purpose. The High Court has yet to rule on what appears to be conflicting authority. (See *Franklin* (1979) 22 SASR 101, *Fernando v Commissioner of Police* (1995) 78 A Crim R 64 and *Dyson* (1997) 68 SASR 156)

As well, legislative provision should be made for the employment of DNA technology in criminal investigations. The validity of DNA results requires the creation of a large data base, which means, in Australia, that the data base must be national, as it is in England and the United States. Therefore, nationally consistent legislation is required. Current inconsistency has led to major problems with Commonwealth prosecutions (for example, *Grollo* (1994) 75 A Crim R 271).

In seeking to balance the rights and liberties of the individual against the rights of investigators to obtain forensic samples for the purpose of analysis, the Bill distinguishes between intimate, non-intimate and intrusive procedures. In general, unless a suspect gives informed consent to the taking of an intrusive sample, an intrusive sample can be taken only by order of a magistrate. Non-intrusive samples may be given by informed consent, or may be required to be given by a police officer, provided that certain criteria are met. However, a court order will be required where the suspect does not or is unable to give informed consent.

There are special procedures to protect children and adults incapable of giving informed consent.

The Bill also allows for the making of urgent orders by electronic means where the taking of the sample must be done without delay and does not require, in every case, that the suspect be under arrest to be subject to the regime imposed by the provisions.

A number of rights have been granted to suspects as part of the Bill, including the right to have full information about the relevant procedure; the right to be present and to make submissions at an application for an order that the sample be provided; the right to have legal representation and, where the suspect is a 'protected person' an 'appropriate representative'; the right to be treated humanely and with a minimum of physical harm, embarrassment or humiliation; the right to have a chosen medical practitioner present at most procedures; and limitations on the number and sex of people present when intimate samples are being obtained.

Where forensic sampling has taken place in violation of the provisions, the Bill states the evidence is inadmissible against the suspect in court, unless the court is satisfied that it should be admitted.

There are also comprehensive provisions relating to the storage and destruction of forensic material. Finally, the Bill provides for the

taking of blood samples and fingerprints in certain circumstances following the conviction of an offender for a serious offence.

Other developments

With its recent re-election, the government has announced a number of reviews with a view to possible reform.

It has indicated it will review the criminal injuries compensation scheme to improve the assistance and support available to victims of crime and to ensure that persons injured in the course of committing offences do not have an entitlement to claim from the Criminal Injuries Compensation Fund. (See *South Australia v Richards* (1998) 69 SASR 263).

A review of the operation of victim impact statements and the Declaration of Victim Rights has been announced. The review will examine what has been done in the past for victims of crime; establish what is needed; identify where improvements are required; and ascertain if there are any gaps in the service currently provided to victims. Consideration will be given whether the Declaration of Victims Rights should be enshrined in legislation and, if so, what the effect of this would be and whether the declaration needs to be revised.

The government is also working on a revision of its system for dealing with fine enforcement, and is planning to remove imprisonment as a penalty for fine defaulters. The objectives of the new system will be to strengthen the integrity of fines and expiation penalties as penalties; increase the rate of fines and expiation fees paid without enforcement; and minimise enforcement actions. A special purpose unit will be established to manage the fine collection process. □

Victorian Law Reform Committee

Review of exemptions under the Juries Act 1967

The Committee tabled Volumes two and three of its final report, *Jury Service in Victoria*, in the Victorian parliament on December 4 last year. Volume two contains an extensive report on the operations of overseas jury systems, which the Committee visited during the inquiry, including Canada, Hong Kong (before the handover), Ireland, the United Kingdom (including Scotland) and the United States.

Topics covered for each jurisdiction include the 'right' to trial by jury; the legal framework; jury

representativeness; jury management issues; complex litigation and the jury system; and sources of information for jurors.

Volume three reproduces three research papers prepared by Committee staff during the inquiry. These are:

- *Jurisprudential and Historical Aspects of Jury Service in Victoria* by Rebecca Waechter;
- *Juries and Complex Trials* by Mark T Cowie; and
- *Gender Issues, Multiculturalism and the Jury System in Victoria* by Angelene Falk.

The liability of the State of Victoria and health service providers

The Victorian government tabled its response to the Committee's report on the legal liability of health service providers in the Victorian Legislative Council on February 9 this year. Many of the Committee's recommendations have been accepted, while others await further consideration pending a determination of their resource implications, further consultation or the outcome of other projects.

Review of the Fences Act 1968

In September 1997, the Committee received a reference from the Governor in Council to review the *Victorian Fences Act 1968* and in particular to consider:

- whether the Act meets the objectives of planning schemes in Victoria as defined in Section 4 (1) of the *Planning and Environment Act 1987*, especially having regard to the need to encourage the development of well designed medium-density housing;
- whether the Act otherwise adequately deals with all situations associated with separating the lands of different occupiers, such as where buildings form a part of a common boundary between properties; and
- whether the Act should be amended to provide a quicker, less expensive and more

accessible means of resolving fencing disputes.

The Committee is expected to table its report in early September 1998.

Inquiry into technology and the law

A second reference from the Governor in Council, also received in September, asks the Committee to examine and report on the opportunities available in the use of new technologies to streamline the administration of courts and tribunals and to improve access to courts and tribunals by members of the public.

In undertaking the reference, the Committee is required to have regard to a number of projects which are currently underway in Victorian government departments and Courts, including:

- a proposed Electronic Commerce Framework Bill;
- audio and video linking;

- the Pathfinder Project, which is designed to improve and integrate the various business units involved in the criminal justice system;
- the Civil Justice Review Project, which is looking at improving procedures within the civil justice system; and
- the Data Improvement Project.

The Committee is requested to consider the impact of these reforms in so far as they affect courts and tribunals and to take a wider view of the opportunities that technology could present. In particular, the Committee is requested to examine access to information about courts, tribunals, judgments, status of cases, etc via electronic means; the future of video linking and technologies beyond video linking; and improvements to and application of court reporting services.

An interim report is expected to be tabled before the end of the year. □

Administrative Review Council

Contracting out of government services

The Administrative Review Council is undertaking a major project on the administrative law implications of contracting out of government services.

It has recently released a discussion paper, *The Contracting Out of*

Government Services - Access to Information, which presents the Council's preliminary views on access to information by the public when government services are provided by contractors.

The Council believes that preserving access to information is essential to the maintenance of government accountability in the context of the contracting out of government

services. Rights of access to information relating to government services should not be lost or diminished because of the contracting out process. Government agencies, rather than individual contractors, should normally be responsible for ensuring that such rights of access to information currently provided by the *Freedom of Information Act 1982* are maintained.

A number of alternative ways of ensuring access to information relating to government services is not lost or diminished as a result of the contracting out process have been considered by the Council. These are:

- extend the FOI Act to apply to contractors;
- deem specified documents in the possession of the contractor to be in the possession of the government agency;
- deem documents in the possession of the contractor that relate directly to the performance of their contractual obligations to be in the possession of the government agency;
- incorporate information access rights into individual contracts;
- a separate information access regime.

Each of these proposals is examined in the discussion paper. These proposals extend beyond access to personal information and extend to access to information that relates to the contractor's performance of their contractual obligations, such as information about services standards; the way in which a service is actually delivered to recipients; a contractor's daily running sheets; or a contractor's instructions to its staff who are involved in the delivery of the service.

At this stage, the Council favours an amendment of the FOI Act to deem documents in the possession of the contractor that relate directly to the performance of their contractual

obligations to be in the possession of the government agency. The citizen would then have a statutory right against the government agency to seek access to the document.

The Council is also considering the suggestion that a separate access regime be established under which government contracts would become public documents able to be accessed directly by the public. Such a regime could operate in addition to any system for access to information established under the above proposals. Although access to copies of government contracts is already available under the *Freedom of Information Act 1982* (except provisions that would be exempt from disclosure), it has been suggested that government contracts should be available to the public without the necessity of making an FOI request and paying a fee.

The discussion paper has been released as a contribution to the growing body of material available on the contracting out of government services to provide guidance and practical solutions to government agencies, public service managers and other groups involved in the contracting out process.

A final report - dealing with a number of administrative law implications of contracting out including access to information and complaints handling - will be prepared by the Council for the Attorney-General

Copies of the discussion paper are available, free of charge, by telephoning the Council's Secretariat on (02) 6247 5100.

Other projects

Work has recommenced on the Council's project on review of patents decisions. The central issue for this project is the appropriateness of the current arrangements for the review of decisions made by the Commissioner for Patents. Some of these decisions are currently reviewable by the Administrative Appeals Tribunal, others by the Federal Court. Work on this project had been suspended while the Council completed Report 41, *Appeals from the Administrative Appeals Tribunal to the Federal Court*. That report was tabled in federal parliament late last year. Some issues raised in the patents project overlap with issues discussed in that report.

The Council is also continuing its project on internal review, that is, review on the merits of a Commonwealth government agency's primary decisions, which is undertaken by other officers within the same agency. □

Family Law Council

The Family Law Council is a statutory authority which began operating in November 1975, after being established under the *Family Law Act 1975*. The Council is a policy review body with an issues focus, advising and making recommendations to the federal Attorney-General on matters relating to family law.

The Council meets quarterly in State capitals, Canberra, Darwin and larger regional cities. It provides advice to the Attorney-General in two forms: first, letters of advice on matters requiring urgent advice or on issues which require a quick and representative viewpoint; second, reports on major issues.

Most of its major projects are undertaken by special purpose committees made up of Council members, observers, staff and 'outside' persons. A discussion paper is usually released for public comment before the Council's advice is finalised and other forms of public consultation take place as required, bearing in mind the Council's limited resources.

The Council's current work program includes the following projects:

Child and Family Services Committee

The CAFS Committee has released a discussion paper on principles and standards for the care, support and protection of children.

Child Abduction Committee

The Child Abduction Committee's final report is being released shortly. The Attorney-General asked the Council to look into a number of matters, including whether parental child abduction should be criminalised.

Clean Break Committee

This committee is looking into the operation of section 81 of the Family Law Act, especially in relation to spousal maintenance. A questionnaire prepared by the committee was distributed to family law practitioners with the assistance of the Family Law Section of the Law Council in September 1997. Responses have not been up to expectations and follow up action is in progress. About 170 completed questionnaires have so far been received and are being analysed as they arrive. Action is currently being taken to try to obtain the views of a wider range of family lawyers.

Penalties Committee

The Council had discussions with the Attorney-General about this project in November 1997. The matter was referred to the Council following the Joint Select Committee Inquiry into Family Law (1992). The committee, which has been collecting data over the past two years, has prepared a preliminary

report. The project is looking into penalties imposed by the Family Court, particularly in relation to enforcement of child access/contact court orders.

Violence and Family Law Committee

A discussion paper prepared by this committee on Violence and Financial Settlements under the Family Law Act is currently being redrafted. It should be available for release before the middle of 1998.

Step-parent adoptions

This issue was referred to the Council by the Attorney-General in January 1998. An advice or report is to be completed by June 30, 1998.

Child Support Committee

The Council has membership on the Child Support Liaison Committee, which enables it to meet with officers of the Child Support Agency, the Department of Social Security and the Family Law Section of the Law Council on a quarterly basis. The Council's Child Support Committee monitors the operation of the Child Support Scheme from a family law perspective.

Other matters

A number of other matters are currently being considered and will be the subject of letters of advice to the Attorney-General, for example, civil and religious divorce (referred by the Attorney-General). □

Law Commission of Canada

The Advisory Council of the Law Commission of Canada held its first meeting on November 15, 1997.

The Advisory Council, comprising 21 persons drawn from across the country, met to discuss key issues facing Canadian society, individuals within that society and the legal system. The meeting was designed to permit the Council to advise the Commission on its underlying policies and principles, its strategic directions and its five year research agenda. Following the session, the Commission drew together suggestions from the Council on the ideas received in the course of its consultations during the summer of 1997. The Commission identified four major research themes:

- Personal relationships (How does the legal system deal with relationships of dependence and interdependence?)
- Social relationships (How should the legal system recognise diverse social relationships in a changing socio-demographic context?)
- Economic relationships (How can the law best be structured to enhance Canada's economic strength while protecting fundamental social values?)
- Governance relationships (How can public decision making and governmental institutions be recast to further enhance openness and accountability in a framework of effective governance?)

The Commission will identify and launch numerous research programs within each theme over the next three years. It expects to commence specific projects of study under its first research program by mid-March.

In November last year, the Minister of Justice requested the Commission, under a statutory reference power, to examine processes for dealing with physical and sexual abuse of children in institutions. The first stage of the Commission's work, an issues paper, was submitted to the Minister in February. The next stage of the project involves in-depth studies of key questions raised in the issues paper, including identifying the causes and consequences of abuse and assessing the strengths and weaknesses of possible models for addressing institutional child abuse.

As part of its development of the strategic theme of governance relationships, the Commission will host a round-table on judicial compensation and judicial independence in early March 1998. The roundtable will explore the character of the relationship between the executive and the judicial branches of government in light of the recent Supreme Court of Canada decision in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* (unreported, September 18, 1997).

Later in the month, the Commission is co-sponsoring another round-table to probe what constitutes good governance and the components of the concept in relation to parliament, the courts, administrative agencies and the public service.



Law Commission of New Zealand

The Law Commission of New Zealand is a permanent, full time law reform body, independent of the government but funded by the taxpayer. As in other countries, much of our work comes from references by the Minister of Justice, but there is also a power to self initiate. Assisting other government bodies and advising ministers on constitutional and law reform issues is a further element in our role.

The appointment of four new members of the Commission over the past 18 months, and the completion of a number of major pieces of work on the law of succession and a range of public law topics, have enabled the Commission to sharpen its focus and plan for work which is of pressing importance in reforming and developing the law.

Forthcoming reports

There are two Commission reports scheduled for release soon; the reform and codification of the law of evidence; and an examination of the barriers which women face in accessing the justice system.

The evidence project has been a major and time-consuming exercise, but one which aims to significantly modernise the law and produce much-needed efficiency in litigation. Our examination of women's access to justice addresses the accessibility of legal services, including legal information, advice and representation, to a diverse population. Another fundamental issue is the responsiveness of the state's justice institutions to the needs of Maori women.

Criminal law procedure

The Commission's current work on criminal procedure concentrates mainly on the system of prosecution, the jury system and alternatives to formal prosecution. Work is also planned on homicide and its defences, for example, in the context of battered women syndrome and similar types of case.

In respect of the jury system, the Commission is co-sponsoring an empirical research project which will, for the first time in New Zealand, allow researchers to observe jury deliberations at first hand. This will involve questionnaires and interviews conducted with jurors and judges as soon as possible after the completion of a trial. The project team for this research is led by Professor Warren Young of Victoria University in Wellington. At the same time, the Commission will publish a discussion paper on the jury system, with a final report - drawing upon the results of the research project - planned for later in the year.

Commercial and common law

The Commission's major commercial law project this year, as the first stage of a review of international trade laws, involves examining law changes needed to facilitate electronic commerce. A discussion paper is due in mid-year. Other work includes aspects of insurance law and a project relating to the marketing of undivided interests in land - the grey area between securities law and land law in such contexts as retirements villages.

A report on the apportionment of civil liability is also being prepared. This follows a discussion paper published in 1992; further work was deferred to await the outcome of reforms considered in Australia.

Public law

Public law in New Zealand places increasing focus on the Treaty of Waitangi, its place in the constitutional framework, and its effect on the legal system. In a contribution last year to public discussion concerning the nature of Maori law, the Law Commission advanced the contention that New Zealand's legal system is 'duadic', comprising one element derived from England, and another deriving from Maori law and custom confirmed by the Treaty and English law. As a practical response to this situation, the Commission will shortly publish a guide to enable judges and other decision makers to recognise concepts of Maori customary law. We will also report on the implications of the Treaty of Waitangi in

our project on women's access to justice. As well, the Commission is giving ongoing consideration to the Treaty in areas such as the operation of the coronial system (for example, in the return of body parts to relatives) and the law of succession.

A recent reference from the Minister of Justice has asked the Commission to examine the law relating to compensation of persons wrongly convicted of offences. A discussion paper will be published by the end of March. Related topics are a review of the law of malicious prosecution (and similar torts) and costs in criminal areas.

A pending project in the public law area will examine ways of reducing the incidence of injury and death from systemic accidents.

Recently completed work

The Commission has recently released a number of reports:

- the civil liability of the Crown for breaches of the New Zealand *Bill of Rights Act 1990*, including issues of judicial immunity: *Crown Liability and Judicial Immunity: A response to Baigents case and Harvey v Derrick* (NZLC R37);
- the ability of beneficiaries to take from the estates of those whom they have unlawfully killed: *Succession Law: Homicidal Heirs* (NZLC R38);
- the adjustment of estates to take account of testamentary promises and the needs of family members (including de facto partners - whether of the same or opposite sex - and adult family members): *Succession Law: A Succession (Adjustment) Act* (NZLC R39);
- modern wills legislation (drawing heavily on the Australian Uniform Succession Law Project): *Succession Law: A Succession (Wills) Act* (NZLC R41);
- a review of the *Official Information Act 1982*, New Zealand's freedom of information legislation: *Review of the Official Information Act 1982* (NZLC R 40);
- the use of anonymous witnesses in criminal proceedings: *Evidence Law: Witness Anonymity* (NZLC R42);

- a modern procedure for habeas corpus applications: *Habeas Corpus: Procedure* (NZLC R44);
- the role of parliament in the making, acceptance and implementation of international treaties: *The Treaty Making Process: Reform and the role of Parliament* (NZLC R45). □

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