

# Commission news

## Current references

Both of the Australian Law Reform Commission's current inquiries—the inquiry into gene patenting and human health, and the review of the protection of classified and security sensitive information (CSSI)—are in their final stages.

The CSSI inquiry released its Discussion Paper, *Protecting Classified and Security Sensitive Information* (DP 67), on 5 February.

The patenting team released its Discussion Paper, *Gene Patenting and Human Health* (DP 68), on 4 March.

Both legal teams are working towards delivering a report to the Attorney-General of Australia for tabling in Parliament by the middle of the year.

## ALRC Commissioners

Justice Mark Weinberg (Federal Court of Australia) has been reappointed as a part-time Commissioner for a further two years, until the end of 2005. Justice Weinberg is currently working on the Commission's inquiry into the protection of classified and security sensitive information.

## *Reform* redesign

Readers will note the new 'look' of this journal. The journal has undergone a few transformations in its almost-30-year history.

*Reform* started life as a 16-page bulletin in January 1976, with Justice Michael Kirby as its first Editor. Its aim then was to help law reform to "escape irrelevance ... [by going] out to the society it serves". The journal still aims to

provide a forum for debate on issues of law reform in Australia and overseas, in a manner that is accessible for the wider community.

These latest changes are limited to graphic design—our regular features remain the same. We welcome feedback about all aspects of *Reform* from our readers.

## Past Report Update

### Designs—ALRC 74

The ALRC's 1994 report *Designs* (ALRC 74) has been substantially implemented with the passage of new legislation. As reported in the last issue of *Reform*, the Designs Bill 2002 was based in large measure on the recommendations in ALRC 74. This Bill was passed by both Houses of Parliament and received royal assent in late 2003. The *Designs Act 2003* (Cth) is expected to commence operation on 17 June 2004.

More than 90% of the 188 recommendations in the ALRC report were incorporated into the *Designs Act 2003*. The Act diverges from the ALRC recommendations in the isolated areas of the treatment of designs embodied in spare parts, the designated period of design registration, and in retaining Crown use provisions. The Crown use provisions are the subject of a current review by the Advisory Council on Intellectual Property (ACIP).

### Federal Civil Justice Strategy—ALRC 92, ALRC 89 and ALRC 75

In March 2004, the Attorney-General of Australia released a *Federal Civil Justice System Strategy Paper* for public comment. The Strategy Paper, which builds on the research and findings of the ALRC in ALRC 89 *Managing Justice: A Review of the Federal Civil Justice System* (2000), includes recommendations for

the future development of the federal courts and legal system. Many of the recommendations of the *Managing Justice* report are mirrored in this Strategy Paper, bringing them a step closer to implementation. These include recommendations relating to event-based fee scales, summary judgments, lawyers' ethical obligations to the court, improved case management techniques, and expert evidence.

The Strategy Paper also proposes the implementation of a number of recommendations from other ALRC reports. The 2001 report ALRC 92 *Review of the Judiciary Act* made a number of recommendations in relation to appeal hearings in the High Court of Australia, the Federal Court of Australia and the Family Court of Australia. Those supported in the Strategy Paper include allowing special leave applications to the High Court to be determined on the papers without parties' consent, and that no appeal should lie from a decision to grant or refuse leave to appeal. The majority of recommendations from ALRC 92 are still under consideration by government.

The Strategy Paper also proposes the introduction of new forms of disciplinary and case management costs orders based on recommendations from ALRC 75 *Costs Shifting: Who Pays For Litigation*. Although well received by the profession at the time of its release in 1995, this represents the first effort at implementing the recommendations in the *Costs Shifting* report.

In setting out its proposals for support of pro bono work, the Strategy Paper has regard to the work of the National Pro Bono Task Force, chaired by ALRC President Professor David Weisbrot, which reported to the Attorney-General in 2001. In particular, the Strategy Paper addresses concerns about commercial conflict of interest for firms undertaking pro bono work in litigation against the Australian Government and also seeking future government work.

#### **Essentially Yours—ALRC 96**

The landmark report of the ALRC and the Australian Health Ethics Committee on the protection of genetic information, which was released last year, continues to receive extensive media coverage and worldwide interest. Professor Weisbrot has been invited to speak about the Australian inquiry at a number of international events, including national

symposiums in Canada, South Korea and the United States, as well as at an OECD experts group in Tokyo. [Editor's note: See the President's 'Comment' article, beginning on p2.]

A 'whole of government' response to the report is in preparation. However, a number of recommendations already have influenced changes in some areas. The Australian Sports Commission has established a Steering Group on Policies and Guidelines on the Use of Genetic Testing and Information in Sport in direct response to recommendations in *Essentially Yours*. The Investment and Financial Services Association (IFSA) is working towards implementation of a number of recommendations related to life insurance, including the development a family medical history policy, clarification of privacy issues related to collection of information about genetic relatives from insurance applicants, and the education and training of IFSA members about the collection and use of genetic information for the purposes of life insurance applications.

#### **Principled Regulation—ALRC 95**

The ALRC report on federal civil and administrative penalties, also released last year, has influenced the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (also known as CLERP 9) in relation to its proposed notice scheme for contraventions of the continuous disclosure provisions under the *Corporations Act 2001* (Cth). The ALRC had criticised the scheme that initially was proposed in a Department of Treasury Discussion Paper in 2002. A number of features of the model infringement notice scheme set out in ALRC 95 have been incorporated into the CLERP 9 Bill.

#### **Complaints Against Police—ALRC 82**

The ALRC's 1996 report *Integrity: But Not By Trust Alone* dealt with the complaints and disciplinary systems of the Australian Federal Police (AFP) and the National Crime Authority (NCA). One of the findings in the report was that the AFP complaints and discipline process was outdated and unsatisfactory. It was seen as a largely inflexible, formal process that was adversarial in character. The ALRC recommended the establishment of an independent, external agency to handle complaints for both the AFP and the NCA. While this option has not been adopted, a 2001 inquiry by the Senate Legal and Constitutional

References Committee into the management arrangements of the AFP and NCA also recommended that the AFP complaints procedures be simplified and made more transparent.

In response to these criticisms, a review of AFP professional standards was undertaken by Justice William Fisher (the Fisher Review). Justice Fisher's report was tabled in the Australian Parliament in December 2003. Generally, Justice Fisher has advocated a move away from the traditional complaints and disciplinary system towards a model of managerial responsibility by adopting a graduated professional standards regime varying according to the seriousness of the matter and the ability of managers or supervisors to deal with performance issues. This approach mirrors that proposed in ALRC 82. A Working Group has been established by the AFP Commissioner to implement the Fisher Review recommendations.

#### **Defamation—ALRC 11**

A quarter of a century ago, in 1979, the ALRC completed a report on defamation law, recommending that there be a codified, uniform law of defamation in Australia to replace the patchwork of existing statutes and case law that existed at the time. The issue has been on the agenda of the Standing Committee of Attorneys-General (SCAG) since 1980. While there has been agreement on the need for uniformity and a further review of defamation law by the NSW Law Reform Commission (in 1995), very little change has occurred to defamation laws since that time.

The Attorney-General of Australia, the Hon Philip Ruddock MP, has announced his intention to make progress on changes to defamation law. While the State and Territories continue to prefer the option of harmonising existing state and territory laws, in March 2004 the Attorney-General's Department released a discussion paper outlining the Australian Government's proposal to develop a draft Bill for a national code of defamation. The proposal incorporates a number of recommendations from ALRC 11 (which remains relevant despite its age and technological change) as well as some from the NSW Law Reform Commission review. The issue will be discussed again at the next SCAG meeting in July.

## **ALRC submissions**

To ensure that the information and expertise developed in ALRC inquiries through research and public consultation is made available to the Australian Government and Parliament, the ALRC makes submissions to Government and Parliamentary inquiries. This is usually done where the subject matter is related to a current or past ALRC reference and the ALRC is able to provide expert comment or background information that would assist the inquiry. In the past six months the ALRC made submissions to:

- the Attorney-General's Department *Federal Civil Justice System Strategy Paper*, which draws heavily on the work of the ALRC. The ALRC's submission highlights the relevant issues and findings of ALRC 89 *Managing Justice*, ALRC 75 *Costs Shifting* and ALRC 92 *The Judicial Power of the Commonwealth*, as well as the work of the Attorney-General's National Pro Bono Taskforce, which was chaired by the President of the ALRC.
- the *Insurance Contracts Act* review by the Department of Treasury. Several submissions to Treasury made by the ALRC refer to the reports ALRC 20 *Insurance Contracts*, ALRC 91 *Review of the Marine Insurance Act 1909* and ALRC 96 *Essentially Yours: The Protection of Human Genetic Information in Australia*.
- the review of employee records privacy by the Attorney-General's Department and the Department of Employment and Workplace Relations, drawing on research and recommendations from ALRC 96 *Essentially Yours: The Protection of Human Genetic Information in Australia*.
- the Attorney-General's Department review of the Australian Government Legal Services Directions. This submission refers to research and recommendations from ALRC 89 *Managing Justice* and ALRC 95 *Principled Regulation*.

Submissions made by the ALRC to these and other inquiries are available from the ALRC website.