

Commission news

New inquiries

Sedition

The ALRC's final report on its review of federal sedition laws, *Fighting Words: A Review of Sedition Laws in Australia* (ALRC 104), was tabled in the federal Parliament on 13 September 2006.

The Terms of Reference were dated 1 March 2006 and the entire Inquiry—which included the release of an Issues Paper and a Discussion Paper as well as extensive consultation—was concluded within five months, with the ALRC submitting its final report to the Attorney-General on 31 July 2006.

The speed with which the ALRC was able to grapple with the issues raised by the Sedition Inquiry would not have been possible without the diligence of staff and the active cooperation of the Advisory Committee and stakeholders on all sides of the debate.

Privacy

The ALRC has released three consultation documents as part of its ongoing Privacy Inquiry. Issues Paper 31, *Review of Privacy*, was released online on 9 October 2006 and in hardcopy a short time later. Issues Paper 32, *Review of Privacy: Credit Reporting Provisions*, was released in December 2006, as was a shorter overview of the two Issues Papers.

The ALRC has established collaborative links with the law reform commissions of New South Wales, Victoria and New Zealand, which are conducting similar privacy inquiries.

Legal Professional Privilege

The ALRC received Terms of Reference in November 2006 for a review of legal professional privilege. The ALRC Inquiry will concentrate on the application of legal professional privilege to the coercive information gathering powers

of Commonwealth bodies—such as the Australian Federal Police, the Australian Crime Commission, the Australian Securities and Investments Commission, the Australian Taxation Office and federal royal commissions.

The ALRC looked at certain aspects of legal professional privilege in its recent report *Uniform Evidence Law* (ALRC 102, 2006) and in somewhat greater detail in *Principled Regulation* (ALRC 95, 2002).

A final report is due by December 2007.

New Commissioners

Professor Rosalind Croucher

Professor Rosalind Croucher has been appointed a full time Commissioner for a term of three years, beginning in February 2007.

Professor Croucher joins the Commission after a distinguished period of 25 years in university teaching and management, most recently as Dean of Law at Macquarie University. Professor Croucher has lectured and published extensively, principally in the fields of equity, trusts, property, inheritance and legal history.

Justice Robert French

On 13 July 2006 the Governor-General appointed Justice Robert French as a part-time member of the ALRC for a period of three years commencing on 15 July 2006.

Justice French has been a judge of the Federal Court of Australia, based in Perth, since November 1986.

CALRAs

ALRC President Professor David Weisbrot has been elected President of the Commonwealth Association of Law Reform Agencies (CALRAs) following the resignation of Justice Elton

Singini, who was unable to continue in the role because his term as Chair of the Malawi Law Commission had ended. Professor Weisbrot will fill the position until the next CALRAs meeting in Nairobi, Kenya in September 2007.

International interest in the ALRC

In November 2006, the ALRC hosted a delegation of leading Japanese scholars interested in exploring Australian approaches to the ethical, legal and social implications (ELSI) of DNA testing and human genetic research, as well as studying Australian methods of engaging and consulting the community on these issues. The visit involved law professors Eiji Maruyama (Kobe University), Megumu Yokono (Waseda University) and Yuko Nagamizu (St Andrews University, Osaka), as well as medical professor and clinical geneticist Yoshimitsu Fukushima (Shinshu University). Among other things, Professor Maruyama is the chair of the ELSI committee of the new Japan Biobank, which holds about 300,000 genetic samples for use in approved medical research.

The decision to visit Australia in particular arose out of the high regard internationally for the ALRC's report *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC 96, 2003). The ALRC also organised a number of meetings for the visitors outside the Commission.

In a whole of government response dated 9 December 2005, the Australian Government accepted the great majority of recommendations in ALRC 96, including the establishment of a standing advisory body on human genetics, to be the trusted source of information about human genetics. The Human Genetics Advisory Committee (HGAC) of the National Health and Medical Research Council (NHMRC) was established in 2006. The 12-person HGAC is chaired by Professor Ron Trent (who also served on the ALRC's Advisory Committee for ALRC 96), and includes ALRC President Professor David Weisbrot.

It is understood that another whole of government response is currently being prepared for release in early 2007, in relation to the ALRC's report *Genes and Ingenuity: Gene Patenting and Human Health* (ALRC 98, 2004).

Internships

The ALRC now has arrangements with two universities in the United States—the American University in Washington DC and Maryland University—allowing law students to undertake internships at the ALRC. Selected students work full-time in the Sydney office of the ALRC for six to eight weeks, undertaking research alongside their Australian counterparts, and under the supervision of ALRC staff. American University student Erica Contini worked at the ALRC in 2005, and the first two students from Maryland University, Elizabeth Crook and Robin Clark, completed internships in June–July 2006. All made valuable contributions to the ALRC's reference work. These programs give the students, funded by their home university, an opportunity to experience law reform and policy discussion in another country, while the ALRC benefits from the students' understanding of current policy issues and research resources available in the United States.

The ALRC's local internship program continues to attract high quality applicants from all around the country. For this summer's 2006–07 internship program, there were 90 applicants. Five students joined us from Flinders University of South Australia (1), the University of Queensland (3), and the Australian National University (1).

Past reports update

ALRC 103—Same Crime, Same Time

Same Crime, Same Time: Sentencing of Federal Offenders (ALRC 103, 2006) has been discussed in Parliament in relation to two recent Bills. In each debate the Government has indicated that ALRC 103 is under active consideration by the Government.

The Crimes Amendment (Bail and Sentencing) Bill 2006 seeks to remove cultural background as a listed relevant factor in sentencing, and specifically prohibits consideration of customary law and cultural practices that would lessen the seriousness of the alleged offence. The Bill was considered by the Senate Legal and Constitutional Affairs Committee, and the ALRC made two submissions to the Committee and appeared before it on 29 September 2006. (The submissions are available from the ALRC website.) In its report on the Bill, the Committee was critical and made recommendations for amendment, although the proposed

amendments did not fully address the ALRC's concerns about the Bill. The Labor Senators provided a more highly critical dissent. Only the first recommendation—to enable a court to ensure that a penalty cannot be increased as well as decreased due to consideration of customary law and cultural practices—was adopted by the Government. The Bill has been passed by the Senate with amendment and, at time of publication, was yet to be introduced to the House of Representatives.

The Crimes Amendment (Victim Impact Statement) Bill 2006 is a private member's Bill introduced on 18 October 2006 by Senator Joe Ludwig. It is primarily a response to concerns raised in a Parliamentary Joint Committee on the Australian Crime Commission report on trafficking of women for sexual servitude. The Bill varies from the recommendations of ALRC 103 on victim impact statements, which Senator Ludwig considered to be too complex.

The ALRC recommended a roll-back scheme which would provide for minimum standards for victim impact statement provisions, but ensure consistency within a state or territory jurisdiction where the legislation met those minimum federal standards. Senator Ludwig's proposal would implement a consistent federal regime, but was in effect narrower than the ALRC proposal in that it was restricted to physical harm, and not economic loss. The Government's response to the relevant Joint Committee report, which was released after the Crimes Amendment (Victim Impact Statement) Bill 2006 was introduced, noted that ALRC 103 is under consideration, and that the Government will consider all sentencing issues as a whole.

ALRC 102—Uniform Evidence Law

It was noted in Issue 88 of *Reform* that the Standing Committee of Attorneys-General (SCAG) is looking at draft model provisions consistent with the recommendations of *Uniform Evidence Law* (ALRC 102, 2005), with a view to adopting uniform evidence laws around Australia. The SCAG process continues, and it is hoped that the issue will progress at the next SCAG meeting in April 2007.

Judges around the country are taking an interest in the possible adoption of the uniform Evidence Act in those jurisdictions that do not presently use the Act. ALRC Commissioner, Professor Les McCrimmon, has presented seminars on the uniform Evidence Act to judges in Darwin and Perth as part of judicial education

programs, consistent with Recommendation 3–1 of ALRC 102.

ALRC 99—Genes and Ingenuity

The ALRC understands that a whole of government response to *Genes and Ingenuity: Gene Patenting and Human Health* (ALRC 99, 2004) is being prepared by an interdepartmental committee coordinated by Biotech Australia, with release expected in 2007.

ALRC 96—Essentially Yours

The Privacy Legislation Amendment Act 2006 (Cth) commenced operation on 14 September 2006. The Act implements Recommendations 7–4, 7–5, 21–1 and 21–2 of *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC 96, 2003) by amending the definition of health information and sensitive information in the *Privacy Act 1988* (Cth) so as expressly to refer to genetic information. Amendments to the Act also permit the disclosure of genetic information to genetic relatives where it may reveal a serious threat to a genetic relative's life, health or safety, but not necessarily an imminent threat.

The implementation of Recommendation 21–1 is narrower than the full recommendation made in ALRC 96. Recommendation 21–1 related to disclosure of genetic information by 'health professionals', which is broader than the term 'medical practitioner' used in the amendment.

ALRC 82—Integrity: But Not By Trust Alone

In Issue 88 of *Reform*, the introduction of the Law Enforcement Integrity Commissioner Bill 2006 and Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 were noted. These Bills have since become Acts.

The Acts substantially implement the recommendations of *Integrity: But Not By Trust Alone—AFP & NCA Complaints and Disciplinary Systems* (ALRC 82, 1996) by establishing a new external complaints and anti-corruption authority (the Australian Commission for Law Enforcement Integrity) covering the Australian Federal Police and the Australian Crime Commission and providing a new complaints and professional standards framework for the Australian Federal Police.