

Commission news

Privacy Inquiry

The ALRC released Discussion Paper 72 (DP 72) *Review of Australian Privacy Law* and *Review of Australian Privacy Law: An Overview*, on 12 September 2007. The 1,977 page Discussion Paper contained 301 proposals for reform of the federal *Privacy Act 1988*.

The ALRC received well over 200 written submissions in response to the release of the Discussion Paper, making a total of over 550 submissions to the Inquiry. To accommodate for late submissions, the closing date for written submissions was extended by three weeks from 7 December to 21 December 2007.

The Privacy Inquiry involved the largest consultation process in the Australian Law Reform Commission's history, with 170 consultation meetings conducted prior to the release of DP 72 and a further 58 targeted meetings held in Sydney, Melbourne, Canberra and New Zealand as part of the consultation process for the final report, which is due to be delivered to the Attorney-General by 31 March 2008.

Talking Privacy Website

The Talking Privacy website, specifically aimed at young people, has been updated to include information on the key proposals in DP 72 relating to children and young people. The site has received a total of 6,245 hits since its launch in February 2007, and is proving to be a valuable consultation resource for the Privacy Inquiry.

Client Legal Privilege Inquiry

Discussion Paper 73 (DP 73), *Client Legal Privilege and Federal Investigatory Bodies*

was released on 26 September 2007, with 42 proposals for reform.

The ALRC received 40 submissions in response to DP 73, and a total of 116 submissions over the course of the Inquiry. Following the release of DP 73, the ALRC conducted 12 further consultations in Sydney, Canberra and South Australia with various stakeholders, including federal bodies, judges, legal practitioners and academics. A total of 51 consultations were held in various states and territories for the Client Legal Privilege Inquiry.

By letter dated 6 December 2007, Attorney-General Robert McClelland agreed to a short extension of the reporting date for the Inquiry from 3 December 2007 to 24 December 2007. The Final Report (ALRC 107), containing 45 recommendations for reform, was delivered to the Attorney-General on 24 December 2007. The Report will become public once it is tabled in Parliament, which must occur within 15 parliamentary sitting days of its receipt by the Attorney-General.

FOI Inquiry

The ALRC received Terms of Reference from the Attorney-General of Australia to examine the *Freedom of Information Act 1982* and related laws on 24 September 2007. Following the announcement, work has commenced on identifying and gathering relevant resources for the Inquiry. An Issues Paper setting out questions for consultation is expected to be published in the first half of 2008, and stakeholders are invited to make submissions to the Inquiry. The Final Report is due to be delivered to the Attorney-General's Office by 31 December 2008.

Farewell Justice Susan Kiefel

Following the announcement of her appointment to the High Court of Australia, Justice Susan Kiefel resigned from her position as a part-time member of the ALRC. Justice Kiefel had been a member of the ALRC since 7 April 2003, and had made important contributions to the ALRC's inquiries into Gene Patenting and Human Health, Sentencing of Federal Offenders, Uniform Evidence Law, Sedition, Privacy, and Client Legal Privilege. ALRC Commissioners and staff warmly congratulate Justice Kiefel on her elevation to the High Court.

Welcome Justice Berna Collier

Justice Berna Collier was appointed as a part-time Commissioner of the ALRC for three years commencing on 2 October 2007. Justice Collier has been a Justice of the Federal Court of Australia, based in Brisbane, since February 2006.

Internship Program

The ALRC internship program continues to provide law students with an opportunity to work alongside ALRC staff to develop an understanding of law reform work. During the second half of 2007 the ALRC benefited from the work of four Australian students—from the University of Sydney, Macquarie University and the University of NSW—as well as two overseas students—one from the University of Maryland and one PhD student from Cambridge University. Each student intern was allocated to the Privacy, Client Legal Privilege or Freedom of Information inquiry team, and completed an internship either one day per week over a university semester or for six weeks full-time.

Solomon Islands Law Reform Commission Visit

The ALRC is committed to assisting other law reform commissions both within Australia and internationally, and was therefore keen to extend an invitation to the Executive Director of the Solomon Islands Law Reform Commission (SILRC) and three legal officers visit Sydney for a series of administrative and organisational briefing sessions with the NSW Attorney-General's Office, the NSW Law Reform Commission and the ALRC in November 2007.

ALRC staff gave a series of presentations to

the SILRC staff, with a view to providing an insight into the history, role and organisational structure of the ALRC; consultation and research processes; development of reform recommendations and writing of reform papers and reports; communications and media liaison; and general management issues.

The SILRC staff acknowledged the trip as being extremely valuable.

Launch of Australian Academy of Law

The official launch of the Australian Academy of Law (AAL) was held at Government House, Brisbane on 17 July 2007. The event was organised by the ALRC and hosted by Her Excellency Ms Quentin Bryce AC, Governor of Queensland. A symposium entitled 'Fragmentation or consolidation? Fostering a coherent professional identity for lawyers', followed the launch. Over 80 Foundation Fellows, ex-officio members of the Academy and invited guests attended the launch and symposium.

The ALRC's *Managing Justice* report, released in 2000, recommended the establishment of the AAL owing to the problems associated with the lack of cohesion and direction in the legal profession. The AAL is an opportunity for some of Australia's leading legal thinkers, including senior judges, practitioners and academics, to collaborate on issues such as legal scholarship, education and training, and national ethical and practice standards.

Chief Justice of the High Court, the Hon Murray Gleeson, is the Patron of the new AAL.

The 2007 Kirby Cup

The 2007 Kirby Cup Competition winners were announced at the annual conference of the Australian Law Students Association (ALSA) in Canberra on 5 July 2007. The competition, organised by the ALRC in conjunction with ALSA, attracted a high calibre of submissions. Teams of two students provided a written submission relating to the ALRC's Client Legal Privilege Inquiry. Three teams were chosen to participate in an oral advocacy round which was held at the July conference. At the conclusion of the oral presentations, judges deemed Tom Smyth and Christian Strauch's submission 'The way forward for legal professional privilege' the winning entry. Tom and Christian will have their names engraved on the perpetual Kirby Cup, donated by the Hon Justice Michael Kirby AC CMG, who was

the Foundation Chairman of the ALRC. The winning submission is published on page 58.

Past reports update

ALRC 102—Uniform Evidence Law

Uniform Evidence Law (ALRC 102, 2005) was a joint report of the Australian Law Reform Commission, New South Wales Law Reform Commission and the Victorian Law Reform Commission. Law reform bodies from Queensland, Tasmania, Western Australia and the Northern Territory were also involved in developing the proposals. The Report recommended changes to the existing uniform Evidence Acts in place in the Commonwealth, New South Wales, Tasmania and Norfolk Island, and encouraged other jurisdictions to adopt the modified Act in its entirety.

In July 2007, the Standing Committee of Attorneys-General (SCAG) approved a Model Uniform Evidence Bill that incorporates the recommendations of the *Uniform Evidence Law* Report. The text of the Model Uniform Evidence Bill is available from the NSW Attorney General's Department's website.

New South Wales has moved to implement the recommended changes to the *Evidence Act 1995* (NSW) with passage of the *Evidence Amendment Act 2007* (NSW). The Bill received assent on 1 November 2007. It is expected that the provisions will not be proclaimed to commence until at least May 2008, in order to give lawyers and others time to become familiar with the amendments.

The then federal Attorney-General, Mr Philip Ruddock MP, indicated in July 2007 the Australian Government's general intention to implement the recommendations of the *Uniform Evidence Law* Report, and it was included on the list of proposed bills for 2007 prior to Parliament being prorogued for the federal election. Mr Ruddock also indicated, however, that the Australian Government at that time did not support the recommendations to extend to same sex de facto partners the ability to object to being compelled as a witness in a criminal matter against their partner, or the proposed broader definition of 'traditional laws and customs' to be applied in relation to exceptions to the hearsay and opinion rules.

Two recommendations of the *Uniform Evidence Law* Report have been enacted in the *Evidence Act 1995* (Cth). The *Evidence Amendment (Journalists' Privilege) Act 2007* (Cth)

introduced a privilege to protect confidential communications between journalists and their sources, based on Recommendations 15-1 and 15-2 of the *Uniform Evidence Law* Report. The relevant provisions implementing the privilege commenced operation on 26 July 2007.

ALRC 96—Essentially Yours

There have been a number of publications in 2007 relevant to the implementation of recommendations in *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC 96, 2003). In March 2007 the National Health and Medical Research Council endorsed and published the revised National Statement on Ethical Conduct in Human Research. The revision incorporates a number of recommendations made in the *Essentially Yours* Report, including improved waiver of consent and unspecified consent provisions, clearer guidance on identifiable, re-identifiable and non-identifiable data, more stringent conditions for the establishment and running of biobanks and genetic registers, and ethical issues specific to genetic research. (Recommendations 15-1, 15-2, 15-4, 16-1, 17-1, 18-1, 18-2, 18-3).

Recommendation 11-2 recommended the development of ethical standards for medical genetic testing. In 2006 the National Pathology Accreditation Advisory Council (NPAAC) circulated for public consultation the first edition of the Classification of Human Genetic Testing (A Supplementary Guide to Laboratory Accreditation Standards and Guidelines for Nucleic Acid Detection and Analysis). The final version of the document is expected to be finalised in late 2007, and take effect from 1 January 2008.

ALRC 80—Legal Risk in International Transactions

Legal Risk in International Transactions (ALRC 80, 1996) was completed before the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency was finalised. [UNCITRAL has a general mandate to further the progressive harmonisation and unification of the law of international trade]. The ALRC recommended that a high priority be given to Australian Government involvement in the UNCITRAL Working Group on Insolvency with a view to adoption of the Model Law.

UNCITRAL finalised and adopted its Model

Law on Cross-Border Insolvency in May 1997. Many countries have been working towards adoption of the Model Law, including Australia. In September 2007, the Cross Border Insolvency Bill 2007 was introduced to the federal Parliament to implement the Model Law into Australian law. The Bill lapsed with the prorogue of Parliament for the federal election.