

regulating those Courts. The Committee had been concerned that modification by regulation might mean that Rules do not need to be registered and therefore are not subject to parliamentary scrutiny. While the Attorney was of the view that this would not occur, he undertook to consider an amendment to the Bill that would make clear that a modification or adaptation could not operate to affect the operation of Part V of the Act.

The Committee's Sixth Report of 1997 (dated 7 May 1997) noted that the Committee had received a letter from the Minister for Industrial Relations in response to the Committee's concerns about the proposed exemption of public sector employment instruments from the Bill. The Report attaches a copy of the Minister's letter.

The Minister advised that it was the Government's position that the exemption should be retained. He noted that the exemption was not intended to have the effect that the position in relation to instruments which are currently required to be tabled, publicly notified, scrutinised and subject to disallowance, should be changed and that the Government would introduce amendments to ensure that these processes, as they currently operate, would remain undisturbed. However, the Minister explained that the exemption would still mean that certain public sector instruments, for example, agency-level agreements under the *Workplace Relations Act 1996* and determinations made to resolve specific issues affecting particular named individuals, would be removed from the requirements of the Bill. In mentioning these examples, the Minister referred to privacy considerations and the inappropriateness of applying the sunset provisions of the Act.

Australian Law Reform Commission Report No 82 - 'Integrity: but not by trust alone'

The Australian Law Reform Commission's report on its inquiries into the complaints and disciplinary systems of the Australian Federal

Police and the National Crime Authority was tabled in the Parliament on 10 December 1996.

The ALRC criticised the current Australian Federal Police (AFP) complaints system and recommended the introduction of a formal complaints procedure for the National Crime Authority (NCA). In relation to both complaints systems, the ALRC recommended that the level and effectiveness of external scrutiny should be increased by the establishment of an external complaints and anti-corruption authority, the National Integrity and Investigations Commission. In respect of complaints against the AFP, that Commission would replace the role that the Ombudsman currently performs and, in the case of complaints against the NCA which currently handles any complaints internally, it would be the first external agency to handle such complaints.

The National Integrity and Investigations Commission (NIIC) would have two separate Divisions (sharing the same infrastructure and an information system): one to deal with complaints (the Office of the Commissioner for Complaints) and the other to deal with corruption (the Office for Anti-Corruption). Under the ALRC's scheme, the NIIC would have the full range of investigative and inquisitorial powers of a royal commission. It would have different investigative procedures depending on the category of the matter, so that:

- for Category A – serious criminality, corruption and significant public interest matters – the NIIC would investigate the matter itself with the power to request that the AFP or NCA, whichever the investigation relates to, provide personnel and/or facilities and equipment;
- for Category B – misconduct – the NIIC could refer the matter to the AFP or NCA for internal investigation, conduct a joint investigation with the relevant agency, investigate the matter itself or refer it to the head of the agency for consideration and response;
- for Category C – customer service matters – the AFP and NCA would deal with these

matters by informal resolution and advise the NIIC of all such complaints and their resolution and the NIIC would have powers of review and audit;

- for Category D – internal management matters – any complaints coming to the attention of the NIIC would be referred back to management for appropriate action. The NIIC would then be able to review any decision taken by management.

The NIIC, in consultation with the AFP and NCA, and peak ADR bodies should develop a series of principles and guidelines to determine the use of alternative dispute resolution for complaints. The NIIC would have the power to make recommendations, give opinions or make assessments to the AFP or NCA. Where a complaint is substantiated, recommendations may be for an apology or explanation, financial compensation or restitution of property, or a change in decision or course of action.

The NIIC would be subject to the provisions of the *Privacy Act 1988* and the Privacy Commissioner should audit the information handling process of the NIIC and report to the Attorney-General. The *Freedom of Information Act 1982* would also apply. The only continuing role for the Ombudsman's offices would be as lodgment points for AFP or NCA complaints, which could also be lodged with the AFP, NCA or NIIC. The ALRC's view is that removal of the Ombudsman from the AFP complaints jurisdiction would not impair the treatment of complaints against the AFP throughout Australia.

A number of recommendations were made in relation to the handling of misconduct and disciplinary matters by the AFP and NCA. The report proposes the replacement of the Federal Police Disciplinary Tribunal - which it regards as a traditional para-military, disciplinary model with a quasi-criminal approach - with administrative review. The AFP and the NCA would have primary responsibility for decision making and for imposing discipline on their personnel with appropriate independent and ex-

ternal scrutiny of that decision-making process.

The Administrative Appeals Tribunal should provide review on the merits of misconduct decisions by the AFP or the NCA. These recommendations include review of decisions under s 26E of the AFP Act to end an appointment before its due expiry. Currently where an appointee is retired under this provision on the basis of poor performance or employment suitability the decision is subject to full merits review under the unlawful termination provisions by the Australian Industrial Relations Commission and the Industrial Relations Court of Australia. However, where the person is retired because of serious misconduct or is having, or is likely to have, a damaging effect on the morale or self-respect of AFP personnel or the reputation of the AFP (s 26F), a declaration of the Commissioner to this effect excludes such a person from the operation of the procedures for termination of employment provided by the *Industrial Relations Act 1988* (now the *Workplace Relations Act 1996*).

The major reason for the ALRC's preference for AAT review in s 26E matters is that it would achieve consistency in approach between s 26E matters and disciplinary decisions. However, the AAT would not review decisions by the AFP Commissioner or NCA Chairperson to terminate an officer's appointment for 'loss of confidence' although such decisions would remain subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

The Commission noted the recommendations of the Council's *Better Decisions* report concerning the creation of the Administrative Review Tribunal. The ALRC supported the Council's proposals and would favour the administrative review of AFP and NCA misconduct decisions being dealt with under this new structure and in particular, within the Security Division of the proposed Tribunal.

The ALRC made a number of other recommendations, including in relation to the NCA's employment regime, powers of the AAT to

award costs, rights of people with special needs, the needs of the Territories, strip searches, secrecy provisions, collective complaints, training and advertising and information.

Australian Law Reform Commission - Review of the Archives Act 1983 - Release of Issues Paper

In the last issue of *Admin Review* it was noted that the Australian Law Reform Commission (ALRC) was conducting a review of the *Archives Act 1983*. The review is to identify what the basic purposes and principles of national archival legislation should be and whether the Archives Act has achieved those purposes and principles or whether it requires amendment.

The ALRC have since released an issues paper (Issues Paper 19) concerning the review. The Commission's Media Release of 13 January 1996 sets the scene for the Commission's work.

"ALRC Inquiry Explores New Options For Accessing Public Information"

Documented information that details the historical Australian experience is not readily accessible to interested members of the public.

Despite a clear public need for information to be available to our community, the establishment of uniform rules for accessing information raises complex issues regarding the integrity of sensitive governmental deliberations and personal privacy.

This is one of the key areas being explored by the Australian Law Reform Commission (ALRC) in its inquiry reviewing the purposes and principles of Australia's federal archival legislation – *The Archives Act 1983*.

An Issues Paper released today notes that current legislation does not reflect the massive changes that have occurred in record keeping practices and technology since the Archives Act was passed in 1983. "Essentially the Act was drafted in the age of paper records," said ALRC President Mr Alan Rose. "During the past decade electronic communication and record keep-

ing systems have developed rapidly, raising fundamental issues about the creation, accessibility and disposal of Commonwealth records," he said.

"Information held by government is a national resource created and collected for public purposes," said Mr Rose. "Governments are trustees of that information for the Australian people. It follows that archival records should be maintained carefully and should be generally available to the public in a useful and comprehensive form".

In describing the social, administrative and technological environment in which future archives legislation might be expected to operate the ALRC has suggested a need for legislation to regulate the management of *all* Commonwealth records by setting down obligations and standards for the creation and management of records and the formulation of a unified approach to public access rights.

The ALRC inquiry will also look at the major changes in the administrative environment in which archival legislation operates. When the present Archives Act was drafted there was a clear distinction between the Commonwealth government and private records. This distinction has become increasingly blurred as major Commonwealth functions have passed wholly or partially to the private sector.

Individuals and community groups have always sought to preserve information about themselves and their activities as a means of defining and protecting the structures of the societies in which they live and to give depth and meaning to their own lives.

As Australian society matures, the importance of modernising the legislative base for maintaining historical records in to the 21st century poses a major challenge. This challenge must be met to enable us to examine our past and determine what lessons it contains for present and future generations."

Submissions in response to the ALRC's issues paper were requested by 31 March 1997. The ALRC is conducting public consultations