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 keeping 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

around Australia from May to July. The ALRC is due to complete its inquiry and report to the Attorney-General by 31 December 1997. Dr Jim Stokes at the ALRC can be contacted concerning this inquiry by phone on (06) 257 7029.

Australian Law Reform Commission – Review of the adversarial system of litigation – Release of Issues Paper

On 30 April 1997, the Commission released its first Issues Paper in response to its reference on review of the adversarial system.

The text of the Commission's Media Release at the time of release of the Issues Paper is set out below.

"Legal mindset hindering reform, Commission warns

The Australian Law Reform Commission has questioned whether the mindset of the legal profession is contributing to excessive costs and delays, overservicing, a lack of accountability and an unduly confrontational approach to resolving disputes.

A "legal culture" among judges and lawyers could be one of the major barriers to effective reform of the Australian civil justice system, the Commission has warned in its Issues Paper *Review of the Adversarial System of Litigation: Rethinking the federal civil litigation system.*

"Our system of civil justice is said to be in crisis but significant and effective long term reform may rely as much on changing the culture of legal practice as it does on procedural or structural change," Commission President Alan Rose said.

"Many judges are reluctant to take a more managerial approach to judging, or to using alternative dispute resolution procedures. This may be because they come from the ranks of litigation lawyers and predisposed towards courtroom dynamics that minimise judicial participation. It may be that they don't want to gain a 'reputation' as a judge who unduly interferes.

"This 'adversarial mindset' extends to lawyers who always anticipate litigation. Such a perspective necessarily brings with it a time-consuming, complex and costly regime directed at covering every possible circumstance," Mr Rose said.

The release of the Issues Paper is the first stage in extensive public consultations on a wide-ranging Commission inquiry into the Australian civil litigation system. As part of the inquiry, due to be completed in 1998, the Commission will examine civil, administrative and family law proceedings before courts and tribunals exercising federal jurisdiction.

The Issues Paper also examines basic procedural matters such as pleadings, discovery, interrogatories, interlocutory hearings and subpoenas and the taking of evidence.

Mr Rose said federal courts are shifting away from oral evidence and advocacy. But while written evidence and argument may save time and money for the courts, oral examination has traditionally been an important way to assess witness credibility.

Allied to this, is the use of expert witnesses in cases where a specialist opinion is required. "There is a difficulty in ensuring that expert witnesses are independent and without bias, given the tendency to 'shop' for the expert that will best suit a particular case," Mr Rose said.

Many proposals to reform the use of expert witnesses concentrate on increasing court control, for example, by introducing rules that provide explicitly that the expert's responsibility is to help the court impartially and that this responsibility overrides any duty to the client.

Mr Rose said an important aspect of the Commission's review was an examination of alternative or assisted dispute resolution (ADR).

"What role should courts have in encouraging ADR? One view is that ADR processes should be kept quite separate from litigation but the Commonwealth, States and Territories have, to varying degrees, enacted legislation designed to encourage ADR, including ADR that is facilitated by the courts," Mr Rose said."