

A list of the planned Issues Papers and Interim Reports or Discussion Papers was provided in the last edition of *Admin Review*. The Commission is required to make preliminary recommendations on the conduct of civil litigation by 30 September 1997 and a final report on the conduct of civil, administrative review and family law litigation by 30 September 1998.

Australian Law Reform Commission/ Human Rights and Equal Opportunity Commission - Release of Draft Recommendations Paper on Children and the Legal Process

In late May, the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission released draft recommendations from their joint inquiry into the impact of legal processes on children. Their joint Media Release provides further information on the proposals.

MEDIA RELEASE

May 20, 1997

“Office for Children needed to overcome ‘appalling’ children’s services

An Office for Children (OFC) should be established to develop policies to overcome the appalling state of Australian systems for the care and protection systems of children, serious deficiencies in children’s services and the marginalisation of children involved in legal processes.

The OFC, which would operate within the Prime Minister’s Department, is one of the major draft recommendations arising from a joint inquiry by the Australian Law Reform Commission (ALRC) and the Human Rights and Equal Opportunity Commission (HREOC) into the impact of legal processes on children.

The draft recommendations paper *A matter of priority: Children and the legal process* was prepared after extensive community consultation. Further submissions are sought before the final report is provided to the federal Attorney-General later in the year.

Releasing the paper today, ALRC President Alan Rose said the OFC would be part of a comprehensive structure to support and coordinate programs for young people and to ensure children’s issues are a matter of priority at all levels of government.

“Giving Australia’s children the best chance possible to develop into mature, responsible citizens by age 18 is a national responsibility. By signing the international Convention on the Rights of the Child, the federal Government, on behalf of all Australians, has made a firm commitment to make essential children’s services and programs a priority.

“While governments invest significant funds in a range of children’s programs, the Commissions have received extensive evidence that legal processes and government services are failing children badly. In some cases, the very systems which seek to support children become yet another disadvantage.

“The Commissions are also disturbed by the discriminatory impact of legal processes, particularly on Indigenous children in the juvenile justice and care and protection systems,” Mr Rose said.

Human Rights Commissioner Chris Sidoti said the Commissions were also concerned by the shift to more punitive, less effective regimes for young offenders in juvenile justice systems.

“This has been justified by a so-called juvenile crime wave when, in fact, there has been no significant increase in juvenile crime in Australia over the past decade. Our consultations have made it clear, that poor police/youth relations are endemic in Australia,” he said.

Mr Rose said legislation allowing children considered “at risk” of offending to be removed from public places should be repealed. “This type of legislation allows police to monitor youth behaviour that is not criminal. It allows police to act on stereotypes about young people but provides little or no police accountability,” he said.

A briefing Paper attached to the Media Release provides further information on the Draft Recommendations Paper.

Under the Commissions proposals, the proposed Office for Children (OFC) would consult with interest groups, including children, develop new strategies and standards for children's contact with legal processes and government authorities. It would also provide policy advice giving priority to children's issues.

Other draft recommendations made by the Commissions include

The education system

- National standards to ensure children have a say in decisions regarding punishment, including allowing a support person or advocate in decisions on exclusion from school.
- National standards for disciplining students, including a ban on corporal punishment in all schools.

Children as consumers

- National child consumer education strategies in all primary and secondary schools.
- Development of national guidelines for all providers of media services to children and for advertisers.

Government services

- The OFC to develop models of best practice to overcome poor inter-governmental and interdepartmental co-ordination and delays in decision making.
- Changes to administrative practices for income support applications, which are often considered "bewildering and confusing".

Children's evidence

- Specialised interview teams to deal with alleged child abuse victims, with all interviews of potential child witnesses to be conducted in accordance with national interview standards.

- A multi-disciplinary working party should be established to develop protocols on videotaping of evidence of child witnesses.
- A presumption against child witnesses giving live evidence at committal proceedings.
- A presumption in favour of the use of closed circuit television for child witnesses, including for non-criminal proceedings.

Family law and care and protection

- Power for State and Territory children's courts to hear federal family law matters and for the Family Court to hear care and protection applications under State legislation, to overcome duplication of proceedings.
- The development of a specialist State Family and Children's magistracy to exercise federal family law jurisdiction as well as care and protection and juvenile justice matters.
- A specialist Family Court magistracy, to simplify the court's structure and increase its capacity.
- A Charter for Children in Care, to be legislatively based at federal, State and Territory levels, to ensure all children in care are provided with accommodation, education, employment and training opportunities, appropriate support and the right to be consulted about issues concerning them.
- National care and protection standards that include recognition of the essential role of the Indigenous community and Aboriginal and Islander care agencies in dealing with Indigenous children in care.

Juvenile Justice

A national approach to juvenile justice, developed by the OFC, based on agreed standards of best practice and including:

- National guidelines on the use of cautions by police, to reduce the scope for differential treatment.
- Action to address the special needs of Indigenous children in relation to sentencing.

- Legislation in all jurisdictions to ensure young people obtain access to legal advice prior to formal interviews.

Representation

- Specialist children's units should be established in each Legal Aid Commission to deal with federal family law cases as well as criminal and care and protection matters.
- Development of clear standards for representation of children in legal proceedings to

ensure appropriate participation by those children.

- The Commissions recognise the resource constraints on Legal Aid Commissions, but consider it vital that children continue to be provided with adequate representation, particularly in family law, care and protection and juvenile justice matters."

TRIBUNAL WATCH

Amalgamation of Merits Review Tribunals

On 20 March 1997 the Attorney-General and Minister for Justice, the Hon Daryl Williams AM QC MP, issued the following News Release

“Reform of Merits Tribunal

Cabinet has agreed in principle, to amalgamate the Administrative Appeals Tribunal, the Social Security Appeals Tribunal, the Veterans’ Review Board, the Immigration Review Tribunal and the Refugee Review Tribunal into a single tribunal, the Administrative Review Tribunal.

The amalgamation would streamline administrative structures and enhance operations.

It is envisaged that separate divisions of the proposed ART would develop and maintain flexible, cost-effective and non-legalistic procedures relevant to their jurisdictions.

An interdepartmental committee comprising senior Commonwealth officers will devise a strategy for implementing the amalgamation.

The basis and scope of administrative review, designed to reduce the number of applications, the overall costs of merits review and excessive legalism, will be examined.

Detailed implementation of the recommendations for improvements to process and procedures of merits review tribunals contained in the *Better Decisions* Report of the Administrative Review Council will also be considered.”

Proposal for an Administrative Decisions Tribunal for New South Wales

The New South Wales Attorney-General’s Department have advised the Council Secretariat that it is expected that legislation to establish an Administrative Decisions Tribunal will be introduced into the New South Wales Parliament in early June. It is hoped that the legislation can be passed in the current session of

the Parliament (which runs until the end of June).

In the preparation of its legislation, the Department has been consulting with a number of experts and says that the proposals have advanced considerably from those raised in early discussions last year.

United Kingdom: The Annual Report of the Council on Tribunals for 1995/96

The United Kingdom Council on Tribunals is an independent advisory body which was established in 1958. Its functions, as set out in the *Tribunals and Inquiries Act 1992*, include keeping under review the constitution and working of a large number of tribunals and advising on administrative procedures relating to certain statutory inquiries. The Council on Tribunals has a Scottish Committee with direct responsibility for supervising tribunals set up under Scottish legislation.

The Annual Report of the Council on Tribunals for 1995/96 was released in December 1996. Matters in the Annual Report which may be of interest to *Admin Review* readers include:

- Consultation with the UK Council on Tribunals

The UK Council on Tribunals notes that while its primary function, as it relates to tribunals, is to keep under review the constitution and working of specified tribunals, much of its time is taken up with giving advice to Government Departments about proposed legislation to establish new tribunals and new appeal procedures.

The Council on Tribunals notes that a very helpful device for drawing the Council’s existence to the attention of legislation developers within Departments is the *Code for Consultation with the Council* which the Council agreed with UK Government some years ago. The Code explains the desirability of Departments consulting the Council at an early stage in the formulation of proposals requiring new adju-