

- ensures administrative certainty without preventing or discouraging an administrative decision maker from taking international obligations into account; and
- complements the recent changes to treaty making procedures.

5.4 The Committee notes, but does not accept, concerns relating to the appropriateness of the bill. In particular, the Committee does not accept that the enactment of the bill is contrary to Australia's international obligations nor will it send the wrong message to domestic decision makers or the international community. The Committee heard no evidence to suggest that the executive statement made on 10 May 1995 had this effect.

5.5 The Committee appreciates amendments suggested by some witnesses to improve the bill. The Committee however considers that these suggested amendments are not of sufficient import to warrant amending the bill."

Senate Committee Inquiry into the Contracting Out of Government Services

On 10 November 1997, the Senate Finance and Public Administration References Committee presented the First Report of its inquiry into contracting out of government services.

The Committee's terms of reference were reported on in *Admin Review* 47. Since that time those terms of reference were added to (see Senate Hansard, 27 May 1997, 3782) and the Committee's report which was tabled on 10 November dealt with those additional terms of reference. The additional terms of reference were as follows:

- (g) all aspects of outsourcing the information technology (IT) requirements of Commonwealth departments and agencies, with particular reference to:
 - (i) the range of IT requirements of Commonwealth agencies,

- (ii) the costs and benefits of IT outsourcing,
- (iii) the privacy implications of IT outsourcing and the need for privacy protection for sensitive information held by Commonwealth agencies,
- (iv) the adequacy of measures proposed to ensure public accountability for taxpayers' funds and public scrutiny of service providers,
- (v) the approach being adopted by the Office of Government Information Technology to the outsourcing of IT,
- (vi) the means by which opportunities for in house bids and domestic IT industry can be maximised,
- (vii) the employment implications of IT outsourcing, and
- (viii) the experience of other jurisdictions with IT outsourcing and the international implications for Australia of IT outsourcing.

The Committee's Report on Information Technology expressed the view that agencies should have an option to reject outsourcing if it does not offer genuine benefits to the agency and that contracting out should not diminish public accountability through the Parliament, the Auditor-General and the administrative law. The suggestion that contracting out may improve accountability by requiring services to be defined more precisely and imposing service agreements on providers should be seen as a bonus not an alternative. Coalition members dissented from the majority report on a number of aspects.

The Committee's final report is expected early next year.

Australian Law Reform Commission – Release of Issues Paper : *Rethinking legal education and training*

On 18 August, the Australian Law Reform Commission release its Issues Paper entitled *Rethinking legal education and training*. The

Issues Paper is part of the Commission's reference on the adversarial system of justice. The Commission's Media Release accompanying the Issues Paper is reproduced below.

ALRC urges rethink on legal education and training

The important issue of education for lawyers and judges is under the microscope, with the release of an issues paper by the Australian Law Reform Commission (ALRC).

ALRC Commissioner Kathryn Cronin said the subject of legal and judicial education and training was a sensitive one for some sections of the legal profession, but was a vital component to efficient reform of the justice system.

The issues paper, *Rethinking legal education and training*, is part of the ALRC's comprehensive review of the adversarial system of justice. The inquiry, due to be completed in April 1999, has the potential to have a significant impact upon the federal civil litigation system.

Dr Cronin said legal education – in a university setting and beyond – could influence the effectiveness and adaptability of dispute resolution in Australia.

"There have been significant reforms in Australia's litigation system over the past two decades. Lawyers and courts are under pressure to deliver better services in terms of cost and efficiency, greater access to law and participation in legal processes.

"The ALRC cannot accurately predict the direction of future reform to the litigation system. However, it is possible that over time, the roles of courts, lawyers and others within the litigation system will change in quite fundamental ways," Dr Cronin said.

"Legal education and training will need to respond to these demands but also has the potential to contribute to reform by changing the way in which lawyers and litigants use litigation and other dispute resolution processes."

Some of the subjects raised in the issues paper include:

- Judicial education
- The role of universities & the profession in educating lawyers
- Practical legal training
- The format & scope of continuing legal education programs

Dr Cronin said public debate about legal education and training still tended to concentrate on the somewhat controversial issues of gender and cultural awareness of the judiciary.

"There are a myriad of other issues that need serious consideration. For example, what educational and training prerequisites could be required of judicial appointees? How could current judicial education programs be extended? What are the ramifications of extended judicial education and training? How will changes impact upon the litigation system and even judicial independence?"

Dr Cronin said the increasing use of alternative dispute resolution procedures, advances in technology and changing community expectations also required new skills of lawyers.

"There is also a need to provide education for other professional groups, such as expert witnesses and paralegals, to ensure litigation and other forms of dispute resolution are used effectively."

The ALRC is seeking comment from any interested individual or organisation on its issues paper, which is available upon request.

[To obtain a copy of the issues paper contact Leora Harrison on (02) 9284 6309 or 0419 500 317.]

Subsequently, on 20 August 1997, the Law Council issued the following Media Release:

ALRC Should Not Reinvent the Legal Training Wheel

Australia's peak legal body, the Law Council of Australia, says the Australian Law Reform

Commission (ALRC) is wasting valuable resources and “reinventing the wheel”, in comprehensively reviewing all levels of Australian legal education when such reviews have already been undertaken in recent years.

The Council says the ALRC should limit its review of the legal education system only to those parts of the system which have a direct impact on making the litigation system more accessible, cheaper and simpler, such as judicial training and the development of advocacy – and other dispute resolution – skills.

The Law Council’s comments have come in response to the ALRC issues paper, *Rethinking Legal Education and Training*, released earlier this week.

“We would prefer limited Government funding be spent on more useful projects than a theoretical, generalised consideration of legal education” says the President-elect of the Law Council, Mr Bret Walker SC. “The ALRC has enough on its plate without trying to tackle broad issues such as whether law degrees are now generalist degrees, what compulsory subjects should be taught at law school, and what skills training should be undertaken in undergraduate law courses.

“Comprehensive reviews have already looked at these issues, particularly in relation to undergraduate courses. These reviews have included the 1987 Pearce Report on Australian Law Schools (conducted for the Commonwealth Government), and a 1992 Department of Employment, Education and Training study to review Australian Law Schools as a follow-up to the Pearce Report. Undergraduate legal education and admission to practise have been continuously and constructively reviewed. It is difficult to see that any reforms not previously considered could have any impact on the cost of litigation, and access to Australian courts.

“The Law Council is very keen for rigorous, empirical research into the current system of litigation in the real world, and appreciates how costly good research of that kind can be. It is a

pity money is being diverted from that urgent priority to this much less useful exercise.

“The Law Council regards the judicial training of legal professionals – as they move to become judges, and when they are judges – as an important issue which needs further analysis by the ALRC. The Law Council is of the belief that such training is crucial.

“Indeed, the Law Council believes that judicial training should be the major focus of the ALRC’s review of legal training. The really important substance not yet addressed by the ALRC – and to which we look forward – is the actual content of what would-be, and serving, judges may properly be taught.”

In response the ALRC issued a further media release on 20 August.

Legal education and training

The Australian Law Reform Commission has welcomed the participation of the Law Council of Australia, in the discussion surrounding the release of its recent issues paper *Rethinking legal education and training*.

The ALRC’s issues papers are designed to stimulate discussion – both within the legal profession and the wider community – about important issues surrounding its major review of the federal civil litigation system.

President Alan Rose said the Law Council and the ALRC clearly had similar objectives in wanting a cheaper, simpler, more accessible litigation system.

But, Mr Rose has rejected claims the ALRC is “reinventing the wheel” and wasting resources by reviewing Australian legal education.

“During our consultations with members of the legal profession, academics, judges and others involved in the federal civil litigation system, specific issues about how legal education can impact upon litigation have been raised for examination.

“Issues about legal education were also the subject of a recent conference, held in Brisbane in

July. That conference was co-hosted by the ALRC and attended by a range of eminent Australian and overseas judges, lawyers and others.

"The importance of legal education in developing skills for new lawyers, its impact on legal culture and expectations, and the role it can play in reforming the legal system cannot and should not be under-estimated," Mr Rose said.

"In its media release, the Law Council has acknowledged the need for an examination of judicial training. However, judicial education and training is intimately connected with the wider issue of general legal education. The inquiries terms of reference specifically point to the need to consider the 'significance of legal education and professional training to the legal process'.

"The ALRC will, of course, take advantage of previous studies and reviews of legal education."

Mr Rose said the ALRC recognised the need for vigorous, empirical research into the current system of litigation.

"A recurring theme in ALRC consultations on the civil litigation system is the lack of data about the operation of the system. In response to these concerns, the Commission has attempted first, to determine what information is currently available and second, to establish some qualitative and quantitative methodologies to obtain more relevant information.

"That work is in its early stages, but the Law Council can rest assured that we have a number of empirical research projects underway."

Mr Rose said the issues paper *Rethinking legal education and training* was produced partly as a result of a collaboration with the National Institute of Law Ethics and Public Affairs, through a grant supplied by the Australian Research Council.

Alteration to ALRC Terms of Reference on Adversarial/ Inquisitorial System of Litigation

On 4 September 1997, the Attorney-General and Minister for Justice, the Hon Daryl Williams AM QC MP issued the following News Release.

ALTERATION OF TERMS OF REFERENCE TO THE AUSTRALIAN LAW REFORM COMMISSION

The valuable work of the Australian Law Reform Commission (ALRC) is promoting examination of legal matters is to be refocused to concentrate on important issues in civil litigation where future reform is likely to deliver significant benefits.

The Government's reform agenda on a range of legal matters necessitates an alteration to the ALRC's 1995 terms of reference to ensure that the Commission's work is not overlapping on reforms already underway.

Reforms designed to improve the operation of the litigation processes, Commonwealth review tribunals and other dispute resolution mechanisms, especially in family law, are already under way through the Government's reform agenda.

It would not be worthwhile use of the Commission's resources to examine areas where reforms have been determined in principle or are being considered and changes are likely to be implemented before the Commission delivers its final report. Of course, the process of necessary and desirable reform can not be left until the Commission completes its work.

At the same time, having considered issues raised by the Commission in its Issues Paper IP20 *Rethinking the federal civil litigation system*, I believe greater emphasis should be given to particular key issues in civil litigation where reform is most likely to deliver reduced costs and delays.

I have also extended the reporting date to 30 April 1999, as requested by the Commission.