

Lack of Research Data Impedes ALRC Inquiry, says LCA

The Law Council of Australia (LCA) has voiced its concerns about a lack of research data to support the Australian Law Reform Commission's (ALRC) major inquiry into federal civil litigation and has noted this problem in its wide-ranging response to the ALRC's Issues Paper 20, *Rethinking the federal civil litigation system*.

"To be fair, the ALRC has acknowledged that there is a major lack of research data in the area of civil litigation. But then it has gone and posited far-reaching reform suggestions, intertwined with unconstructive criticisms of the civil litigation process and the legal profession. The very nature of the ALRC as a publicly funded law reform body demands that reform proposals are based on proper research, investigation and debate," said President of the Law Council, Bret Walker, SC.

The LCA believes that the Commission has a duty to inform the federal Attorney-General that its inquiry is being hampered by insufficient empirical research and data.

This criticism is echoed in the LCA's reaction to the ALRC's recently released Issues Paper 22 – *Rethinking family law proceedings*.

This paper looks at the "nuts and bolts" of the way the Family Court operates and seeks views on possible ways to improve access to family law justice.

Mr Alan Rose, President of the ALRC says that, "In essence, the Commission is asking what alternative processes are available to help achieve more accessible and user-friendly court system."

The paper also identifies lack of data as a key issue for discussion and targets the lack of clear objectives, adversarial and alternative dispute resolution, the role of family litigation and

non-litigious alternatives, funding, costs, managerial judging and case management and the role of lawyers and their professional associations as other key areas for discussion.

Following the release of this issues paper, the Law Council has urged the ALRC to gather extensive research data in its inquiry, suggesting that popular myths should not form the basis of any reform proposal.

Mr Walker said that the Law Council was committed to working constructively with the ALRC on this issue and would also respond to this issues paper in a detailed manner.

However, he went on to suggest that some of the comments offered by the ALRC regarding family law proceedings were at odds with the reality of present-day family law practice.

"Whilst the ALRC is advocating the importance of mediation and alternative dispute resolution in settling family law cases before they reach the court, it should acknowledge that the legal profession has fully embraced mediation, counselling and conciliation and is promoting these widely in resolving family law cases," said Mr Walker.

The LCA also suggests that the ALRC is ill-informed in the area of costs in family law cases. The ALRC says that potential litigants in family law cases need to be aware of costs they might incur and in this they have the full support of the LCA.

However, the LCA considers the family law jurisdiction as being the high water mark of fee disclosure in the Australian legal system and has made the point that the Family Court already requires compulsory disclosure of costs to clients and stage-based costs disclosure.

Both ALRC issues papers are available for consultation at the Law Society.

MISSING WILL

**JAMES GUBB late of
347 Wilsons Rd
WHITTINGTON VIC 3219**

I act on behalf of the *de facto* widow of the deceased who died on 12 November 1997.

She believes that the deceased was working in Darwin during 1995 and early 1996.

Would anyone holding or knowing the whereabouts of any will of **James Gubb** please contact:

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PO Box 154
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Advocacy Book Takes Prize

The international Association of Continuing Legal Education (ACLEA) announced at their recent annual meeting that they had chosen an Australian publication for their prestigious Award for Outstanding Achievement in Publications.

Hampel on Advocacy, by Max Perry of the Victorian Bar was honoured by the five judges, drawn from continuing legal education educators from the US and Canada.

The book, published by Leo Cussen Institute, was chosen for its practicality and comprehensive information and was considered by the judges to be "one of the most innovative publications on this subject that we have ever seen."

Hampel on Advocacy was prepared in collaboration with Ms Li Ming Teh of the Leo Cussen Institute and with the guidance of Mr Justice George Hampel of the Supreme Court of Victoria. It is available from the Leo Cussen Institute and costs \$40.