

Chapter 6

Making a reference to the Commission

The two issues that arise when considering making references to the Commission are who should be able to make references and which matters should be referred. The Committee concludes that while others, including the Commission, may suggest references to the Attorney-General, the Attorney-General alone should have the power to refer matters to the Commission. With regard to the second issue, the Committee considers that the references should reflect the role of the Commission as a national law reform body and should not be limited in any way to, or by exclusion from, specific subject areas. The Committee believes that there should not be a definitive set of criteria to determine what references should be made to the Commission. The Committee also believes that an annual work plan will enhance the management and flow of the Commission's work.

6.0.1 Sections 6 and 7 of the Act regulate the provision of references to the Commission.²²⁷ The work of the Commission is undertaken pursuant to references 'made by the Attorney-General, whether at the suggestion of the Commission or otherwise'.²²⁸ The subject matter of references is not defined by the Act. In practice, references are the result of a collaborative effort between the Attorney-General's Department and the Commission. A senior officer of the department discusses reference proposals with members of the Commission.²²⁹ There is fairly constant ongoing discussions between the two organisations. They discuss whether emerging issues are appropriate for reference and the Commission's resource capability to deal with a proposed project.

227 See 1.4.2 to 1.4.4 above.

228 Section 6 of the Act.

229 Attorney-General's Department, *Submissions*, p. S310–S311.

6.1 The power to refer

6.1.1 At present only the Attorney-General has the power to make references to the Commission and most submissions support this position.²³⁰

6.1.2 In the past there have been proposals to enable others to refer matters to the Commission.

6.1.3 In 1990 the National Legal Aid Advisory Committee recommended that the Act be amended to enable the Commission to initiate or pursue law reform references other than those nominated by the Attorney-General.²³¹ In its response to the report, the government stated that it saw no need so to amend the Act, as it considered the Commission was already able to suggest appropriate references to the Attorney-General. The response argued that the final approval of the Attorney-General for references was desirable to ensure the coordination of activities of the Commission and other law review bodies, such as the FLC and the ARC.²³²

6.1.4 In 1991 the Commission suggested to the Attorney-General that the Act be amended:²³³

- to permit parliamentary committees to refer certain matters to it;
- to make it clear that the Commission should take into account changes to administrative law and the principles on which they are based; and

230 For example X. Connor, *Submissions*, p. S241.

231 National Legal Aid Advisory Committee, *Legal Aid for the Australian Community*, AGPS, Canberra, 1990, p. 322.

232 National Legal Aid Advisory Committee, *Annual Report 1990–91*, p. 18.

233 Law Reform Commission, *Annual Report 1991*, (ALRC 1991) p. 11.

- to include references to other international conventions and agreements that deal with human rights such as the United Nations Convention on the Rights of the Child.²³⁴

6.1.5 Those suggestions were not taken up.

6.1.6 Several submissions contained suggestions that the Commission be given a stronger measure of self referencing power.²³⁵ The Trustee Companies Association believed this would overcome the possible inefficiencies that might result if the Commission were to pursue an unstructured approach to law reform.²³⁶

6.1.7 The Commission is not in favour of having a statutory power to initiate its own references.²³⁷ In practice, the Commission can seek references in the course of formal or informal consultations with the Attorney-General or Attorney-General's Department. It argues that to be effective, it must take into account that resources are best directed to produce recommendations which address the government's agenda for reform.

6.1.8 The Commission proposed that section 6(1) of the Act be amended to expressly state that the Commission may make recommendations to the Attorney-General concerning new possible references.²³⁸

234 The Commission is required under section 7 of the Act to ensure that, as far as practicable, its proposals are consistent with the Articles of the International Covenant on Civil and Political Rights.

235 J. Goldring, *Submissions*, p. S7; R. Simmonds, *Submissions*, p. S10; FLC, *Submissions*, p. S103; Trustee Companies Association of Australia, *Submissions*, p. S175; Law Society of South Australia, *Submissions*, p. S181; and S. Glacken, *Submissions*, p. S252.

236 Trustee Companies Association of Australia, *Submissions*, p. S175.

237 ALRC, *Submissions*, p. S360.

238 ALRC and Attorney-General's Department joint submission, *Submissions*, p.S514.

6.1.9 Mr David Kelly (one time chairman of the now defunct Victorian Law Reform Commission) also argued that the Commission's work should reflect the priorities in a government's legal policy.²³⁹ Mr Stephen Mason also argued that the Commission should not establish its own reform program because it might be wasteful.²⁴⁰

Comments

6.1.10 The Commission already has the power under the Act to make suggestions for references to the Attorney-General. Section 6(1) states that the

. . . functions of the Commission are, in pursuance of references to the Commission made by the Attorney-General, whether at the suggestion of the Commission or otherwise: . . .

The Committee does not consider that a more explicit statutory restatement of that power will have a substantive effect on the current practices. What the Attorney-General does with those proposals depends on how persuasively the Commission argues the case and on the Commission's working relationships with the Attorney-General and the department.

6.1.11 The Committee understands that arguments against other people or bodies making law reform references include, that another body's work may affect the matter, or that the impetus for law reform is removed from the government of the day, which may have consequent effects on consideration and implementation.

Recommendation 21

The Committee recommends that the Attorney-General continue to have the sole power to make references to the Commission, and that the Commission's statutory right to make suggestions about references should continue.

239 D. Kelly, *Submissions*, p. S277.

240 S. Mason, *Submissions*, p. S301.

6.2 Whether a reference should be made

6.2.1 The Attorney-General's Department believes that the suitability of references for the Commission is subjective and that it is 'difficult to identify any clear criteria which will necessarily identify a subject as suitable or unsuitable for reference'.²⁴¹ The guiding criteria for identifying references have generally been:

- whether the issue in question raises serious questions of law and/or legal policy, or whether it is more properly classified as a policy issue better addressed by some other body;
- whether there is any more appropriate specialist body to which the issue should be committed - eg, the Administrative Review Council;
- whether the issue is one likely to benefit from the application of the Commission's broadly-based consultative methodologies;
- whether the Commission would be able to deal with the issue within time constraints that may be required, having regard to other existing references and their competing priorities;
- whether other bodies, such as Departments of State, have the capacity to attract and retain qualified staff able to undertake detailed law reform exercises which may only be called for periodically; and
- whether the issue is one which the government believes should be dealt with within the Executive rather than by an independent body - for example, because commitment has already been given to broad policy parameters.²⁴²

6.2.2 Mr David Kelly proposes one overriding principle to assess the suitability of references to the Commission:

References should be given on the basis of the value to the government and the community of the likely outcome of work on those references.²⁴³

241 Attorney-General's Department, *Submissions*, p. S311.

242 *ibid.*

243 D. Kelly, *Submissions*, p. S277.

6.2.3 The BCA suggests that references should only be made to the Commission where there is a clear case for law reform and there are 'demonstrable economic and social benefits to be gained' from law reform.²⁴⁴

6.2.4 In particular, Professor Simmonds suggested that in order to assess the suitability of references the Commission should address Australia's federal structure and the need to develop new cooperative arrangements with the states.²⁴⁵

6.2.5 Professors Chesterman, Graycar and Zdenkowski suggested three features that would make a project suitable for reference to the Commission:

- it needs lengthy, in-depth examination of some branch or branches of the law;
- it requires extended consultation with the community at large or with a significant range of interest-groups; and
- change, if any, is likely in one or more of the following:
 - the way in which major justice or policy issues are dealt with under the law;
 - the law's response to a new social or economic challenge;
 - the total 'package' of rules, regulations and administrative practices which governs a major activity within the private or public sector.²⁴⁶

6.2.6 Mr Sturt Glacken suggested the Commission's work should be directed to 'those matters which have the greatest need for long term reform'.²⁴⁷ Hon Xavier Connor also suggested that suitable subjects

244 BCA, *Submissions*, p. S196.

245 R. Simmonds, *Submissions*, p. S10.

246 M. Chesterman, R. Graycar and G. Zdenkowski, *Submissions*, p. S214.

247 S. Glacken, *Submissions*, p. S250.

should be of long or medium term interest and not 'hot' or short term issues.²⁴⁸

6.3 Suitable matters for reference to the Commission

6.3.1 Some evidence focussed on the subject areas for possible references. Certain submissions stated that the Commission is particularly suited to work on issues of social justice and should continue to work in this area.²⁴⁹

6.3.2 Some submissions argued that the Commission should continue to work in the administrative law area, both where there are large scale reforms to administrative rules, regulations and practices²⁵⁰, and in matters determining the merits of review by administrative bodies and judicial review by courts²⁵¹.

6.3.3 The NSW Law Society argued that the Commission should continue to review broad policy issues.²⁵² The then president, Mr John Nelson suggested the Commission might have a role in the government's 'Reclaiming Justice' project.

6.3.4 Some evidence contained arguments that the Commission should play a greater role in business and commercial law reform²⁵³ and in developing economic regulation.²⁵⁴

248 X. Connor, *Submissions*, p. S241.

249 Humanist Society of Victoria, *Submissions*, p.S15–S16; M. Chesterman, R. Graycar and G. Zdenkowski, *Submissions*, p. S214; Minister for Foreign Affairs, *Submissions*, p. S218; J. Crawford, *Submissions*, p. S258; and Minister for Immigration and Ethnic Affairs, *Submissions*, p. S261.

250 M. Chesterman, R. Graycar and G. Zdenkowski, *Submissions*, p. S215.

251 ACS, *Submissions*, p. S230.

252 Law Society of New South Wales, *Submissions*, p. S12.

253 Trustee Companies Association, *Submissions*, p. S175.

254 M. Chesterman, R. Graycar and G. Zdenkowski, *Submissions*, p. S214.

6.3.5 The Commission proposes, and the Attorney-General's Department agrees that the Commission should continue to be given references in any aspect of the law and include joint references where appropriate.²⁵⁵ They also suggest that the criteria they identified in their earlier submissions be used to assess the suitability of references.

6.3.6 The Commission argued that it should undertake references which require the development of detailed legal policy on issues from all sectors of the community.²⁵⁶ It also felt the Commission benefits from a mix of references and acknowledged the need to develop and maintain close relationships with other specialist law reform bodies. The Commission proposes references in the following areas:

- social equity and access to justice
- economic regulation and business and commercial law
- operation of the legal system
- international law
- family law
- environmental law
- criminal law
- intellectual property law.²⁵⁷

6.3.7 The Commission developed this list from issues arising in the course of its work. It suggests that some would be suitable as joint references.

6.3.8 The Department of Environment, Sport and Territories suggested that the Commission undertake work on the legal regimes of the Commonwealth responsibility on Norfolk Island, external territories and the Jervis Bay Territory because they require reform that addresses their individual needs.²⁵⁸

255 ALRC and Attorney-General's Department joint submission, *Submissions*, p.S508.

256 ALRC, *Submissions*, p. S356.

257 ALRC, *Submissions*, pp. S357–S358.

258 Department of Environment, Sport and Territories, *Submissions*, pp. S237–S238.

6.3.9 Hon Wayne Goss, the Premier of Queensland, suggested there might be more joint references to law reform commissions generally.²⁵⁹

Comments

6.3.10 The Committee considers it is not desirable to limit references to the Commission in any way to specific subject areas. What new reference the Commission takes on should undoubtedly be influenced by what references the Commission already has, and the urgency of the reference.

6.3.11 The Committee considers that the Commission should have a mix of medium term and long term projects which increases the possibility of the Commission having capacity to commence important projects as they arise.

6.3.12 The Committee believes that a set of definitive criteria is not appropriate and would be too limiting with the possibility of denying to government the flexibility in undertaking law reform. Systematic development of the law demands a sustained review of the policy. The scope of inquiry into reform should not be too narrowly drawn.

6.3.13 The Commission has demonstrated an ability and a capacity not enjoyed by other bodies to undertake difficult and long term projects.

Recommendation 22

The Committee recommends that there should be no restriction on the scope of references given to the Commission.

259 Premier of Queensland, *Submissions*, p. S249.

6.4 Annual work program

6.4.1 The ACS suggested the Commission should offer a consultancy review service to federal departments and agencies which would share the associated costs with the Commission.²⁶⁰ In effect this would mean that government departments could be identifying areas for review and proposing references.

6.4.2 The Commission suggests that the ACS proposal about consultancy work could be incorporated into an annual work program that it proposes should be included in its annual report.²⁶¹ The Commission and the Attorney-General's Department agree the Commission should prepare a work program to describe progress on current references and new references which the Commission proposes should be undertaken in the year to follow.²⁶² The Attorney-General should continue to make references as necessary and changes to the work program should be agreed between the Attorney-General and the Commission at the time a new reference is given.

6.4.3 A related proposal by the Commission is for the establishment of a law reform advisory committee.²⁶³ It is suggested as ensuring a more regular and orderly consideration of the allocation of law reform projects to the Commission. This proposal builds on a suggestion by Mr Glacken for a committee to help promote a more structured and systematic approach to law reform in a federal system.²⁶⁴

6.4.4 The Commission also suggests that as related measures, law reform should be a standing item on the agenda of the Standing

260 ACS, *Submissions*, p. S231.

261 ALRC, *Submissions*, pp. S360–S361.

262 ALRC and Attorney-General's Department joint submission, *Submissions*, pp. S508–S509.

263 Refer chapter 4 above.

264 S. Glacken, *Submissions*, p. S251.

Committee of Attorneys-General (SCAG), and the Attorney-General should advise the SCAG of that committee's views about how law reform projects should be allocated between federal agencies and the states and territories and how uniformity of laws should be achieved.

6.4.5 The Attorney-General's Department agrees on the underlying concept of broad consultation to identify subjects suitable for reference to the Commission.

Comments

6.4.6 As the Committee discusses in chapter 9, it does not believe a formal structure will assist the processing of law reform proposals. The Committee believes that the Commission should nevertheless undertake broad consultation to identify subjects suitable for future reference. These consultations should be reflected in its work program.

6.4.7 The Committee considers that a consultancy review service should only be included in terms of a formal references to the Commission. The Committee also considers that work plans will enhance the management and flow of the Commission's work.

6.4.8 As the Commission already collects and publishes information about law reform proposals and work in Australia, it should be well placed to prepare annual work plans.

Recommendation 23

The Committee recommends that the Commission should prepare an annual work plan.

Chapter 7

Amendments to the *Law Reform Commission Act 1973* and other legislation

*The Commission made numerous proposals for amendments to the Act and related legislation. In this chapter the Committee considers ten of the proposals that relate to administrative or machinery provisions as well as to drafting considerations. The other four suggestions are considered by the Committee elsewhere in the report.*²⁶⁵

*The proposals which were the subject of round table discussions in public hearing between the Commission, the Attorney-General's Department, the OPC and the Committee are considered below.*²⁶⁶

7.1 Modernisation of the format

7.1.1 The Commission proposed, and the Attorney-General's Department agreed that the Act be redrafted in accordance with modern drafting styles.²⁶⁷ The earlier proposed amendments did not contemplate substantive changes and included reorganising and renumbering provisions.²⁶⁸

Comments

7.1.2 The Committee supports modernisation of the Act and notes that the proposal does not contemplate amendments of a substantive nature. The appropriate time for the Commission to discuss its proposed changes

265 The proposal to include statutory provisions about the conduct of inquiries is considered in chapter 3 above. The two proposals to amend the Commission's statutory functions are considered in Chapter 4 above. The proposal about the president's ex-officio membership of the ARC is considered in Chapter 8 below.

266 *Transcript*, pp. 454–513.

267 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S512.

268 ALRC, *Submissions*, p. S160.

with the drafters is when instructions are given for substantive amendments to the Act.

Recommendation 24

The Committee recommends that the *Law Reform Commission Act 1973* be redrafted in accordance with modern drafting styles. The Commission should discuss modernisation proposals with the drafters when instructions are prepared for substantive amendments to the Act.

7.2 Deputy president

7.2.1 The Commission proposed, and the Attorney-General's Department agreed, that the Act be amended:

- to make it clear the deputy president is a member of the Commission;
- to enable persons who are not already members of the Commission to be appointed as deputy president and member, without first having to be appointed as a member;
- by replacing the provision that the deputy president can be removed at the discretion of the Governor-General, with standard conditions concerning the appointment and removal of statutory office holders;
- to make it clear that the deputy president is eligible for re-appointment;
- to enable the deputy president, or person otherwise exercising the powers of president, to act in the position of president; and

- to provide for the appointment of a member of the Commission as acting president when the president and deputy president are unavailable to act.²⁶⁹

Comments

7.2.2 The Committee accepts these proposals and notes that they concern machinery provisions and that the amendments clarify the position of the deputy president, and streamline the operations of the Commission.²⁷⁰

7.2.3 The Committee notes that there have been only two deputy presidents both of whom have been appointed in a situation where the president's term of office was about to expire, but had not been replaced. The Committee considers that, because of the significance of the position, if there is a deputy president, he or she should be a full-time member.

²⁶⁹ ALRC and Attorney-General's Department joint submission, *Submissions*, p. S512.

²⁷⁰ ALRC, *Submissions*, pp. S161–S162.

Recommendation 25

The Committee recommends that the Act be amended:

- to make it clear the deputy president is a member of the Commission;
- to enable persons who are not already members of the Commission to be appointed as deputy president and member, without first having to be appointed as a member;
- by replacing the provision that the deputy president can be removed at the discretion of the Governor-General, with standard conditions concerning the appointment and removal of statutory office holders;
- to make it clear that the deputy president is eligible for re-appointment;
- to enable the deputy president, or person otherwise exercising the powers of president, to act in the position of president; and
- to provide for the appointment of a member of the Commission as acting president when the president and deputy president are unavailable to act.

Recommendation 26

The Committee further recommends that if there is a deputy president, then he or she should be a full-time member.

7.3 Staff appointments

7.3.1 The Commission proposed, and the Attorney-General's Department agreed, that the Act be amended to allow for staff to be appointed under either the *Public Service Act 1922* or the *Law Reform Commission Act 1973*.²⁷¹ All staff are currently employed under sections 22 of the Act on terms and conditions set by the president with the approval of the Attorney-General. They do not have mobility to move to other federal agencies in the same way as public servants.²⁷²

7.3.2 At the round table discussions Mr Chris Sidoti said that in particular, the Commission's administrative staff would benefit from increased mobility.²⁷³

Comments

7.3.3 The Committee considers that giving the Commission power to appoint staff under either Act would protect the Commission's flexibility to appoint staff. The Committee considers that staff appointed under the Public Service Act would have increased mobility in their jobs, which would enhance staff morale and would not affect the independence of the Commission.

Recommendation 27

The Committee recommends that the *Law Reform Commission Act 1973* be amended to enable the president to appoint staff under either the *Public Service Act 1922* or the *Law Reform Commission Act 1973*.

271 ALRC and Attorney-General's Department, *Submissions*, p. S512.

272 ALRC, *Submissions*, p. S163.

273 *Transcript*, pp. 455–456.

Recommendation 28

The Committee further recommends that appointments under the *Law Reform Commission Act 1973* be made on terms and conditions determined by the Commission in consultation with the Public Service Commission.

7.4 Disclosure of interests

7.4.1 The Commission and the Attorney-General's Department agreed that members of the Commission should be required to disclose all relevant personal interests where they may conflict with the performance of their duties.²⁷⁴ The Commission originally made a proposal to amend the Act to include similar requirements made of the members of other statutory authorities.²⁷⁵

7.4.2 This was not a formal proposal of the Commission and the Attorney-General's Department because they believe proposed amendments to the *Audit Act 1901* might cover some of the same requirements.²⁷⁶

Comments

7.4.3 The Committee notes that this issue was raised by the Commission, and it is not considered by the Committee to be a significant problem, having regard to the nature of work done by the Commission.

274 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S518.

275 ALRC, *Submissions*, p. S163.

276 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S518.

7.4.4 The Committee considers that members of the Commission are at liberty to disclose their pecuniary and non-pecuniary personal interests where those interests may conflict with the performance of their duties. However, the Committee does not think it is necessary for this disclosure to be required in legislation.

7.5 Consultants

7.5.1 The Commission proposed, and the Attorney-General's Department agreed, that the Act should be amended to enable the Commission, rather than the president or the Attorney-General to appoint consultants.²⁷⁷

7.5.2 The Commission acknowledged that the current arrangement worked well but argued that it should have a power similar to that of other statutory authorities.²⁷⁸

Comments

7.5.3 The Committee notes that the Attorney-General has delegated this power to the Attorney-General's Department and considers that the proposal would not represent a diminishing of the importance of the role of the consultant.²⁷⁹

Recommendation 29

The Committee recommends that the *Law Reform Commission Act 1973* be amended to enable the Commission to appoint consultants.

277 ALRC and Attorney-General's Department, *Submissions*, p. S513.

278 ALRC, *Submissions*, p. S164.

279 Attorney-General's Department, *Submissions*, p. S317.

7.6 Delegations

7.6.1 The Commission and the Attorney-General's Department proposed that the Act be amended to confer chief officer powers on the president of the Commission, or any person acting in that position, and to ensure that such powers can be delegated to members of staff of the Commission. The Commission also proposed that other powers such as the establishment of divisions should be conferred on the Commission, and that the Act should make appropriate provision for their exercise by a member or members of the Commission as delegate of the Commission.²⁸⁰

Comments

7.6.2 The Committee notes that the absence of such powers of delegation is in part a reflection of the age of the Act.²⁸¹

7.6.3 The Committee considers that the chief officer powers of the Commission should be conferred on the president. The Committee also considers that the powers presently conferred on the president ought to be conferred on the Commission, and there should be provision for the delegation of powers of the Commission to the members and the most senior staff member.

7.6.4 The Committee considers that these measures would promote flexibility and continuity in the operations of the Commission especially when the president is not available.

280 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S513.

281 *Transcript*, pp. 480–482.

Recommendation 30

The Committee recommends that the *Law Reform Commission Act 1973* be amended to confer chief officer powers on the president, or any person acting in that position, and to enable such powers to be delegated to members of the Commission, or to the most senior staff member. The Committee further recommends that the president's other powers should be conferred on the Commission and that the Act be amended to make provision for a member of the Commission to exercise those powers as delegate of the Commission.

7.7 Immunity from civil action

7.7.1 The Commission proposed, and the Attorney-General's Department agreed, that the Act be amended to give members and staff of the Commission immunity from civil action – similar to that provided in the *Human Rights and Equal Opportunity Commission Act* – the cause of which necessarily or reasonably arises in the ordinary course of duties being undertaken for the Commission.²⁸²

Comments

7.7.2 The Committee notes that the members and staff of other statutory authorities have similar immunity, and considers the proposal should be accepted.²⁸³

282 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S513.

283 ALRC, *Submissions*, p. S167 and *Transcript*, pp. 487–488.

Recommendation 31

The Committee recommends that the *Law Reform Commission Act 1973* be amended to give members and staff of the Commission immunity from civil action the cause of which necessarily or reasonably arises in the ordinary course of duties being honestly undertaken for the Commission.

7.8 Principal officer

7.8.1 The Commission proposed, and the Attorney-General's Department agreed, that the *Freedom of Information (Miscellaneous Provisions) Regulations* Schedule 2, be amended to record the president as the Commission's 'principal officer'.²⁸⁴

7.8.2 This proposal is intended to give effect to the recent corporate restructure in which the position of Secretary and Director of Research was abolished.²⁸⁵

Comments

7.8.3 The Committee considers that in light of its strong preference discussed in chapter 5 to reinstate the position of Secretary and Director of Research, this proposal should not be adopted.

284 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S513.

285 ALRC, *Submissions*, p. S169.

7.9 Monetary value of contracts

7.9.1 The Commission proposed, and the Attorney-General's Department agreed, that the Commission's expenditure limit without the Attorney-General's approval be increased from \$100,000 to \$250,000.²⁸⁶

7.9.2 The Commission originally proposed that the expenditure limit be removed because other statutory authorities did not have such a limit.²⁸⁷ The Attorney-General's Department was not in favour of removing the limit²⁸⁸ and Mr Skehill suggested that an extended limit to \$200-250,000 would be more appropriate.²⁸⁹

Comments

7.9.3 The Committee notes that a similar limit is included in the *Federal Court Act 1976* and considers that the proposed expenditure limit of \$250,000 without the express authority of the Attorney-General is reasonable.

Recommendation 32

The Committee recommends that the *Law Reform Commission Act 1973* be amended to increase the Commission's expenditure limit without the Attorney-General's approval to \$250,000.

286 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S514.

287 ALRC, *Submissions*, p. S169.

288 Attorney-General's Department, *Submissions*, p. S318.

289 *Transcript*, p. 491.

7.10 Annual Report

7.10.1 The Commission and the Attorney-General's Department agreed that the Commission be required by statute to submit an annual report to Parliament, irrespective of whether the requirement is under its own Act, the *Audit Act 1901* or any replacement Act.²⁹⁰

Comments

7.10.2 The Committee notes that the Commission has always made an annual report to the Attorney-General and that it would like to formalise this practice.²⁹¹ The Committee considers that not only do the annual reports of the Commission contain very useful information but that it is appropriate for the Commission to continue to provide an annual report.

Recommendation 33

The Committee recommends that the Commission be required by statute to submit an annual report to parliament.

290 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S518.

291 *Transcripts*, p. 487.

Chapter 8

Relationships between the Commission and other federal bodies

This chapter examines the roles of some of the statutory and non-statutory bodies which advise the federal government. After considering the relationship each has with the Commission, the Committee concludes that the Administrative Review Council, the Companies and Securities Advisory Committee and the Family Law Council have distinctive roles and should continue as separate bodies.

However, the Commission should develop mechanisms to foster cooperation including, where relevant, joint projects. Duplication should be avoided and better communication promoted.

The Copyright Law Review Committee is not resourced sufficiently well to enable it to function effectively as an independent body. Because of the increasing value to Australia of expertise on copyright law, this body should be strengthened and adequately resourced.

The relationship between the Commission and the Attorney-General's Department, while sound, could be put on a better footing by encouraging more regular contact. The Commission should have formal discussions with the Attorney-General on a quarterly basis.

The relationship between the Commission and the Office of Parliamentary Counsel is defined largely by the issue of legislative drafting in Commission reports. The relationship can be improved by formalising the structure of consultation on legislative drafting.

8.0.1 Since the establishment of the Commission in 1975 a number of other statutory and non-statutory bodies which advise the government on law reform have been established. Several submissions noted the range of advisory agencies and commented on the extent of liaison which should exist between them.

8.0.2 The Commission does not specialise in a specific area of law. It describes itself as a generalist law reform body and refers to the list of current references as an indicator of its broad range of operations.²⁹²

8.0.3 By comparison, the names of four bodies mentioned in the terms of reference indicate the narrow focus on specialist subject matters that those bodies deal with: the Administrative Review Council (ARC), the Companies and Securities Advisory Committee (CASAC), the Copyright Law Review Committee (CLRC) and the Family Law Council (FLC).

8.0.4 Many submissions, including those from the advisory bodies, focus on the distinctions between them and the Commission. For example, one distinction between the Commission and some of the other advisory bodies is the role of research in each organisation's operations. The Family Law Council stressed its function as an advisory body rather than a research organisation. It saw the Commission's role as a research body.²⁹³ That is, it was able to conduct research and provide advice of a detailed nature. The advice the FLC provided was described as 'specialist advice at a policy level'.²⁹⁴

8.0.5 While each of these bodies comes within the Attorney-General's portfolio, each has its own separate reporting relationship with the Attorney-General or the Minister for Justice.

8.1 Specialist law advisory bodies

A. Administrative Review Council

8.1.1 The ARC is a statutory authority established by the *Administrative Appeals Tribunal Act 1975*. Its role is to provide policy

292 ALRC, *Submissions*, p. S149.

293 FLC, *Submissions*, p. S106.

294 *ibid*, p. S108.

advice to the Minister for Justice on strategic and operational issues affecting Commonwealth administrative decision-making processes, particularly processes for the review of government decisions.

8.1.2 The ARC is responsible for the broad oversight of Australia's administrative review system – the Administrative Appeals Tribunal, the Ombudsman and the Federal Court's jurisdiction to review administrative action. The ARC further states that:

It is also responsible for the general oversight of a number of specialist tribunals. As part of this role, the ARC seeks to facilitate the work of all administrative review bodies at the Commonwealth level by assisting them to cooperate in a principled, coordinated and cost-effective way.²⁹⁵

8.1.3 The ARC has a separate secretariat based in Canberra which is staffed by officers of the Attorney-General's Department.

B. Companies and Securities Advisory Committee

8.1.4 The CASAC is a statutory authority established by the *Australian Securities Commission Act 1989* (the ASC Act). It was formed in September 1989 and is the newest of this group of advisory bodies. CASAC is comprised of part-time members appointed by the federal Attorney-General and is supported by a separate secretariat based in Sydney.

8.1.5 CASAC's role is to provide advice to the Attorney-General about any matters connected with companies, securities or the futures industry or a national scheme law including law reform in relation to a national scheme law.²⁹⁶ Like the ARC, the CASAC may provide advice as it determines the need. CASAC states that:

In fulfilling these functions, the Advisory Committee seeks to stimulate and lead the debate on the enhancement of the standards for

²⁹⁵ ARC, *Submissions*, p. S184.

²⁹⁶ Section 148 of the ASC Act.

corporations and participants in public markets, and propose suitable regulatory reform where necessary'.²⁹⁷

C. Copyright Law Review Committee

8.1.6 The CLRC was established administratively in 1983 by the Attorney-General and is the only non-statutory body in this group of advisory bodies. Its role is to advise the Minister for Justice on specific copyright matters referred to it from time to time. Unlike the ARC, CASAC and the FLC, but like the Commission, it does not provide short term advice nor does it have an express power to initiate the advice it provides.

8.1.7 The members are all part-time as is the secretariat support, which is provided by the Attorney-General's Department in Canberra 'as required'.²⁹⁸ The members come from Brisbane, Canberra, Melbourne, Perth and Sydney.²⁹⁹

D. Family Law Council

8.1.8 The FLC is a statutory authority established by the *Family Law Act 1975*. Its role is to provide policy advice to the Attorney-General concerning legislation relating to family law, legal aid in relation to family law and any other matter relating to family law.

8.1.9 Like the ARC and CASAC, the FLC's advice and recommendations to the Attorney-General may be either of its own motion or upon request made to it by the Attorney-General.³⁰⁰ It has a separate secretariat based in Canberra and staffed by officers of the Attorney-General's Department co-located within the Family and Administrative Law Branch.

297 CASAC, *Submissions*, p. S274.

298 Attorney-General's Department, *Submissions*, p. S314.

299 CLRC, *Submissions*, p. S80.

300 FLC, *Submissions*, p. S100.

8.2 The Commission's relationships with the specialist law advisory bodies

8.2.1 The Commission's relationships with the specialist bodies may be considered from two points of view. First, the Commission has a real working relationship with some bodies. With others, it has a potential relationship although it has no actual contact.

8.2.2 As there is an overlap of the subjects on which the Commission and each of these specialist law advisory bodies may provide advice, there is scope for wasteful duplication of effort. However, in most cases there are mechanisms in place that are designed to minimise duplication.

8.2.3 There is an ongoing statutory relationship between the ARC and the Commission because the president of the Commission is an ex officio member of the ARC. This supports a working relationship in which the ARC has provided advice to the Commission on administrative law matters arising under law reform references.

8.2.4 The ARC and the Commission are currently working together on the review of programs administered by the Department of Human Services and Health. The ARC is reviewing the administrative law aspects of the funding programs and developing administrative law principles for the Commission to incorporate in its review of the legislation.

8.2.5 The ARC and the Commission defined their respective responsibilities at the beginning and are continuing consultations to ensure a successful working relationship on the project.³⁰¹

301 ARC, *Submissions*, p. S185.

8.2.6 Although there is no statutory provision to underpin a working relationship, the Commission and the CASAC recently completed a joint review of the regulatory framework for collective investment schemes. The joint review published an issues paper, two discussion papers and two reports. The recommendations were settled through negotiation and dissenting views were recorded.³⁰² This inquiry combined the market oriented knowledge of CASAC with the law reform methodology, expertise and resources of the Commission.

8.2.7 CASAC was 'most satisfied with the conduct and outcomes'³⁰³ of the project and the work produced was favourably commented upon by many in the business community.³⁰⁴ The methodology and conduct of the inquiry also were generally commented on favourably, although the inquiry attracted some criticism.³⁰⁵

8.2.8 Although it is not a statutory relationship, the Commission has observer status on the FLC, and consults the FLC in relation to family law aspects of Commission references.³⁰⁶ The Commission and the FLC are engaged in a joint study of intractable access applications in the Family Court, and work on this project is continuing under an agreed protocol for the initiation and conduct of joint projects.³⁰⁷

8.3 Independence of the law advisory bodies

8.3.1 While the terms of reference do not specifically raise the possibility of amalgamation of the law advisory bodies with the Commission, many submissions addressed this prospect. Submissions argued both for and

302 CASAC, *Submissions*, p. S270.

303 CASAC, *Submissions*, p. S269.

304 ALRC, *Submissions*, p. S149.

305 D. Blyth, *Transcript*, p. 128; and A. Duggan, *Transcript*, p. 154.

306 FLC, *Submissions*, p. S107.

307 FLC, *Submissions*, pp. S122–S123.

against some form of amalgamation. There were suggestions made to the Committee that there would be benefits in merging the Commission and some of these bodies³⁰⁸ including the suggestion that their existence 'substantially reduced the public benefit of a permanent and separate Law Reform Commission'.³⁰⁹

8.3.2 The weight of the evidence was against bringing any of the advisory bodies into the Commission. In particular none of the bodies specified in the terms of reference proposed that they be amalgamated and most offered sound reasons why they should continue as separate bodies.

8.3.3 The ARC argued that the roles of the Commission and itself are very different and should be maintained separately.³¹⁰ The Commission reviews the law on a one-off project basis, whereas the ARC has ongoing responsibility for the operation of the administrative law system. The Commission undertakes long term reviews only after matters have been referred by the Attorney-General, whereas the ARC often provides quick advice on current matters which may be self initiated. The ARC believes the capacity to provide such advice may be adversely affected if the two were amalgamated.

8.3.4 The CASAC argued against being absorbed into the Commission because the ability to provide timely advice to the Attorney-General on commercial matters could be seriously compromised and the utility of the CASAC undermined.³¹¹

308 J. Goldring, *Submissions*, p. S6, (in relation to the FLC, CLRC, and CASAC); Law Council of Australia, *Submissions*, p. S200 (in relation to expanding the ALRC's role to give it responsibility for law reform in the intellectual property area) and Australian Customs Service, *Submissions*, p. S236.

309 BCA, *Submissions*, p. S194.

310 ARC, *Submissions*, p. S84.

311 CASAC, *Submissions*, p. S272.

8.3.5 The FLC argued against being amalgamated with the Commission as their roles are distinct and the FLC is already working economically, effectively and efficiently.³¹² It believes the government would lose the capacity to obtain speedy and representative advice on family law because its members have highly specialised knowledge.³¹³ The FLC does not undertake large research projects and considers the Commission to be qualified to undertake substantive research and to provide advice of a more detailed nature.³¹⁴

8.3.6 The FLC further argues that it would not be cost effective to amalgamate it with the Commission because of its current convenient secretariat arrangements. It considers that there are useful and adequate mechanisms both to avoid wasteful duplication of effort and to foster cooperative work between them.

8.3.7 The Attorney-General's Department argued³¹⁵ that each of the ARC and the FLC operates within so discrete and important an area of speciality that it would not be desirable to subsume that role within a wider generalist law reform body. There would not be a significant economy

8.3.8 The evidence from the Commission itself did not support its amalgamation with these agencies.³¹⁶ It considers that each provides a different type of advice to Government. However, it also considered that each of the bodies and the Commission would benefit from improved mechanisms for communication, and, where relevant, closer working relationships.

312 FLC, *Submissions*, pp. S108–S109.

313 FLC, *Submissions*, p. S111.

314 FLC, *Submissions*, p. S106.

315 Attorney-General's Department, *Submissions*, p. S313.

316 ALRC, *Submissions*, p. S342.

8.3.9 The different working methods of the advisory bodies, when compared with the Commission, contribute to the successful fulfilling of their different functions. Mr Stephen Mason considered that these bodies attract professional and community input and respond quickly to government requests because they are not expected to work out the full detail of their proposals.³¹⁷

8.3.10 The CLRC is one of those bodies with a potential rather than a working relationship with the Commission. It considers that there has been a high level of acceptance of its recommendations by both the government and those with interests in copyright.³¹⁸ The CLRC has nevertheless identified two problems, both stemming from a lack of adequate resources with which to fulfil its functions.³¹⁹ The first is its inability to produce research papers because of a lack of continuous research resources. The second is the perceived lack of continuity in the performance of its work because its members and staff are part-time.

8.3.11 These concerns have been echoed in the arguments of the Intellectual Property Committee of the Law Council of Australia.³²⁰ The Law Council argued that the consequences of the resource problem are that the CLRC has taken too long to complete one inquiry and there has been little opportunity to consider wider policy issues in another inquiry. The Law Council of Australia advocates the incorporation of the CLRC within the Commission because of the need for a 'single and coherent means for dealing with intellectual property reform issues'³²¹.

8.3.12 The Australian Copyright Council shares these concerns about the CLRC's lack of resources. It considers that the CLRC would benefit

317 S. Mason, *Submissions*, p. S301.

318 CLRC, *Submissions*, pp. S81–S82.

319 CLRC, *Submissions*, pp. S81–S82.

320 Intellectual Property Committee of the Law Council of Australia, *Submissions*, p. S207.

321 Law Council of Australia, *Submissions*, p. S209.

from increased research and advisory assistance of the kind provided at the Commission.³²²

8.3.13 In more general comments about the development of law in the area of intellectual property, the Law Council expressed concern about the fragmented nature of law reform and the proliferation of bodies and persons involved in the preparation of such law reform proposals.³²³ The result of this has been that reform has been frequently drawn out over a long period of time and proposals have lacked wide general support because of the perceived lack of appropriate consultation.³²⁴

8.3.14 While the Commission expressly addresses and rejects amalgamation with any of the specialist bodies it does consider there would be merit in joint projects.³²⁵

8.3.15 Professor David Weisbrot, a former commissioner with the NSWLRC, considers the Commission is particularly suited to continued involvement in joint projects because of its multi-disciplinary approach.³²⁶

Comments

8.3.16 The Committee believes that there is value in providing a range and diversity of advice to the government. The Commission should not therefore be amalgamated with or assume the functions of the ARC, the CASAC, the FLC or the CLRC. These specialist bodies can perform the law reform aspects of their operations all the better because of their specialisation and the support they receive from experts in their fields.

322 Australian Copyright Council, *Submissions*, p. S499.

323 Law Council of Australia, *Submissions*, p. S206.

324 *ibid.*, p. S207.

325 ALRC, *Submissions*, p. S343.

326 *Transcripts*, p. 347.

Recommendation 34

The Committee recommends that the Commission should develop and maintain mechanisms to avoid wasteful duplication of effort and to foster cooperative work with the Administrative Review Council, the Companies and Securities Advisory Committee, the Family Law Council and the Copyright Law Review Committee.

Recommendation 35

The Committee recommends that there should be joint projects between the Commission and any of the Administrative Review Council, the Companies and Securities Advisory Committee, the Family Law Council and the Copyright Law Review Committee where it is likely that cooperation will result in better recommendations due to the study being jointly conducted. The relationship between the Commission and the other participating bodies should be defined at the time the reference is given.

8.3.17 Minor adjustments are needed to further enhance the relationship between the Commission and particular bodies. For example, the Committee considers it undesirable that the relationship between the ARC and the Commission should be disturbed because the office of president is vacant or the president is not available.

Recommendation 36

The Committee recommends that the *Law Reform Commission Act 1973* and/or the *Administrative Appeals Tribunal Act 1975* be amended to allow a person otherwise exercising the powers of the president of the Commission to act as ex officio member of the Administrative Review Council when the office of the president is vacant or when the president is not available.

8.3.18 The situation with the CLRC must be distinguished from that of the other bodies. Evidence showed that the CLRC is suffering from a severe shortage of resources. The current chairman, Justice Ian Sheppard, carries out his CLRC obligations on a part-time basis, supported by part-time committee members and part-time staff.³²⁷ The Committee believes that the CLRC cannot continue to rely on goodwill.

8.3.19 The Committee recognises the importance of the area of copyright law and considers that the work performed by the CLRC is too important to be delayed by inadequate research and administrative resources. Having regard to both the importance of its work and the increasing demands being made on the CLRC, the Committee gave serious consideration to whether amalgamation of the CLRC with the Commission was the best way to provide the former with the research support it needs.

8.3.20 Having studied the matter, the Committee is convinced that this option would not be in the best interests of the development and reform of copyright law. Instead, the CLRC should be adequately resourced as a matter of urgency.

³²⁷ He is a judge of the Federal Court of Australia.

8.3.21 The Committee considers that copyright law is not the only area of intellectual property law which needs attention. Consideration should be given to not only expanding the resources of the CLRC, but to also expanding its area of interest.

8.3.22 The Committee is not able to describe what resources would be adequate for the support of the CLRC, although a full-time secretariat would seem to be a minimum requirement. The most suitable staffing and financial support for the CLRC should be studied by a working group established for that purpose by the Attorney-General.

Recommendation 37

The Committee recommends that the Copyright Law Review Committee be adequately resourced in order to fulfil its functions. The most suitable level of resourcing should be determined by a working group, established by the Attorney-General. The working group should include at least one member of the CLRC, and the scope of its inquiry should include an examination of the possible expansion of the role of the CLRC to include other areas of intellectual property.

8.4 Relationships of the Commission with the legislative drafters and the Attorney-General's Department

A. Attorney-General's Department

8.4.1 The role of the Attorney-General's Department in relation to the Commission is that the Department assists the Attorney-General in the administration of the Act and provides advice on³²⁸:

- appointments to the Commission;
- references to the Commission;

328 Attorney-General's Department, *Submissions*, p. S308.

- the need for amendment to the Act;
- the effectiveness of the Commission's performance of its role and function; and
- the financial and other resource needs of the Commission.

8.4.2 The Attorney-General's Department also advises the Attorney-General on the recommendations of the Commission which relate to matters of substantive law within the portfolio authority of the Attorney-General.

8.4.3 Senior officers of the Attorney-General's Department discuss proposals for references with the members of the Commission before recommending to the Attorney-General that he make a particular reference to the Commission.³²⁹ It has provided consultants to work on particular references and holds frequent meetings with members and staff of the Commission.

8.4.4 The Attorney-General's Department seeks to build 'an open and effective relationship built on frank communication'.³³⁰

Comments

8.4.5 Although evidence on the relationship between the Attorney-General's Department and the Commission is scant, it appears that the relationship is sound and that the intention of the Commission's founders to empower it with reasonable operational independence has been honoured. Indirect evidence suggests that earlier Presidents may have enjoyed closer day-to-day relationships with past Attorney-Generals, than those in more recent times. While recognising that personalities are always a factor in working relationships, this probably reflects the ever-widening range of responsibilities of the Attorney-

329 An amendment was moved to the original Bill to permit suggestions about references to be made by the Commission.

330 Attorney-General's Department, *Submissions*, p. S308.

General. The Committee considers that a regular formal meeting between the Attorney-General and the Commission, held, say quarterly, would ensure that the lines of communication are well maintained.

B. Drafting legislation³³¹

8.4.6 References to the Commission usually include a request that draft legislation be prepared with the final report. When the Government accepts a Commission report any draft legislation, including drafts that are part of the report, will need to be prepared for introduction into Parliament. Together the Office of Legislative Drafting (OLD) and the Office of Parliamentary Counsel (OPC) provide specialist drafting services for federal legislation.

Office of Legislative Drafting

8.4.7 The Office of Legislative Drafting (OLD) is part of the Attorney-General's Department. It provides drafting services for subordinate legislation such as regulations, the ordinances of Australia's non-self governing territories and the wide variety of other legislative instruments made under federal Acts.

8.4.8 The Commission does not often provide draft regulations, so the OLD has not had much need to work with Commission drafts.

Office of Parliamentary Counsel

8.4.9 The Office of Parliamentary Counsel (OPC) is a statutory authority established by the *Parliamentary Counsel Act 1970* to draft legislation for introduction into Parliament, to draft amendments of proposed laws that are being considered by Parliament and to perform functions incidental to such drafting.

331 The issue of draft legislation arises elsewhere in this report in the context of examining the effectiveness of the Commission in performing its functions – refer chapter 3.

8.4.10 OPC feels the quality of Commission draft Bills it has worked with has varied considerably, and states that it has had to rework draft Bills both to give effect to any policy differences between the Commission's report and the government's decision³³² and to overcome 'drafting infelicities'.³³³

8.4.11 OPC argues³³⁴ that the Commission should not produce draft Bills because:

- a focus on draft legislation distracts the Commission from its major function of determining policy;
- the Commission does not have adequate access to the services of skilled drafters:
- the use of consultant drafters by the Commission is an inefficient use of Commonwealth resources;
- there can be substantial difficulties in preparing Commission Bills for introduction into Parliament.

8.4.12 On a similar line of argument, the Attorney-General's Department argued that even where recommendations have been adopted, Commission draft Bills have not been enacted because of significant differences in drafting style between OPC and the Commission.³³⁵ The Department viewed this checking step as an inefficient duplication in drafting effort.

Draft Bills as a part of reports

8.4.13 OPC argued that if a policy does not have government support, a draft Bill represents a waste of resources.³³⁶ Other relevant issues are the quality of the drafting and the extra time taken in producing a report.

332 OPC, *Submission*, p. S134.

333 OPC, *Submissions*, p. S135.

334 OPC, *Submissions*, p. S131.

335 Attorney-General's Department, *Submissions*, p. S312.

336 OPC, *Submissions*, p. S134.

8.4.14 The Australian Customs Service (ACS) took an interest in this matter because its principal legislation was referred to the Commission in 1987. Reports arising from the reference and including draft legislation, were tabled in 1992. The ACS does not support the inclusion of draft legislation in Commission reports.³³⁷

8.4.15 In a current project involving the legislation administered by the Department of Human Services and Health, the aim of the project is to develop from a considerable number of current pieces of legislation, five main Acts drafted in a plain language style. The terms of reference require the Commission to work with OPC. The Commission is to provide drafting instructions for Bills to OPC who will draft these Bills as a normal part of its workload.³³⁸ The Bills will have the priority assigned to them by the Parliamentary Business Committee.

Who should draft Bills for Commission reports

8.4.16 The Commission is firmly in favour of having a role in the drafting process to ensure the policy developed is 'sound and practical'.³³⁹ The Commission argues that it is significant that OPC has indicated that resource constraints may prevent OPC from being able to allocate resources to drafting for the Commission within the time frame required by the terms of reference.³⁴⁰ The Commission feels that it must have the option of playing an active role in the drafting process because if it were relying on OPC:

This would put the Commission in a situation where none of its reports would be able to append draft legislation. This may jeopardise the chances of Commission's reports being implemented.

337 ACS, *Submissions*, p. S234.

338 OPC, *Submissions*, p. S501.

339 ALRC, *Submissions*, p. S382.

340 H. Penfold, *Transcripts*, p. 471; and OPC, *Submissions*, p. S502.

8.4.17 Consequently the Commission proposed that it should be involved in the drafting process and its role should be determined at the start of a reference.³⁴¹ It thought a mechanism should be developed to enable it to work with OPC to produce the drafts.

8.4.18 The Attorney-General's Department proposes that OPC or a consultant drafter approved by OPC should undertake the legislative drafting³⁴². The Commission accepts, apparently with some reservation, that 'that should occur whenever possible'.³⁴³ If the Commission is less than whole-hearted about this proposal, its reserve is understandable. It may not always be possible or appropriate to engage a consultant drafter approved by OPC. In the Committee's opinion, any requirement to do so might have the potential to undermine the Commission's independence.

Comments

8.4.19 The evidence presented to the Committee during its inquiry into clearer Commonwealth law, suggested that specialisation in drafting is desirable in the interests of better quality drafting and in making the best use of specialist drafting resources.³⁴⁴

8.4.20 Expense is also a consideration if the alternative is a drafting specialist in private practice. OPC noted that consultants might be two to nine times as expensive as federal government drafters.³⁴⁵

8.4.21 While the specialised nature of legislative drafting was emphasised during the inquiry, the Committee was confronted with a

341 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S511.

342 *ibid.*

343 *ibid.*

344 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Clearer Commonwealth Law*, 1993, AGPS Canberra.

345 OPC, *Submissions*, p. S134.

majority of evidence which argued that the process of drafting legislation helped focus the policy and ensure the detail was developed in a way that resulted in a more complete report.

8.4.22 The Hon Xavier Connor put the case in this way:

... it has occurred over and over again that the reduction of law reform proposals to a legislative format has demonstrated inadequacies in the proposals. Consequently the presence of an in-house drafting service is invaluable.³⁴⁶

8.4.23 This is an area where compromise is needed to achieve the best results. The Committee considers that the Commission should continue to include draft legislation where appropriate but that the specialist drafters of OPC should provide the service of drafting wherever possible.

Recommendation 38

The Committee recommends that where draft legislation is either requested in the terms of reference, or is required by the Commission for whatever purpose, the Commission should, at an early stage in the inquiry process and in the first instance, have discussions with the Office of Parliamentary Counsel to determine resource availability. Where OPC indicates that it will not be able to meet the Commission's drafting needs in a timely manner, the Commission should be at liberty to make whatever drafting arrangements that it thinks suitable.

This practice should also be followed for subordinate legislation, in which case the Office of Legislative Drafting should provide the drafting resources necessary.

346 X. Connor, *Submissions*, p. S240.

Chapter 9

Relationships between the Commission and state and territory law reform bodies

The Commission has much to gain by cooperation with the other law reform bodies in Australia, as a learner, a teacher and a partner in joint projects. In considering the optimum role and function of the Commission, the Committee decided to seek evidence on the relationships between the Commission and its state and territory equivalents. This chapter examines the joint projects and the working relationships between the Commission and those bodies. It considers proposals for the further development of cooperation between the Commission and the state and territory law reform bodies.

9.1 Background

9.1.1 When the Commission was established there was a clear intention that the role of the national law reform body would address the commonwealth and state relationships in legal issues.

9.1.2 Since the Commission commenced operations in 1975 there have been changes in the form and status of State and Territory law reform bodies. There have however been regular meetings of Australian law reform bodies since 1974 at the Australasian Law Reform Agencies Conference (ALRAC). At present the conference meets biennially. Proposals discussed at these meetings often result in joint projects being undertaken by the members.

9.1.3 From 1 January 1976 the Standing Committee of Attorneys-General assigned³⁴⁷ a clearing house function to the Commission for the compilation and distribution of an official list of work carried out or

³⁴⁷ Prior to this the law reform body in Western Australia performed this function. See ALRC 3, *Annual Report 1975*, p. 36.

being carried out by all law reform agencies in Australia and New Zealand.³⁴⁸

9.1.4 The Commission considers that one of its non-statutory functions is to promote uniformity of law throughout Australia and to reduce duplication of law reform effort. It does so by:

- undertaking joint projects with state and territory bodies;
- consulting relevant state and territory bodies to ensure wide support for its proposals; and
- developing comprehensive laws which can serve as model laws for the states and territories.³⁴⁹

9.1.5 The Commission considers that there should be greater emphasis on promoting joint projects between the Commission and other Commonwealth bodies and between the Commission and state and territory law reform bodies,

. . . especially where the aim is to harmonise the laws of the Commonwealth, States and Territories and where it is evident that cooperation will result in better recommendations due to involvement by experts with a variety of necessary skills and knowledge.³⁵⁰

9.2 Law reform structures in Australian states and territories³⁵¹

A. Australian Capital Territory

9.2.1 The ACT Community Law Reform Committee is a ministerial committee and was established in March 1990, in the second year of self government in the ACT. The ACT Committee reports to the ACT government on formal references for law reform and identifies areas in

348 ALRC 3, *Annual Report 1975*, p. 37.

349 ALRC, *Submissions*, p. S23.

350 ALRC, *Submissions*, p. S507; See also S. Tongue, *Transcript*, p. 497.

351 For more detail than is included in this report refer to: ALRC, *Submissions*, p. S429–S439.

need of review or reform, anticipates emerging social-legal issues and assesses the practical impact of various proposals and laws on the people of the ACT. The ACT government has recently agreed to give statutory recognition to the ACT Committee.

B. New South Wales

9.2.2 The New South Wales Law Reform Commission (NSWLRC) commenced operations on 1 January 1966, and in September 1967 became an independent statutory authority constituted under the (NSW) *Law Reform Commission Act 1967*.

9.2.3 The NSWLRC is the oldest continuing full-time commission in Australia. It receives references from, and reports to, the NSW Attorney-General.

C. Northern Territory

9.2.4 The Northern Territory Law Reform Committee (NTLRC) was established in 1976. It is an independent non-statutory standing committee of honorary members governed by a written constitution which was last revised in November 1992.

9.2.5 The NTLRC receives references from, and reports to, the NT Attorney-General.

D. Queensland

9.2.6 The Law Reform Commission of Queensland (QLRC) is an independent statutory authority constituted under the (Qld) *Law Reform Commission Act 1968*. Amendments to that Act in 1972 provided for the appointment of full-time members.

9.2.7 The QLRC reports to the Queensland Attorney-General. The work of the QLRC is directed to the simplification and modernisation of the law, with a focus on codification.

E. South Australia

9.2.8 There is today no separate government based law reform body in South Australia. The former Law Reform Committee of South Australia established by Proclamation in 1968, made its last report to the South Australian Attorney-General in 1987.

9.2.9 The Law Society of South Australia, law teaching universities in South Australia, the Legal Services Commission of South Australia, community centres and other community based groups make proposals for law reform that are usually focussed narrowly on current practical problems.³⁵² Research papers prepared by the Department of Justice are not often made available for comment before legislation is introduced into parliament.³⁵³

F. Tasmania

9.2.10 The Office of the Law Reform Commissioner of Tasmania (TLRC) was established by the (Tas) *Law Reform Commissioner Act 1988*.

9.2.11 The TLRC reports to the Tasmanian Attorney-General on its standing references on criminal law and procedure and civil procedure as well as ad hoc references from the Tasmanian Attorney-General.

G. Victoria

9.2.12 Several bodies now contribute to law reform in Victoria:

- *Law Reform Committee, a joint parliamentary committee* established in November 1992;
- Scrutiny of Acts and Regulations Committee;
- Victoria Law Foundation;

352 *Law Society of South Australia, Submissions*, p. S179.

353 *ibid.*

- experts appointed as temporary law reform commissioners for particular inquiries, and
- Law Reform Advisory Council.

9.2.13 The Chief Justice of Victoria is the chair of both the Law Foundation and the Law Reform Advisory Council. However there are no formal linkages with the Law Reform Committee.

9.2.14 The current structure replaces a statutory authority which was established in 1985 and dissolved by the Victorian Parliament in 1992.

H. Western Australia

9.2.15 The Law Reform Commission of Western Australia (WALRC) was established by the (WA) *Law Reform Commission Act 1972*.

9.2.16 The WALRC receives references from, and reports to, the WA Attorney-General.

9.3 Joint projects and cooperation

9.3.1 The Commission argued that there is 'great merit in joint projects' with state and territory law reform agencies.³⁵⁴ It has been involved in several joint projects with state law reform commissions.

A. Product liability

9.3.2 This project involved the Commission, the NSWLRC and the then Victorian Law Reform Commission (VLRC) and resulted in a joint report. The Commission notes that the recommendations contained in the report are now being followed in the European Community.³⁵⁵

354 ALRC, *Submissions*, p. S345.

355 ALRC, *Submissions*, p. S 343.

9.3.3 This inquiry was criticised by the Business Council of Australia (BCA).³⁵⁶

B. Personal property securities

9.3.4 The personal property securities project – the Commission, the VLRC, the NSWLRC, the QLRC – did not achieve the same degree of accord. The Commission and the NSWLRC published a joint discussion paper and the QLRC and the VLRC issued their own joint discussion paper. The Commission produced an interim report and remains willing to consult with the remaining state bodies with a view to issuing a joint final report.

9.3.5 The NSWLRC considered that further consultation with relevant interest groups was needed as well as detailed analysis of the Commission's proposals.³⁵⁷ It stated that the QLRC and the NSWLRC will reassess the project in 1994.

9.3.6 This project was the target of some criticism in submissions and at public hearings.³⁵⁸ The QLRC expressly endorsed the adverse comments of Professor Anthony Duggan and Mr Simon Begg³⁵⁹. It argued that the Commission's approach to the placement of the legislative provisions in the Corporations Law had the effect that 'the role of the Commission was not as a facilitator of law reform, but as an advocate for an increase in Commonwealth power'³⁶⁰.

9.3.7 This reference illustrates the difficulties for a law reform commission in working on references with a potential to invoke

356 The details of the BCA's criticisms are in chapter 3.

357 NSWLRC, *Submissions*, pp. S493–S494.

358 This criticism is discussed in chapter 3.

359 QLRC, *Submissions*, p. S497.

360 QLRC, *Submissions*, p. S497.

commonwealth/state arguments and sensitivities. The Commission's objectivity will always be tested in such references. The Premier of Western Australia, Hon Richard Court, urges the Commission to be sensitive to the division of powers between the states and the Commonwealth in its work.³⁶¹ Potentially political references highlight the need for commissioners to be people capable of great objectivity. In each case no more can be asked than that they consult widely and argue cases individually.

C. Other cooperative activities

9.3.8 The NSWLRC referred to a joint project on informed consent to medical treatment which led to a joint report by the Commission and the NSWLRC and a discussion paper by the VLRC in 1987.³⁶²

9.3.9 The WALRC referred to cooperation with the Commission in which 'the two Commissions engaged in normal cooperative processes, sharing research material and ideas, and I came to Sydney to attend a consultants meeting.'³⁶³

9.3.10 Hon Daryl Manzie, the Northern Territory Attorney-General, expressed appreciation for the Commission's consultative and cooperative approach in seeking Northern Territory input to references.³⁶⁴

9.4 The future for joint projects and cooperation

9.4.1 The WALRC considered that 'the scope for joint projects between a state law reform body and the Commission is diminishing', because the Commission no longer had an interest in law at the state level now that

361 Premier of Western Australia, *Submissions*, p. S264.

362 NSWLRC, *Submissions*, p. S493.

363 WALRC, *Submissions*, p. S496.

364 Northern Territory Attorney-General, *Submissions*, p. S97.

there was the ACT Consultative Law Reform Committee.³⁶⁵ It also referred to the unwillingness of a former Western Australian Attorney-General to allow the WALRC to be involved in the uniform project on succession law.

9.4.2 Hon Richard Court, the Western Australian Premier, has advocated:

a clear demarcation, in accordance with the constitutional powers and responsibilities in the Australian federation, of the work done by the Australian Law Reform Commission'.³⁶⁶

He acknowledged the cooperation between the WALRC and the Commission, and supported improvement of that cooperation and consultation.

9.4.3 The QLRC considered that constitutional and jurisdictional problems will arise in each joint federal and state project.³⁶⁷ It felt that joint projects between states and territories were more likely to be successful as uniform law reform exercises. Unlike the QLRC, Premier Wayne Goss suggested there might be more joint references to law reform commissions, including the Commission.³⁶⁸

9.4.4 Despite these doubts about joint projects, the QLRC noted that the Commission has a valuable role and that its research and publications greatly assisted the QLRC in various projects, and had informed it about law reform in other jurisdictions.³⁶⁹

9.4.5 The NSWLRC considered that joint projects are worthwhile because of efficiencies in resource use, the progression of uniformity and increasing the project's political acceptability.³⁷⁰ The NSWLRC

365 WALRC, *Submissions*, p. S496.

366 Premier of Western Australia, *Submissions*, p. S263.

367 QLRC, *Submissions*, p. S498.

368 Premier of Queensland, *Submissions*, p. S249.

369 QLRC, *Submissions*, p. S498.

370 NSWLRC, *Submissions*, p. S494.

cautioned that there must be a clear allocation of work, an agreed timetable and commitment to the project. It further said that care needs to be given to the allocation of responsibility for consultation because of its crucial importance.

9.4.6 The NSWLRC stated the role to be played by the Commission in joint projects is largely determined by whether there is federal jurisdiction to deal with the subject matter under consideration.³⁷¹ It identified several areas in which the Commission could take a lead role and in which it considered there is both federal and state jurisdiction, and where uniformity is desirable: environmental law, criminal law, the legal profession, and alternative dispute resolution.

9.4.7 The most enthusiastic supporter for joint federal and state law reform work was the TLRC. Professor Don Chalmers, the TLRC, argued that 'collaboration on law reform between the Commission and the relevant state and territory bodies is fundamental to the continued improvement of the law in this country'.³⁷² He referred to one of the early Commission reports, on human tissue transplants, as a 'clear example of the benefits achievable' in terms of consistency of development in the law in different jurisdictions within Australia.³⁷³

9.4.8 Mr Russell Scott, one of the original commissioners and a later consultant to the Commission, also referred to the success of this reference in terms of uniform law reform. He described the human tissue transplants report as the most successful uniform law reform project in Australia so far:

This Report was widely accepted nationally and internationally and the draft statute which accompanied it was soon enacted (with minor variations from State to State) by all Australian States and Territories. . . The Council of Europe displayed early interest in the Commission's

371 *ibid.*

372 TLRC, *Submissions*, p. S320.

373 *ibid.*

Report which, in turn, led to the Council inviting Australia to attend the meetings of its principal Bioethics Committee (CAHBI). This Committee prepared model legislative principles for European nations throughout the 1980s.³⁷⁴

9.4.9 In particular, Professor Chalmers considered laws which directly impact on the private and personal lives of individuals would be improved by joint projects. He argued that these laws are in urgent need of uniformity and considered that the Commission could play an important role as a coordinator for work undertaken at state and territory level in such areas as: wills and succession, aged accommodation, privacy, adoption and surrogacy, the legal profession, real and personal securities, evidence and collective investments.

9.4.10 Professor Chalmers argued that the need for uniformity is a matter of common sense and of human rights.³⁷⁵ There has been much talk about uniformity over the years but he argued there was still repetition of effort and divergence between state laws and the need for collaboration has not changed. The Committee generally supports this view but notes that uniformity may be achieved without the need for a formal mechanism.

9.4.11 Professor Chalmers stated that although the TLRC had not been involved in any joint projects with the Commission, he felt it had provided guidance and avoided divergence between state laws. He considered they were an effective use of limited law reform resources. One example he cited was that Tasmania was considering the federal and New South Wales final drafts of the uniform Evidence Bill.³⁷⁶

374 R. Scott, *Submissions*, p. S265.

375 TLRC, *Submissions*, p. S320.

376 TLRC, *Submissions*, p. S321.

9.4.12 The NTLRC had not been involved in any joint projects, but was supportive of future joint projects in which it saw the Commission in a coordinating role.³⁷⁷

9.4.13 The Commission argues that it is suited to coordinate effort to promote harmonisation of law between the Commonwealth and the states and territories.³⁷⁸ The joint submission from the Attorney-General's Department and the Commission suggests that the relationship between the Commission and other participating organisations should be defined when the references are given.³⁷⁹

9.5 Proposals for a formal coordinating structure

9.5.1 In 1990 the National Legal Aid Advisory Committee recommended that a national and integrated approach to law reform by governments should be coordinated by the Standing Committee of Attorneys-General (SCAG). The Government agreed that SCAG be informed of the need to coordinate a national and integrated approach to law reform,³⁸⁰ and SCAG noted the recommendation.³⁸¹

9.5.2 Mr Sturt Glacken proposes formal structures to encourage the exchange of information and research between various law reform agencies with a view to coordinating the work of such bodies, and to minimise any duplication of effort.³⁸² He proposes the establishment of a 'Commonwealth-State Advisory Council on Law Reform' of

377 NTLRC, *Submissions*, pp. S323–S324.

378 ALRC, *Submissions*, p. S346.

379 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S507.

380 National Legal Aid Advisory Committee, *Annual Report 1990-91*, p. 18.

381 Advice sought from the Civil Law Division, Attorney-General's Department in 1993 by the Committee secretariat.

382 S. Glacken, *Submissions*, p. S253.

representatives of Commonwealth and state and territory agencies or including representatives of state and territory agencies as statutory part-time members.

9.5.3 The Commission also envisages a law reform advisory committee and provides details of the proposed body in its submissions.³⁸³ The committee would include members from other federal law reform agencies as well as SCAG and the Law Council. The function of the committee would be to provide advice to the Attorney-General on areas of the law in need of reform. The views of the committee should be conveyed to SCAG by the Attorney-General.³⁸⁴

9.5.4 Although the Attorney-General's Department falls short of supporting this proposal, it agrees with the concept of broad consultation with interested parties to identify subjects suitable for future references to the Commission.³⁸⁵

9.6 Conclusions

9.6.1 The state and territory attitudes to and expectations of joint projects and cooperation with the Commission were quite mixed. The Committee considers that the formal coordinating structures proposed will not necessarily assist in furthering cooperative relationships.

9.6.2 The Committee commends the members and operation of the ALRAC in promoting cooperation between the law reform bodies. The Committee recognises the value of this forum in encouraging an

383 ALRC, *Submissions*, pp. S362–S365 and ALRC and the Attorney-General's Department joint submission, *Submissions*, p. S509; See also S. Tongue, *Transcript*, p. 497.

384 ALRC and Attorney-General's Department joint submission, *Submissions*, p. S509.

385 *ibid.*

exchange of information as well as a more consistent approach to the development of law.

9.6.3 The Committee notes the arguments that the practical effect of the changes in relation to the self-government of some territories is that the federal government no longer has the same direct interest at the state and territory level of law as it used to have. Such an argument denies the possibility of the national law reform commission taking a lead in the development of a systematic development of law within Australia.

9.6.4 The Committee believes that part of the role of a national law reform commission is to assist in the systematic development of the law. The Committee supports the activities of the Commission in carrying out its function of promoting uniformity and reducing duplication.

9.6.5 The Committee notes the constitutional and jurisdictional nature of problems that may affect the selection of joint projects. Nevertheless the Committee feels the Commission should continue to promote the harmonisation of law between the federal jurisdiction and those of the states and territories.

Recommendation 39

The Committee recommends that the Commission continue to suggest and that the Attorney-General continue to make references that promote uniformity of law throughout Australia and reduce duplication of law reform effort.

Recommendation 40

The Committee further recommends that the Commission continue its role of promoting uniformity of law and reducing duplication of law reform effort through its activities with the states and territories including: undertaking joint projects with them, consulting them, and developing comprehensive laws as models for them.

9.6.6 The Committee notes that there are significant advantages in the globalisation of economic activity. The Committee further notes that the platform of Closer Economic Relations with New Zealand is progressing. The Committee considers that there would be advantages in the Commission maintaining links with its law reform counterpart in New Zealand, the Law Commission.

EXPRESSION OF CONCERN

by

Peter Slipper MP

I am most concerned particularly about three issues in this report. They are:

1. the renaming of the Law Reform Commission;
2. whether draft legislation should be prepared by the Commission or provided in its reports; and
3. international treaty obligations which subvert Australia's national sovereignty and independence without reference to Parliament or the Australian people.

1. Renaming the Law Reform Commission

I agree that the name of the Law Reform Commission should be changed, however I believe the name, 'Commonwealth Law Reform Commission', should be adopted given the federal nature of the Australian political system. I agree with comments to this inquiry by Hon Richard Court, MLA the Premier of Western Australia, that there should be a clear demarcation of the work undertaken by the Commission.¹ The designation 'Commonwealth Law Reform Commission' is a more appropriate manner in which to describe the Commonwealth Government body responsible for federal law reform.

2. Draft legislation

It is inefficient to have draft legislation accompanying reports of the Law Reform Commission. This is because the preparation of draft legislation grossly delays the completion of reports, and in any event the legislation is rarely enacted in that form if ever.

¹ Premier of Western Australia, *Submissions*, p. S263.

I believe that draft legislation should only be produced when the Attorney-General insists it is essential, in which case, the Office of Parliamentary Counsel and the Office of Legislative Drafting should provide the necessary drafting resources. Naturally it would still be open to the Law Reform Commission to approach the Attorney-General for a direction that draft legislation be included in those situations where the Law Reform Commission considers draft legislation necessary.

3. International treaty obligations

The hypocrisy of the Labor Government in this area is appalling. On the one hand, it claims to be the champion of a so-called independent Australia when pursuing Keating's republican agenda at public expense. On the other hand, it regularly signs away our national sovereignty and independence by indiscriminately entering into myriad treaties and protocols.

The reality is of course that Australia is already independent. Treaties and protocols purport to subject Australia to international obligations without the consent of parliaments or the Australian people. At the very least treaties and protocols should only be entered into subject to Australia's domestic constitutional arrangements. Unfortunately a wide High Court interpretation of the external affairs power in the Australian Constitution has destroyed the federal balance, enabling the Commonwealth to legislate in Australia to implement international obligations in areas traditionally matters for the States. This has virtually torn up the Constitution and undermined our federal system. The Law Reform Commission should state what the law in Australia ought to be regardless of what international treaties say.

Peter Slipper MP

May 1994

Appendix A

List of submissions

List of Submissions

Submission Number	Individual/Organisation
1	Hon Mr Justice Bryan Beaumont Judges' Chambers Federal Court of Australia
2	Professor John Wade School of Law Bond University
3	Mr Uri Thernal, OAM Director, Bureau of Ethnic Affairs Department of Family Services and Aboriginal and Islander Affairs
4	Professor John Goldring Dean, Faculty of Law University of Wollongong
5	Professor Ralph Simmonds Dean and Foundation Professor of Law School of Law Murdoch University
6	Mr John Nelson President The Law Society of New South Wales
7	Ms Halina Strnad Convenor, Submissions Committee Humanist Society of Victoria Inc
8	Ms Sue Tongue Deputy President Law Reform Commission of Australia (Volume 1)
9	Hon Justice I F Sheppard, AO Chairman Copyright Law Review Committee

Submission Number	Individual/Organisation
10	Mr Leonard Matthews
11	Judge H H Jackson President Children's Court of Western Australia
12	<i>Professor A J Duggan</i> Acting Dean of Law Henry Bournes Higgins Professor of Law Monash University
13	Ms Robyn Henderson Executive Director, National Council Royal Institute of Public Administration Australia
14	The Hon Daryl W Manzie, MLA Attorney-General Northern Territory Government
15	Mr John Faulks Chairman Family Law Council
16	The Hon Justice G N Williams QC Chairman Queensland Law Reform Commission
17	Mr Brian Dargan Director, Law Reform National Crime Authority
18	Ms Hilary Penfold First Parliamentary Counsel Office of Parliamentary Counsel
19	Ms Sue Tongue Deputy President Law Reform Commission of Australia (Volume 2) (Supplementary submission to no. 8)
20	Mr Simon Begg Corrs Chambers Westgarth

Submission Number	Individual/Organisation
21	Mr Don Blyth National Director Trustee Companies Association of Australia
22	Mr Stephen Walsh QC President The Law Society of South Australia
23	Dr Susan Kenny President Administrative Review Council
24	Mr Clive Speed Assistant Director Business Council of Australia
25	Ms Susan Crennan Chairman Victorian Bar Council
26	Mr Peter Levy Secretary-General Law Council of Australia
27	Professor Michael Chesterman, Professor Graycar and Professor Zdenkowski Faculty of Law University of New South Wales
28	Mr John Coombs QC President The New South Wales Bar Association
29	Senator the Hon Gareth Evans Minister for Foreign Affairs
30	Justice Murray Wilcox Judges' Chambers Federal Court of Australia
31	Mr J M Drury Deputy Comptroller-General (Services) Australian Customs Service

Submission Number	Individual/Organisation
32	Mr Andrew McKinlay Acting Assistant Secretary Department of the Environment, Sport and Territories
33	The Hon Xavier Connor, AO QC
34	Mr John Greenwell
35	The Hon Wayne Goss MLA Premier of Queensland
36	Mr Sturt Glacken Owen Dixon Chambers West
37	The Hon Wayne Berry Acting Chief Minister Australian Capital Territory
38	Professor James Crawford Jesus College Cambridge, UK
39	Professor John Goldring Dean, Faculty of Law University of Wollongong (Supplementary submission to no. 4)
40	Senator the Hon Nick Bolkus Minister for Immigration and Ethnic Affairs
41	The Hon Richard Court MLA Premier of Western Australia
42	Russell Scott
43	John Kløver Executive Director Companies & Securities Advisory Committee
44	Mr David St L Kelly Phillips Fox Solicitors
45	Mr Ian Cuncliff Blake Dawson Waldron Solicitors

Submission Number	Individual/Organisation
46	Mr Clive Speed Assitant Director Business Council of Australia (Supplementary submission to no. 24)
47	Mr Robert Ferguson Joint Managing Director Bankers Trust Australia Ltd
48	Mr David Fairlie President The Law Society of New South Wales (Supplementary submission to no. 6)
49	Mr Tim Robertson Secretary New South Wales Society of Labor Lawyers
50	Mr Stephen Mason Special Counsel Blake Dawson Waldron
51	Mr Stephen Skehill Deputy Secretary Attorney-General's Department
52	Professor Don Chalmers Commissioner Law Reform Commission of Tasmania
53	Mr Stephen Herne Executive Officer Northern Territory Law Reform Committee
54	Ms Sue Tongue Deputy President Law Reform Commission of Australia (Volume 3) (Supplementary submission to nos. 8 & 19)
55	Mr Peter Hennessey Executive Director New South Wales Law Reform Commission

Submission Number	Individual/Organisation
56	Dr Peter Handford Executive Officer and Director of Research Law Reform Commission of Western Australia
57	The Hon Justice G N Williams QC Chairman Queensland Law Reform Commission (Supplementary submission to no. 16)
58	Ms Libby Baulch Executive Officer Australian Copyright Council
59	Ms Hilary Penfold First Parliamentary Counsel Office of Parliamentary Counsel (Supplementary submission to no. 18)
60	Ms Kate Waterhouse Acting Director, Law Reform Unit ACT Attorney-General's Department
61	Ms Sue Tongue Deputy President Law Reform Commission of Australia;
	and
	Mr Stephen Skehill Deputy Secretary Attorney-General's Department (Supplementary submission to nos. ALRC: 8, 19, 54 and AG's: 51)

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Appendix B

List of exhibits

List of Exhibits

Exhibit Number	Exhibit
1	Goldring, J. 1993, 'Processes and problems of law reform', paper presented to the Australasian Law Reform Agencies' Conference, Hobart, 24–25 Sept.
2 (i)	Pamphlet – The Australian Law Reform Commission.
(ii)	Pamphlet – Women: Equality Before the Law.
(iii)	Pamphlet – Trade Practices Act Enforcement.
(iv)	Pamphlet – Designs.
(v)	Australian Law Reform Commission 1993, <i>Designs</i> , Issues Paper no. 11, ALRC, Sydney.
(vi)	Australian Law Reform Commission 1993, <i>Equality Before the Law</i> , Discussion Paper no. 54, ALRC, Sydney.
(vii)	Australian Law Reform Commission 1993, <i>Child Care</i> , Discussion Paper no. 55, ALRC, Sydney.
(viii)	Australian Law Reform Commission (interim), <i>Personal Property Securities</i> , Report no. 64, ALRC, Sydney.
(ix)	Australian Law Reform Commission 1993, <i>Collective Investments: Other People's Money</i> , Report no. 65, ALRC, Sydney.
(x)	Blair, M., <i>Collective Investments</i> , Research Paper no. 2, ALRC, Sydney.
(xi)	Australian Law Reform Commission 1993, <i>Collective Investments: Other People's Money</i> , Report no. 65, vol. 1, ALRC, Sydney.
(xii)	Australian Law Reform Commission 1993, <i>Collective Investments: Other People's Money</i> , Report no. 65, vol. 2, draft legislation, ALRC, Sydney.
(xiii)	Australian Law Reform Commission, <i>Guide to Child Care</i> , Discussion paper.
(xiv)	Australian Law Reform Commission, <i>Equality Before the Law</i> , Discussion Paper no. 54, ALRC, Sydney.
(xv)	Australian Law Reform Commission 1993, <i>Reform</i> , no. 65, ALRC, Sydney.

**Exhibit
Number**

Exhibit

- 3 Jackson, H. H. 1987, 'Law reform – from the outside looking back', paper presented to the Annual National Conference of the Australian Society of Labor Lawyers, Perth.
- 4 (i) Duggan, A. J. 1991, 'Some reflections on consumer protection and the law reform process, *Monash University Law Review*, vol. 17, no. 2, pp. 252–284.
- (ii) Duggan, A.J. 1991, 'Commercial law: reform and uniformity – is there a better way?', *Commercial Law Association*, March 1992, pp. 24–26.
- (iii) *Personal Property Security Law Reform*, 1993.
- 5 (i) Family Law Council 1992, *Annual Report 1991–1992*, AGPS, Canberra.
- (ii) Family Law Council 1992, *Patterns of Parenting After Separation*, Report to the Minister for Justice and Consumer Affairs, AGPS, Canberra.
- (iii) Family Law Council 1992, *Family Mediation*, A Report to the Minister for Justice, AGPS, Canberra.
- (iv) Family Law Council 1992, *Power of the Family Court to Require the Provision of Information for the Recovery of Children*, Report to the Minister for Justice, AGPS, Canberra.
- (v) Family Law Council 1993, *Comments on the Report of the Joint Select Committee on the Operation and Interpretation of the Family Law Act*, Report to the Minister for Justice, AGPS, Canberra.
- (vi) Family Law Council 1993, *Sterilisation and Other Medical Procedures on Children*, Discussion Paper, October.
- (vii) Family Law Council 1993, *Family Law in Magistrates Courts*, Discussion Paper, October.
- (viii) Family Law Council 1993, *News*, no. 4.
- 6 Copy of submission by Intellectual Property Committee of the Law Council of Australia 1992, 'Intellectual property law reform and administration'.
- 7 (i) Law Reform Commission of Victoria 1991, *Annual Report 1990–1991*, no. 44, Melbourne.
- (ii) Law Reform Commission of Victoria 1992, *Annual Report 1991–1992*, no. 51, Melbourne.
- 8 (i) Hudson, R. 1992, 'No will to implement', *New Law Journal*, June 26 1992, p. 899.
- (ii) Confidential

**Exhibit
Number**

Exhibit

- 9 Copy of letter dated 17 November 1992 to Mr S. Mason.
- 10 Copy of letter dated 25 Novemeber 1992 to Mr S. Mason.
- 11 (i) Braddock, R. 1989, *Economic Impact of Revised Proposals*, no. 2A, ALRC, Sydney.
- (ii) Braddock, R. 1989, *Product Liability: Economic Impacts*, no. 2, ALRC, Sydney.
- (iii) List of reports on references with a direct commerical impact by the Law Reform Commission of Australia.

Appendix C

List of witnesses

List of Witnesses

Canberra, 2 November 1993

Office of the Parliamentary Counsel

Ms Hilary Penfold, First Parliamentary Counsel

Canberra, 3 November 1993

Administrative Review Council

Dr Susan Kenny, President
Mr Stephen Lloyd, Ex-Director of Research

Business Council of Australia

Mr Clive Speed, Assistant Director
Mr David Lieberman, Member
Mr Robert Gardini, Consultant

Family Law Council

Mr John Faulks, Chairman
Dr Nigel Collings, Member
Ms Matina Mottee, Member

Melbourne, 10 December 1993

Professor Anthony Duggan

Blake Dawson Waldron

Mr Ron Harmer, Partner

Trustee Companies Association of Australia

Mr Don Blyth, National Director

Sydney, 20 December 1993

Hon Justice Elizabeth Evatt AO
Hon Justice Michael Kirby AC CMG

Australian Law Reform Commission

Ms Sue Tongue, Deputy President
Mr Chris Sidoti, Commissioner
Mr Andrew Naylor, Law Reform Officer (Legal)

Copyright Law Review Committee

Hon Justice I F Sheppard, Chairman

Law Society of New South Wales

Mr John Nelson, President
Mr Mark Richardson, Secretary

New South Wales Law Reform Commission

Hon Gordon Samuels, Chairman
Mr Peter Hennessy, Executive Director

Sydney, 15 February 1994

Mr Bob Ellicott QC
Professor John Goldring
Mr Greg James QC
Mr Stephen Mason
Mr Ronald Sackville QC

Companies and Securities Advisory Committee

Mr Mark Burrows, Chairman
Mr John Kluver, Director
Mr Leigh Hall, Member

Sydney, 15 February 1994 continued...

*New South Wales Society of Labor
Lawyers*

Mr Tim Robertson, Secretary

University of Sydney

Professor David Weisbrot, Dean, Law
School

Canberra, 24 February 1994

Attorney-General's Department

Mr Stephen Skehill, Deputy Secretary

Australian Law Reform Commission

Ms Sue Tongue, Deputy President

Mr Chris Sidoti, Commissioner

Mr Andrew Naylor, Law Reform
Officer

Office of Parliamentary Counsel

Ms Hilary Penfold, First Parliamentary
Counsel

Mr Tom Reid, Second Parliamentary
Counsel

Mr Paul Lanspeary, Senior Assistant
Parliamentary Counsel

Appendix D

Law Reform Commission Act 1973



LAW REFORM COMMISSION ACT 1973

Reprinted as at 31 March 1990

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LAW REFORM COMMISSION ACT 1973

An Act to Constitute a Law Reform Commission

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Law Reform Commission Act 1973*.¹

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.¹

Interpretation

3. In this Act, unless the contrary intention appears:

“**Commission**” means the Law Reform Commission;

“**Deputy President**” means the Deputy President of the Commission;

“**judicial office**” means:

- (a) an office of judge of a Federal Court or of the Supreme Court of a Territory;
- (b) an office the holder of which has, by virtue of an Act, the same status as a judge of a court referred to in paragraph (a);
or
- (c) the office of President of the Defence Force Discipline Appeal Tribunal;

“**laws**” includes rules of the Common Law or of Equity;

“**laws to which this Act applies**” means:

- (a) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and

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(b) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal;

“**member**” means the President or another member of the Commission;

“**President**” means the President of the Commission;

“**reference**” means a reference by the Attorney-General to the Commission under this Act;

Extension to Territories

4. This Act extends to all the external Territories.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COMMISSION

Establishment of Commission

5. There is established by this Act a Commission by the name of the Law Reform Commission.

Functions of Commission

6. (1) The functions of the Commission are, in pursuance of references to the Commission made by the Attorney-General, whether at the suggestion of the Commission or otherwise:

- (a) to review laws to which this Act applies with a view to the systematic development and reform of the law, including, in particular:
 - (i) the modernization of the law by bringing it into accord with current conditions;
 - (ii) the elimination of defects in the law;
 - (iii) the simplification of the law; and
 - (iv) the adoption of new or more effective methods for the administration of the law and the dispensation of justice;
- (b) to consider proposals for the making of laws to which this Act applies;
- (c) to consider proposals relating to:
 - (i) the consolidation of laws to which this Act applies; or
 - (ii) the repeal of laws to which this Act applies that are obsolete or unnecessary; and
- (d) to consider proposals for uniformity between laws of the Territories and laws of the States;

and to make reports to the Attorney-General arising out of any such review or consideration and, in such reports, to make such recommendations as the Commission thinks fit.

- (2) The Attorney-General may:
- (a) modify the terms of a reference; and
 - (b) give directions to the Commission as to the order in which it is to deal with references.

Certain matters to be considered

7. In the performance of its functions, the Commission shall review laws to which this Act applies, and consider proposals, with a view to ensuring:

- (a) that such laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
- (b) that, as far as practicable, such laws and proposals are consistent with the Articles of the International Covenant on Civil and Political Rights.

Powers of the Commission

8. Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.

Commission to comply with requirements of Parliament

9. If either House of the Parliament or a Committee of either House, or of both Houses, of the Parliament requires the Commission to furnish to that House or Committee any information (including information in respect of expenditure or proposed expenditure of the Commission) concerning the performance of the functions, or the exercise of the powers, of the Commission under this Act, the Commission shall comply with the requirement.

Interim reports

10. Where the Attorney-General has referred a matter to the Commission:

- (a) the Commission may, at any time before making its report in pursuance of the reference, make an interim report on its work under the reference; and

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- (b) the Attorney-General may, at any time before the Commission makes its report in pursuance of the reference, direct the Commission to make an interim report on its work under the reference.

PART III—CONSTITUTION OF THE COMMISSION

Commission to be a body corporate

11. (1) The Commission:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) The common seal of the Commission shall be kept in such custody as the Commission directs and shall not be used except as authorized by the Commission.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that it was duly sealed.

Constitution of Law Reform Commission

12. (1) The Commission shall consist of:

- (a) a President; and
- (b) 4 or more other members;

each of whom shall be:

- (c) a judge of a Federal Court or of the Supreme Court of a State or Territory;
- (d) a person who has been enrolled as a legal practitioner of the High Court, or of the Supreme Court of a State or Territory, for not less than 5 years;
- (e) a person who is a graduate in law of a university and has had experience as a member of the academic staff of a tertiary educational institution; or
- (f) a person who, in the opinion of the Governor-General, is, by reason of the person's special qualifications, training or experience, suitable for appointment to the Commission.

(2) All members of the Commission shall be appointed by the Governor-General.

(3) The President shall be appointed as a full-time member, but if the President is or becomes the holder of a judicial office the President may perform any of the duties of that office.

(4) Members other than the President shall be appointed either as full-time members or as part-time members.

(5) The holder of a judicial office shall not be appointed as a full-time member (other than the President) unless the President is the holder of a judicial office.

(5A) In subsections (3) and (5), “judicial office” includes a judicial office of a State.

(6) A member shall not be appointed for more than 7 years but is eligible for re-appointment.

(7) The instrument of appointment of each member shall specify the terms and conditions of the member’s appointment, including the period for which the appointment is made.

(8) The instrument of appointment of a member, being a legal practitioner of the Supreme Court of a Territory, may designate the member as a member in respect of that Territory, and a member so designated shall take part in the proceedings of the Commission in respect of such references only as the President determines to be of special significance in relation to that Territory.

(9) The exercise or performance of the functions or powers of the Commission is not affected by reason only of there being a vacancy in the office of a member.

Appointment of holder of judicial office as member of Law Reform Commission not to affect tenure etc.

13. The appointment of a person who is the holder of a judicial office as a member of the Commission, or service by a person who is the holder of a judicial office as such a member, whether the appointment was or is made or the service occurred or occurs before or after the commencement of this section, does not affect, and shall be deemed never to have affected, the person’s tenure of that judicial office or the person’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person’s service, whether before or after the commencement of this section, as a member of the Commission shall be taken to have been, or to be, service as the holder of that judicial office.

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Arrangements for appointment of the holder of a judicial office of a State

14. (1) The Governor-General may, for the purpose of appointing to the Commission a person who is the holder of a judicial office of a State, enter into such arrangement with the Governor of that State as is necessary to secure that person's services.

(2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

Appointment of Deputy President

15. (1) The Governor-General may appoint a member to be Deputy President of the Commission.

(2) The Deputy President holds office as Deputy President during the pleasure of the Governor-General.

(3) The Deputy President may exercise any power of the President:

- (a) during a vacancy in the office of President; or
- (b) during any period, or during all periods, when the President is absent from duty or absent from Australia, or for any other reason, unable to perform the duties of the office of President.

Remuneration and allowances of members of Law Reform Commission

16. (1) A member, not being the holder of a judicial office (including a judicial office of a State), shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Termination of appointments of members of Law Reform Commission

17. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

(2) If:

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (b) a full-time member engages, except with the approval of the Attorney-General, in paid employment outside the duties of the member's office;

the Governor-General shall terminate the appointment of the member concerned.

(3) Subsections (1) and (2) do not apply to a member who is the holder of a judicial office but, if a member who is the holder of a judicial office ceases to hold a judicial office, the Governor-General may terminate the member's appointment.

(4) In this section, "judicial office" includes a judicial office of a State.

Resignations

18. A member may resign the office of member by writing signed by the member and delivered to the Governor-General.

Leave of absence for full-time members

19. The Attorney-General may grant leave of absence to a full-time member upon such terms and conditions as to payment of salary or otherwise as the Attorney-General determines.

Meetings of Commission

20. (1) The President shall convene such meetings of the Commission as are, in the President's opinion, necessary for the efficient conduct of its affairs.

(2) The quorum for a meeting shall be 3 members.

(3) A question arising at a meeting of the Commission shall be decided by a majority of the votes of members present and voting.

(4) The President shall preside at all meetings at which the President is present.

(5) In the event of the absence of the President from a meeting, the Deputy President shall preside at that meeting.

(6) In the absence of the President and the Deputy President from a meeting, the members present shall elect one of their number to preside at that meeting and the person so elected shall preside accordingly.

(7) At a meeting, the President or other member who presides has a deliberative vote and, in the event of votes being equal, has a casting vote.

(8) The Commission may regulate and conduct the proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

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Meetings of Divisions

21. (1) A meeting of a Division constituted under subsection 27 (1) shall:

- (a) if the President is among the members of the Division, be convened and presided over by the President;
- (b) if the Deputy President but not the President is among the members of the Division, be convened and presided over by the Deputy President; and
- (c) in any other case, be convened and presided over by a member of the Division specified for the purpose by the President.

(2) In the event of the absence from a meeting of a Division of the member who, pursuant to subsection (1), is to preside, those members of the Division who are present may elect one of their number to preside at that meeting.

(3) The quorum for a meeting of a Division shall be 2 members.

(4) The member presiding at a meeting of a Division shall have a deliberative vote.

(5) A question arising at a meeting of a Division shall be decided by a majority of the votes of the members present and voting.

(6) If at a meeting of a Division at which only 2 members are present, those members differ in opinion on a question, the member presiding shall postpone the determination of that question to a meeting of the Division at which all the members of the Division are present.

(7) In the event of an equality of votes on a question before a meeting of the Division at which more than 2 members are present, the member presiding shall have a casting vote.

(8) A Division may regulate the conduct of its proceedings at meetings and shall keep minutes.

Appointment of staff

22. (1) The President may, on behalf of the Commission and with the approval of the Attorney-General, appoint as employees of the Commission such persons as the President thinks necessary for the purposes of this Act.

(2) The terms and conditions of employment of employees of the Commission are such as are from time to time determined by the President with the approval of the Attorney-General.

President may engage consultants

23. (1) The President may, with the approval of the Attorney-General, engage persons having suitable qualifications and experience as consultants to the Commission.

(2) The terms and conditions of the engagement of a person under subsection (1) are, subject to this Act, such as are determined by the President with the approval of the Attorney-General.

Application of Superannuation Act to staff etc.

26. The Commission is an approved authority for the purposes of the *Superannuation Act 1922*.

PART IV—PROCEEDINGS OF THE COMMISSION

President may constitute Divisions

27. (1) The President may constitute a Division consisting of not less than 3 members including, if the President thinks fit, himself or herself, for the purposes of a particular reference.

(2) A Division constituted under subsection (1) shall, for the purposes of the reference in respect of which it is constituted, and for the purpose of making a report and recommendations to the Attorney-General arising out of that reference, be deemed to be the Commission.

Commission to inform itself in any manner

28. For the purposes of a review or consideration of any matter the subject of a reference, the Commission may inform itself in such manner as it thinks fit.

PART V—FINANCE

Moneys payable to Commission, and estimates of expenditure

29. (1) There are payable to the Commission such moneys as are appropriated by the Parliament for the purposes of the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in subsection (1) are to be paid to the Commission.

(3) The Commission shall prepare estimates, in such form as the Attorney-General directs, of receipts and expenditure of the Commission for each financial year and, if the Attorney-General so directs, for

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any other period specified by the Attorney-General and the Commission shall submit estimates so prepared to the Attorney-General not later than such date as the Attorney-General directs.

(4) Moneys of the Commission shall not be expended by the Commission otherwise than in accordance with estimates of expenditure approved by the Attorney-General.

Purchase and disposal of assets

30. The Commission shall not, without the approval of the Attorney-General:

- (a) acquire any property, right or privilege for a consideration exceeding in amount or value \$50,000 or, if a higher amount is prescribed, that higher amount;
- (b) dispose of any property, right or privilege where the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds \$50,000 or, if a higher amount is prescribed, that higher amount;
- (c) enter into a contract for the construction of a building for the Commission, being a contract under which the Commission is to pay an amount exceeding \$50,000 or, if a higher amount is prescribed, that higher amount; or
- (d) enter into a lease of land for a period exceeding 10 years.

Application of moneys of Commission

32. The moneys of the Commission shall be applied only:

- (a) in the discharge of obligations and liabilities of the Commission arising under this Act; and
- (b) in the payment of any salary and allowances payable under this Act.

Application of Division 3 of Part XI of Audit Act

33. It is hereby declared that the Commission is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

Exemption from taxation

36. The Commission is not subject to taxation under any law of the Commonwealth, a State or a Territory.

PART VI—MISCELLANEOUS

Reports to be laid before each House of the Parliament

37. Where the Attorney-General receives a report (including an interim report) on a matter the subject of a reference, the Attorney-General shall lay the report before each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.

Regulations

38. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

NOTE

1. The *Law Reform Commission Act 1973* as shown in this reprint comprises Act No. 221, 1973 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law Reform Commission Act 1973</i>	221, 1973	20 Dec 1973	31 Dec 1974 (see <i>Gazette</i> 1975, No. G3, p. 2)	
<i>Remuneration and Allowances Amendment Act 1977</i>	111, 1977	28 Oct 1977	Ss. 1, 2, 5, 9 (2), 13, 16, 18 and 19 (2); Royal Assent Remainder: 1 June 1977	S. 14 (2)
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1983</i>	91, 1983	22 Nov 1983	S. 3: 20 Dec 1983 (a)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (b)	S. 11

NOTE—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (c)	S. 16

- (a) The *Law Reform Commission Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsection 2 (1) of which provides as follows:
“(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (b) The *Law Reform Commission Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2 (1) of which provides as follows:
“(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (c) The *Law Reform Commission Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2 (1) of which provides as follows:
“(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.”

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 111, 1977; Nos. 65 and 193, 1985
S. 4	am. No. 65, 1985
S. 11	am. No. 65, 1985
S. 12	am. No. 111, 1977; No. 91, 1983; No. 65, 1985
S. 13	rs. No. 111, 1977 am. No. 65, 1985
Ss. 14, 15	am. No. 65, 1985
S. 16	rs. No. 111, 1977 am. No. 65, 1985
S. 17	am. No. 111, 1977; No. 65, 1985
S. 18	am. No. 65, 1985
Ss. 20-23	am. No. 65, 1985
Ss. 24, 25	rep. No. 65, 1985
Ss. 26, 27	am. No. 65, 1985
S. 29	am. No. 36, 1978
S. 30	am. No. 65, 1985
S. 31	rep. No. 65, 1985
S. 33	rs. No. 65, 1985
S. 34	rep. No. 65, 1985

NOTE—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 35	am. No. 36, 1978 rep. No. 65, 1985
Ss. 36, 37	am. No. 65, 1985

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Appendix E

Information on the Law Reform Commission's references

(reproduced from submission no. 8 – volume one of the Commission's submission)

Information about references

Complaints against police

Reference received	16 May 1975
Preliminary papers	Complaints against police ALRC WP 1, 1975
Report	Complaints against police ALRC 1, 1975
Date tabled	7 August 1975
Legislative action	<i>Complaints (Australian Federal Police) Act 1981</i> (Cth) See also <i>Police (Allegations of Misconduct) Act 1977</i> (NSW); <i>Police Administration Act 1979</i> (NT)

Criminal investigation

Reference received	16 May 1975
Report	Criminal investigation ALRC 2, 1975
Date tabled	8 November 1975
Legislative action	<i>Criminal Investigation Bill 1979</i> (Cth): introduced; lapsed <i>Criminal Investigation Bill 1981</i> (Cth): introduced, lapsed <i>Defence Force (Discipline) Act 1984</i> (Cth) <i>Crimes (Investigation of Commonwealth Offences) Act 1991</i> (Cth) See also <i>Police Administration Act 1978</i> (NT)
Judicial citations	<i>Alexander v R</i> (1981) 145 CLR 395 <i>Williams v R</i> (1986) 161 CLR 278 <i>Carr v R</i> (1988) 165 CLR 314 <i>McKinney v R</i> (1991) 171 CLR 468 <i>Petty & Maiden v R</i> (1991) 173 CLR 95 <i>Collins v R</i> (1980) 31 ALR 257 <i>R v Coleman</i> (1987) 87 FLR 175 <i>Carroll & ors v Mijovich</i> (1991) 25 NSWLR 441 <i>Larsson v Commissioner of Police for NSW</i> (1989) 16 NSWLR 173
Selected articles	F Bates 'Australian draft legislation on identification parades' 41(161) <i>Journal of Criminal Law</i> 61 R Bates 'The right to a lawyer at a police interrogation' 1981) 35(2) <i>Australian Police Journal</i> 77

Alcohol, drugs and driving

Reference received	22 January 1976
Preliminary papers	Alcohol, drugs and driving ALRC WP 2, 1976
Report	Alcohol, drugs and driving ALRC 4, 1976
Date tabled	23 September 1976
Legislative action	<i>Motor Traffic (Alcohol and Drugs) Act 1977</i> (ACT)

Insolvency: the regular payment of debts

Reference received	10 May 1976
Preliminary papers	Consumers in debt ALRC WP 3, 1976
Report	Insolvency: the regular payment of debts ALRC 6, 1977
Date tabled	4 November 1977
Legislative action	
Judicial citations	<i>Water Board v Glambedakis</i> (1992) 28 NSWLR 694
Selected articles	KE Lindgren 'Consumer dealings' 6 <i>Australian Business Law Review</i> 74

Human tissue transplants

Reference received	15 July 1976
Preliminary papers	Human tissue transplants ALRC WP 5, 1977 Does Australia need statutory brain death? ALRC IP 1, 1977
Report	Human tissue transplants ALRC 7, 1977
Date tabled	21 September 1977
Legislative action	<i>Transplantation and Anatomy Act 1978</i> (ACT) legislation based on the report has been enacted in all States and Territories except Tasmania
Selected articles	'British medicos praise Australian report' (1978) (March/April) <i>Law Society Bulletin</i> 10

Complaints against police (supplementary report)

Reference received	16 May 1975
Preliminary papers	Complaints against police (supplementary report) ALRC WP 6, 1977
Report	Complaints against police (supplementary report) ALRC 9, 1978
Date tabled	9 June 1978
Legislative action	As for ALRC 1

Unfair publication: defamation and privacy

Reference received	23 June 1976
Preliminary papers	Defamation ALRC WP 4, 1976 Defamation – options for reform ALRC DP 1, 1977 Defamation and publication privacy – a draft uniform Bill ALRC DP 3, 1977
Report	Unfair publication: defamation and privacy ALRC 11, 1979
Date tabled	7 June 1979
Legislative action	See: <i>Defamation Bill 1992</i> (NSW): introduced 25 February 1992; <i>Defamation Bill 1992</i> (Qld): introduced 10 March 1992; <i>Defamation Bill 1991</i> (Vic): introduced 13 November 1991.

Judicial citations	<i>Williams v Spautz</i> (1992) 174 CLR 509 <i>Mann v Medicine Group Pty Ltd</i> (1992) 38 FCR 400 <i>Cotogno v Lamb</i> (No 3) (1986) 5 NSWLR 559 <i>ABC v Waterhouse</i> (1991) 25 NSWLR 519 <i>Herald & Weekly Times Ltd v Guide Dog Owners</i> [1990] VR 451
Selected articles	PT George 'Congruency: unravelling the defamation action' (1990) 6 <i>Australian Bar Review</i> 124

Privacy and the census

Reference received	9 April 1976
Preliminary papers	Privacy and the census ALRC DP 8, 1978
Report	Privacy and the census ALRC 12, 1979
Date tabled	15 November 1979
Legislative action	<i>Census and Statistics Amendment Act 1981</i> (Cth)
Other action	Administrative implementation of other recommendations

Lands acquisition and compensation

Reference received	7 July 1977
Preliminary papers	Lands acquisition law: reform provisions ALRC WP 8, 1977 Lands acquisition law: reform proposals ALRC DP 5, 1978
Report	Lands acquisition and compensation ALRC 14, 1980
Date tabled	22 April 1980
Legislative action	<i>Lands Acquisition Act 1988</i> (Cth) See also <i>Lands Acquisition Act 1978</i> (NT)
Judicial citations	<i>Universal Sands & Minerals Pty Ltd v Commonwealth</i> (1980) 30 ALR 637 <i>Leppington Pastoral Co Pty Ltd v Department of Administrative Services</i> (1990) 23 FCR 148 <i>Goold v Commonwealth</i> (1993) 114 ALR 135 <i>James v Swan Hill Sewerage Authority</i> [1978] VR 519 (ALRC DP 5) <i>Kozaris v Roads Corporation</i> [1991] 1 VR 237 <i>Mario Piraino Pty Ltd v Roads Corporation</i> [No 2] [1993] 1 VR 130
Selected articles	PM Salmon 'Compulsory acquisition and compensation for the taking of land' (1980) (No 16) <i>New Zealand Law Journal</i> 354

Sentencing of federal offenders (interim)

Reference received	11 August 1978
Preliminary papers	Sentencing: reform options ALRC DP 10, 1979 <i>Sentencing of federal offenders</i> ALRC DP 15, 1980
Report	Sentencing of federal offenders (interim) ALRC 15, 1980
Date tabled	21 May 1980

Legislative action	<i>Crimes Amendment Act 1982</i> (Cth); publication of prosecution guidelines Recommendations on criminal compensation for ACT not accepted: <i>Criminal Injuries Compensation Act 1983</i> (ACT) <i>Crimes Compensation Act 1982</i> (NT)
Judicial citations	<i>Neal v R</i> (1982) 149 CLR 305 <i>Morris v East</i> (1988) 83 ACTR 1 <i>Chow v DPP & anor</i> (1992) 28 NSWLR 593 <i>DPP (Cth) v el Karhani</i> (1990) 21 NSWLR 370 <i>Piper v Corrective Services Commission of NSW</i> (1986) 6 NSWLR 352
Selected articles	D Challenger 'Payment of fines' (1985) 18 <i>Australian Journal of Criminology</i> 95

Insurance agents and brokers

Reference received	9 September 1976
Preliminary papers	
Report	Insurance agents and brokers ALRC 16, 1980
Date tabled	11 September 1980
Legislative action	<i>Insurance (Agents and Brokers) Act 1984</i> (Cth)
Judicial citations	<i>Con-Stan Industries of Australia Pty Ltd v Norwich</i> (1986) 160 CLR 226 <i>Norwich v Con-Stan Industries</i> [1983] 1 NSWLR 461 <i>Metrot Pty Ltd v Manufacturers' Mutual Insurance Ltd</i> (1990) 21 NSWLR 220

Child welfare

Reference received	18 February 1979
Preliminary papers	Child welfare – children in trouble ALRC DP 9, 1979 Child welfare: child abuse and day care ALRC DP 12, 1980
Report	Child welfare ALRC 18, 1981
Date tabled	12 November 1981
Legislative action	<i>Children's Services Act 1988</i> (ACT)
Judicial citations	<i>J v Lieschke</i> (1987) 162 CLR 447 <i>Shales v Lieschke</i> (1985) 3 NSWLR 65
Selected articles	G Lombard 'Child welfare in the Australian Capital Territory' (1986) 11 <i>Legal Service Bulletin</i> 33 C Staniforth 'Advancing the welfare of children or entrenching the welfare bureaucrats?' (1987) 12 <i>Legal Service Bulletin</i> 10

Insurance contracts

Reference received	9 September 1976
Preliminary papers	Insurance contracts ALRC IP 2, 1977 Insurance contracts ALRC DP 7, 1978
Report	Insurance contracts ALRC 20, 1982

Date tabled	16 December 1982
Legislative action	<i>Insurance Contracts Act 1984</i> (Cth)
Judicial citations	<i>Deaves v CML Fire & General Insurance Co.</i> (1979) 143 CLR 24 (ALRC DP 7) <i>Trident General Insurance Co. v McNiece Bros Pty Ltd</i> (1988) 165 107 <i>Advance (NSW) Insurance Agencies Pty Ltd & Anor v Matthews</i> (1989) 166 CLR 606 <i>Ferrcom Pty Ltd v Commercial Union Assurance Company of Australia Ltd</i> (1993) 176 CLR 332 <i>Wasson v Commercial & General Acceptance</i> (1985) 2 NSWLR 206 <i>GRE Insurance Ltd v QBE Insurance Ltd</i> [1985] VR 83 <i>Advance (NSW) Insurance Agencies Pty Ltd v Matthews</i> (1988) 12 NSWLR 250 <i>Commercial Bank of Australia v Baltica General Insurance Co Ltd</i> (1992) 28 NSWLR 579 <i>Lindsay v CIC Insurance Ltd</i> (1985) 16 NSWLR 673 <i>Commercial Union Assurance Company of Australia v Ferrcom</i> (1991) 22 NSWLR 389 <i>Accident Insurance Mutual Ltd v Sullivan</i> (1986) 7 NSWLR 65 <i>Barclay Holdings (Australia) Pty Ltd v British National Insurance Co.</i> (1987) 8 NSWLR 514 <i>Trident General Insurance Co. Ltd v McNiece Bros. Pty Ltd</i> (1987) 8 NSWLR 270
Selected articles	PD Finn 'Good faith and fair dealing. Part 1' (1990) 5 <i>Australian Insurance Law Bulletin</i> 101 D Kelly 'Further thoughts on the Ferrcom case: a re-examination of the principle of "proportionality"' (1993) 8(8) <i>Australian Insurance Law Bulletin</i> 57
Privacy	
Reference received	9 April 1976
Preliminary papers	Privacy and publication – proposals for protection ALRC DP 2, 1977 Privacy and intrusions ALRC DP 13, 1980 Privacy and personal information ALRC DP 14, 1980
Report	Privacy ALRC 22, 1983
Date tabled	14 December 1983
Legislative action	<i>Privacy Act 1988</i> (Cth) <i>Telecommunications Interception Amendment Act 1987</i> (Cth)
Judicial citations	<i>Tullamore Bowling & Citizens Club v Lander</i> [1984] 2 NSWLR 32
Selected articles	K O'Connor 'Privacy problems in the nineties' (1990) 10(2) <i>Communications Law Bulletin</i> 11

Foreign State immunity

Reference received	11 November 1982
Preliminary papers	Foreign State immunity ALRC DP 19, 1983
Report	Foreign State immunity ALRC 24, 1984
Date tabled	10 October 1984
Legislative action	<i>Foreign States Immunities Act 1985</i> (Cth)

Evidence (interim)

Reference received	18 July 1979
Preliminary papers	Evidence ALRC IP 3, 1980
Report	Evidence (interim) ALRC 26, 1985 see also ALRC 38
Date tabled	21 August 1985
Legislative action	see ALRC 38
Judicial citations	<i>McKinney v R</i> (1991) 171 CLR 468 <i>Bell v R</i> (1985) 7 FCR 555 <i>Minister for Immigration and Ethnic Affairs v Tavelli</i> (1990) 23 FCR 162 <i>Natta v Canham</i> (1991) 104 ALR 143 <i>Wade v Gilroy</i> (1986) 10 Fam LR 793 <i>Chambers v Joblin</i> (1986) 7 NSWLR 1 <i>Ritz Hotel Ltd v Charles of the Ritz Ltd</i> (1988) 15 NSWLR 158 (Evidence RP 2) <i>ULV Pty Ltd v Scott</i> (1990) 19 NSWLR 190 (Evidence RP 13) <i>R v Connors</i> (1990) 20 NSWLR 438 <i>Trawl Industries of Australia v Effem Foods Pty Ltd</i> (1992) 27 NSWLR 326 <i>R v Rosenmeyer</i> [1985] VR 945 (Evidence RP 14) <i>DPP v Martell</i> [1992] 2 VR 249
Selected articles	PM Reynolds 'Optical disc document images: evidentiary aspects in Victoria' (1991) 3 <i>Bond Law Review</i> 85

Standing in public interest litigation

Reference received	1 February 1977
Preliminary papers	Access to courts – I: Standing: public interest suits ALRC WP 7, 1977 Access to courts – I: Standing: public interest suits ALRC DP 4, 1978
Report	Standing in public interest litigation ALRC 27, 1985
Date tabled	29 November 1985
Legislative action	
Other action	Consideration being given to Government's response
Judicial citations	<i>Onus v Alcoa of Australia Ltd</i> (1981) 1981 149 CLR 27 (ALRC DP 4) <i>Ogle v Strickland</i> (1987) 13 FCR 306 <i>United States Tobacco Co. v Minister of Consumer Affairs</i> (1988) 20 FCR 520

Selected articles *Tectran Corporation Pty Ltd v Legal Aid Commission of NSW* (1986) 7 NSWLR 340
Coles Myer Ltd & Anor v O'Brien (1992) 28 NSWLR 525
 KM Mack 'Standing to sue under federal administrative law' (1987) 16 *Federal Law Review* 319

Contributory negligence

Reference received 21 February 1984
Preliminary papers Contributory negligence: consultation paper
 ALRC DP 1, 1984
 Fatal accidents legislation in the ACT: consultation paper
 ACTLR 2, 1984
Report Community law reform for the Australian Capital Territory: First report – The community law reform program, contributory negligence in fatal accident cases and breach of statutory duty cases and funeral costs in fatal accident cases
 ALRC 28, 1985
Date tabled 29 November 1985
Legislative action *Law Reform (Miscellaneous Provisions) (Amendment) Act 1991* (ACT); *Compensation (Fatal Injuries) (Amendment) Act 1991* (ACT)

Domestic violence

Reference received 29 May 1984
Preliminary papers Domestic violence in the ACT: Discussion paper
 ACTLR 4, 1984
Report Domestic violence
 ALRC 30, 1986
Date tabled 20 March 1986
Legislative action *Domestic Violence Act 1986* (ACT) and associated legislation; see *Domestic Violence Amendment Act 1991* (ACT) for extension (as recommended) to other relationships.
Other action Establishment of Domestic Violence Unit
Judicial citations *Fisher v Fisher* [1988] VR 1028

The recognition of Aboriginal customary laws

Reference received 9 February 1977
Preliminary papers Aboriginal customary law – recognition?
 ALRC DP 17, 1980
 Aboriginal customary law – marriage, children and the distribution of property
 ALRC DP 18, 1982
 Aboriginal customary law – criminal law, evidence and procedure
 ALRC DP 20, 1984
Report The recognition of Aboriginal customary laws
 ALRC 31, 1986
Date tabled 12 June 1986
Legislative action See *Adoption Act 1984* (Vic)
 See also *Children (Guardianship and Custody) Act 1984* (Vic)
Community Welfare Act 1983 (NT)

Judicial citation *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 (ALRC DP 7)
Walden v Hensler ((1987) 163 CLR 561
Mabo & ors v Queensland (No 2) (1992) 175 CLR 1
Attorney-General v Queensland (1990) 25 FCR 125

Selected articles J McKenzie 'Recognition of Aboriginal customary law' (1993) 31(5) *Law Society Journal* 37

Loss of consortium

Reference received 23 October 1986

Preliminary papers Loss of consortium: consultative paper
 ACTLR 3, 1984

Report Community law reform for the Australian Capital Territory:
 Second report – Loss of consortium and compensation for loss
 of capacity to do housework
 ALRC 32, 1986

Date tabled 21 February 1984

Legislative action *Law Reform (Miscellaneous Provisions) (Amendment) Act (No 2)*
 1991 (ACT)

Civil Admiralty jurisdiction

Reference received 23 November 1982

Preliminary papers Admiralty jurisdiction
 ALRC DP 21, 1984

Report Civil Admiralty jurisdiction
 ALRC 33, 1986

Date tabled 2 December 1986

Legislative action *Admiralty Act 1988* (Cth)

Judicial citation *Empire Shipping Co. Inc v "Shin Kobe Maru"* (1991) 104 ALR
 489
*Survival and Industrial Equipment (Newcastle) Pty Ltd v "Alley
 Cat"*
 (1992) 36 FCR 129
Port of Geelong Authority v "Bass Reefer" (1992) 37 FCR 374

Selected articles MWD White 'Arrest of ships - Queensland jurisdiction' (1988) 18
Queensland Law Society Journal 19
 I Maitland & R Kriedemann 'Civil admiralty jurisdiction –
 Australia' (1988) 10 *Law Society Bulletin* 321
 MWD White 'Changes in maritime law: the Admiralty Act 1988'
 (1989) 19 *Queensland Law Society Journal* 111

Contempt

Reference received 7 April 1983

Preliminary papers Reform of contempt law
 ALRC IP 4, 1984
 Contempt and family law
 ALRC DP 24, 1985
 Contempt and the media
 ALRC DP 26, 1986
 Contempt: disruptions, disobedience and deliberate interference
 ALRC DP 27, 1986

Report Contempt
 ALRC 35, 1987

Date tabled	3 June 1987
Legislative action	<i>Family Law Amendment Act 1989</i>
Other action	Attorney-General's Department has issued a Discussion Paper about criminal contempt proposals; on the agenda for consideration by SCAG.
Judicial citation	<i>Hinch v Attorney-General (Vic) (No 2)</i> (1987) 164 CLR 15 <i>In the Marriage of Schwartzkopff</i> (1992) 15 Fam LR 545 <i>Prothonotary v Collins</i> (1985) 2 NSWLR 549 (ALRC IP 4) <i>McIntyre v Perkes</i> (1987) 15 NSWLR 417 <i>R v Day</i> [1985] VR 261
Selected articles	H Giuringa 'The law of contempt of court – a guide for legal practitioners' (1987) 61 <i>Law Institute Journal</i> 1044 ME Errington 'Applications in relation to contempt in the Family Court' (1988) 4 <i>Australian Bar Review</i> 268 SB McNicol 'Privilege in a academia: a consideration of the power to resist disclosure of information obtained by academics in confidence' (1989) 9 <i>University of Tasmania law Review</i> 205

Debt recovery and insolvency

Reference received	10 May 1976
Preliminary papers	Debt recovery and insolvency ALRC DP 6, 1978
Report	Debt recovery and insolvency ALRC 36, 1987
Date tabled	21 October 1987
Legislative action	

Spent convictions

Reference received	11 August 1978
Preliminary papers	Criminal records ALRC DP 25, 1985
Report	Spent convictions ALRC 37, 1987
Date tabled	3 June 1987
Legislative action	Partly accepted: <i>Crimes Legislation Amendment Act 1989 (Cth)</i>

Evidence

Reference received	18 July 1979
Preliminary papers	Evidence ALRC DP 23, 1985
Report	Evidence ALRC 38, 1987 see also ALRC 26
Date tabled	5 June 1987
Legislative action	Evidence Bill 1991 (Cth): introduced 15 October 1991. Lapsed with the dissolution of Parliament See also Evidence Bill 1991 (NSW) (lapsed). NSW has released an exposure draft of the Evidence Bill 1993. The Commonwealth has not yet released its bill, but the NSW bill is in effect a uniform bill. Differences between the NSW and Commonwealth bills are noted in the text.
Judicial citation	<i>Natta v Canham</i> (1991) 104 ALR 143 <i>R v Connors</i> (1990) 20 NSWLR 438

Selected articles C Arnold 'Expert and lay opinion evidence' (1990) 6 *Australian Bar Review* 219
'Evidence reform: moves towards a national scheme' (1991) 29(7) *Law Society Journal* 42

Matrimonial property

Reference received 16 June 1983
Preliminary papers Matrimonial property
ALRC DP 22, 1985
Report Matrimonial property
ALRC 39, 1987
Date tabled 16 September 1987
Legislative action
Other action The Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act recommended some of the ALRC's proposals on superannuation.

Selected articles J Fogarty 'Family law in Australia. Part A: property and child support reforms' (1988) 18 *Queensland Law Society Journal* 161
A Lanteri 'Superannuation, the Family Law Act 1975 and the Hambly Report' (1989) 63 *Law Institute Journal* 161
F Bates 'Australia: towards the familiarization of family law' (1988-89) 27 *Journal of Family Law* 7
F Bates 'Reforming Australian matrimonial property law' (1988) *Anglo-American Law Review* 46

Service and execution of process

Reference received 29 November 1982
Preliminary papers Service and execution of process
ALRC IP 5, 1984
Report Service and execution of process
ALRC 40, 1987
Date tabled 9 December 1987
Legislative action *Service and Execution of Process Amendment Act 1991* (Cth);
Service and Execution of Process Act 1992 (Cth)
Judicial citation *David Syme & Co Ltd v Grey* (1992) 38 FCR 303
Seymour-Smith v Electricity Trust of SA (1989) 17 NSWLR 648
Paroukas v Katsaris [1987] VR 39 (Service and Execution RP 7)

Occupiers' liability

Reference received 18 July 1984
Preliminary papers Occupiers' liability
ALRC DP 28, 1987
Report Occupiers' liability
ALRC 42, 1988
Date tabled 13 April 1988
Legislative action *Law Reform (Miscellaneous Provisions) (Amendment) Act 1991* (ACT)
Judicial citation *Morawski v State Rail Authority* (1988) 14 NSWLR 374 (ALRC DP 28)

The Commonwealth Prisoners Act (interim)

Reference received	11 August 1978
Preliminary papers	
Report	The Commonwealth Prisoners Act (interim) ALRC 43, 1988
Date tabled	24 March 1988
Legislative action	Implemented in part: <i>Crimes Legislation Amendment Act (No 2) 1989</i> (Cth)

Sentencing

Reference received	11 August 1978
Preliminary papers	Sentencing: procedure ALRC DP 29, 1987 Sentencing: penalties ALRC DP 30, 1987 Sentencing: prisons ALRC DP 31, 1987
Report	Sentencing ALRC 44, 1988
Date tabled	25 August 1988
Legislative action	<i>Crimes Legislation Amendment Act (No 2) 1989</i> (Cth); <i>Crimes Amendment Bill (No. 2) 1993</i> (ACT) introduced 25 March 1993
Judicial citation	<i>The Queen v P</i> (1992) 39 FCR 276 <i>In the Marriage of Williams</i> (1992) 16 Fam LR 217 <i>Morris v East</i> (1988) 83 ACTR 1 (ALRC DP 29) <i>Attorney-General v David</i> [1992] 2 VR 46 (ALRC DP 30) <i>DPP (Cth) v el Karhani</i> (1990) 21 NSWLR 370

General insolvency inquiry

Reference received	20 November 1983
Preliminary papers	General insolvency inquiry ALRC IP 6, 1985 General insolvency inquiry ALRC DP 32, 1987
Report	General insolvency inquiry ALRC 45, 1988
Date tabled	13 December 1988
Legislative action	As to corporate insolvency: implemented; see <i>Corporate Law Reform Act 1992</i> (Cth)
Judicial citation	<i>Re La Rosa ex parte Norgard v Rocom Pty Ltd</i> (1990) 21 FCR 270 <i>McIntyre v Gye & Perkes</i> (1990) 23 FCR 260 <i>Re Dallhold Investments Pty Ltd v Dallhold Estates (UK) Pty Ltd</i> (1991) 6 ACSR 378 <i>Heenan; ex parte Collins v Official Receiver</i> (1992) 39 FCR 428 <i>Fielding v Vagrard Pty Ltd</i> (1992) 39 FCR 251 <i>Macquarie Bank Ltd v Fociri</i> (1992) 27 NSWLR 203
Selected articles	J O'Donovan 'The Harmer proposals' (1988) 6 <i>Company and Securities Law Journal</i> 203 A Herzberg 'The Metal Manufacturers Case and the Australian Law Reform Commission's insolvent trading recommendations' (1989) 7 <i>Company and Securities Law Journal</i> 177

A Herzberg 'Insolvent trading' (1991) 9 *Company and Securities Law Journal* 285
 CB Penman & TW Ferrell 'Bankruptcy and directors' duties: the United States perspective' (1991) 9 *Company and Securities Law Journal* 347
 D Everett 'Debt subordination in insolvency' (1991) 4 *Corporate and Business Law Journal* 21
 B Baxt 'Laws of diminishing return' (1992) 63(2) *Charter* 16
 P Lipton 'Voluntary administration: is there life after insolvency for the unsecured creditor?' (1993) 1 *Insolvency Law Journal* 87

Grouped proceedings in the Federal Court

Reference received 1 February 1977
Preliminary papers Access to the courts – II: class actions
 ALRC DP 11, 1979
Report Grouped proceedings in the Federal Court
 ALRC 46, 1988
Date tabled 13 December 1988
Legislative action *Federal Court Amendment Act 1991* (Cth)
Judicial citation *E v Australian Red Cross Society and ors* (1991) 99 ALR 601
Re Sheehan v Sheehan (1990) 13 Fam LR 736
Esanda Finance Corp Ltd v Carnie (1992) 29 NSWLR 382
Selected articles 'Cy Pres – the Australian situation' (1989) (May/June)
Consumer Views 9

Enduring powers of attorney

Reference received 21 April 1984
Preliminary papers Enduring powers of Attorney
 ALRC DP 33, 1987
Report *Community law reform for the Australian Capital Territory: Third report – Enduring powers of attorney*
 ALRC 47, 1988
Date tabled 6 April 1989
Legislative action *Powers of Attorney (Amendment) Act 1989* (ACT)
 See also *Property Law Amendment Act 1990* (Qld)

Criminal admiralty jurisdiction and prize

Reference received 23 November 1982
Preliminary papers Admiralty jurisdiction
 ALRC DP 21, 1984
Report Criminal Admiralty jurisdiction and prize
 ALRC 48, 1990
Date tabled 27 November 1990
Legislative action *Crimes Legislation Amendment Act 1992* (Cth) Commenced
 8 January 1993. Similar policies implemented: see *Crimes (Ships and Platforms) Act 1992* (Cth). Commenced 20 May 1993.
Other action Aspects of the report dealing with crimes at sea are on the agenda for consideration by SCAG.

Informed decision-making in medical procedures

Reference received	21 February 1984
Preliminary papers	Informed consent to medical treatment VLRC DP 7, 1987
Report	Community law reform for the Australian Capital Territory: Fourth report – Informed decision-making in medical procedures ALRC 50, 1989 (a joint report with the Law Reform Commission of Victoria and the New South Wales Law Reform Commission)
Date tabled	21 November 1989
Legislative action	
Selected articles	R Scott 'Duty to disclose risks of treatment and procedures: informed decisions' (1993) 2(1) <i>Australian Health Law Bulletin</i> 1

Product liability

Reference received	11 September 1987
Preliminary papers	Product liability ALRC IP 7, 1988 Product liability ALRC DP 34, 1988 Product liability: draft legislation ALRC DP 37, 1989
Report	Product liability ALRC 51, 1989
Date tabled	15 August 1989
Legislative action	
Other action	Not implemented: see <i>Trade Practices Amendment Act 1992</i> (Cth); Act referred to Senate Standing Committee on Legal and Constitutional Affairs for report; the report supported the Act (dissent from Senator Walsh)

Guardianship and management of property

Reference received	29 August 1988
Preliminary papers	Guardianship and management of property ALRC DP 39, 1989
Report	Guardianship and management of property ALRC 52, 1989
Date tabled	20 December 1989
Legislative action	ACT: implemented with minor changes: <i>Guardianship and Management of Property Act 1991</i> (ACT) and associated legislation:

Censorship procedure

Reference received	10 May 1990
Preliminary papers	Censorship procedure ALRC DP 47, 1991
Report	Censorship procedure ALRC 55, 1991
Date tabled	11 September 1991
Legislative action	

Other action SCAG is considering the report. SCAG Officers meeting reached broad agreement supporting proposals. Standing Committee of Censorship Ministers (SCOCM) met in Darwin in June. They agreed that ALRC proposals for a single censorship code should be presented to them in the form of drafting instructions for legislation and they would consider these at their next meeting in 5 November.
NT: It is understood that the enforcement recommendations are being considered for adoption

Multiculturalism and the law

Reference received 2 August 1989
Preliminary papers Multiculturalism and the law
ALRC IP 9, 1990
Multiculturalism: family law
ALRC DP 46, 1991
Multiculturalism: criminal law
ALRC DP 48, 1991
Multiculturalism: contract law
ALRC DP 49, 1991
Report Multiculturalism and the law
ALRC 57
Date tabled 28 April 1992
Legislative action Racial vilification legislation introduced (*Racial Discrimination Amendment Bill 1992* introduced 16 December 1992): open for public comment. Bill lapsed with the dissolution of Parliament.
Other action The Office of Multicultural Affairs has commissioned an audit of community legal education and the issue of uniform laws relating to de facto relationships is now on the agenda of SCAG.

Choice of law

Reference received 16 December 1988
Preliminary papers Federal and Territory choice of law rules
ALRC IP 8, 1989
Choice of law rules
ALRC DP 44, 1990
Report Choice of law
ALRC 58, 1992
Date tabled 28 May 1992
Legislative action
Other action
Judicial citation On the agenda for consideration by SCAG.
McKain v Miller (1991) 174 CLR 1 (ALRC DP 44)
David Syme & Co Ltd v Grey (1992) 38 FCR 303
Selected articles M Davies 'Conflict of laws issues in fatal accident actions' (1993) 1 *Torts Law Journal* 45
M Moshinsky 'Choice of law in torts' (1993) 1 *Torts Law Journal* 169

Collective Investments

Reference received 4 September 1991
Preliminary papers Collective investment schemes: superannuation
ALRC DP 50, 1992

Report	Collective investments: superannuation ALRC 59, 1992
Date tabled	28 April 1992
Legislative action	Many recommendations reflected in report of Senate Select Committee on Superannuation (the Sherry Committee): the Government has announced that it will implement many of these recommendations. Details of these measures announced 21/10/92: vast majority of recommendations accepted. Superannuation Industry (Supervision) Bill 1992 and cognate bills were introduced on the 16th of December 1992 but lapsed with the dissolution of Parliament. The bills were reintroduced on 27 May 1993.
Selected articles	A Fairley 'Is a middle ages law system good enough?' (1992) 27(5) <i>Australian Law News</i> 34

Customs and excise

Reference received	26 November 1987
Preliminary papers	Customs and Excise: Offshore provisions ALRC DP 35, 1989 Customs and Excise: Administrative provisions ALRC DP 36, 1989 Customs and Excise: Cargo Control ALRC DP 38, 1989 Customs and Excise: Licensing provisions ALRC DP 41, 1989 Customs and Excise: Customs prosecutions, jurisdiction and administrative penalties ALRC DP 42, 1990 Customs and Excise: Seizure and forfeiture ALRC DP 43, 1990 Customs and Excise: Draft legislation ALRC DP 45, 1990
Report	Customs and Excise ALRC 60, 1992
Date tabled	7 May 1992
Legislative action	The Minister for Science and Small Business, Senator Schacht, had said that a bill implementing many of the report's recommendations may be introduced in the Autumn 1994 session of Parliament.
Judicial citation	<i>Whim Creek Consolidated NL v Colgan</i> (1991) 103 ALR 204 (ALRC DP 43)

Administrative penalties in customs and excise

Reference received	27 November 1991
Preliminary papers	Administrative penalties: Customs Act 1901 (Cth) Part XIII, Division 4, 1992 ALRC DP 51, 1992
Report	<i>Administrative penalties in customs and excise</i> ALRC 61, 1992
Date tabled	9 September 1992
Legislative action	

Children 's evidence

Reference received	24 May 1991
Preliminary papers	Children 's evidence by video link ALRC DP 40, 1989
Report	Children 's evidence: closed circuit TV ALRC 63, 1993
Date tabled	26 May 1993
Legislative action	

Personal property securities

Reference received	8 June 1990
Preliminary papers	Personal property securities ALRC DP 52, 1992
Report	Personal property securities ALRC 64, 1993
Date tabled	27 May 1993
Legislative action	

Collective Investments

Reference received	24 May 1991
Preliminary papers	Collective investment schemes ALRC IP 10, 1991 Collective investment schemes ALRC DP 53, 1992
Report	Collective Investments: Other people 's money ALRC 65, 1993
Date tabled	30 September 1993
Legislative action	

Health, housing and community services legislation

Reference received	18 August 1992
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Designs

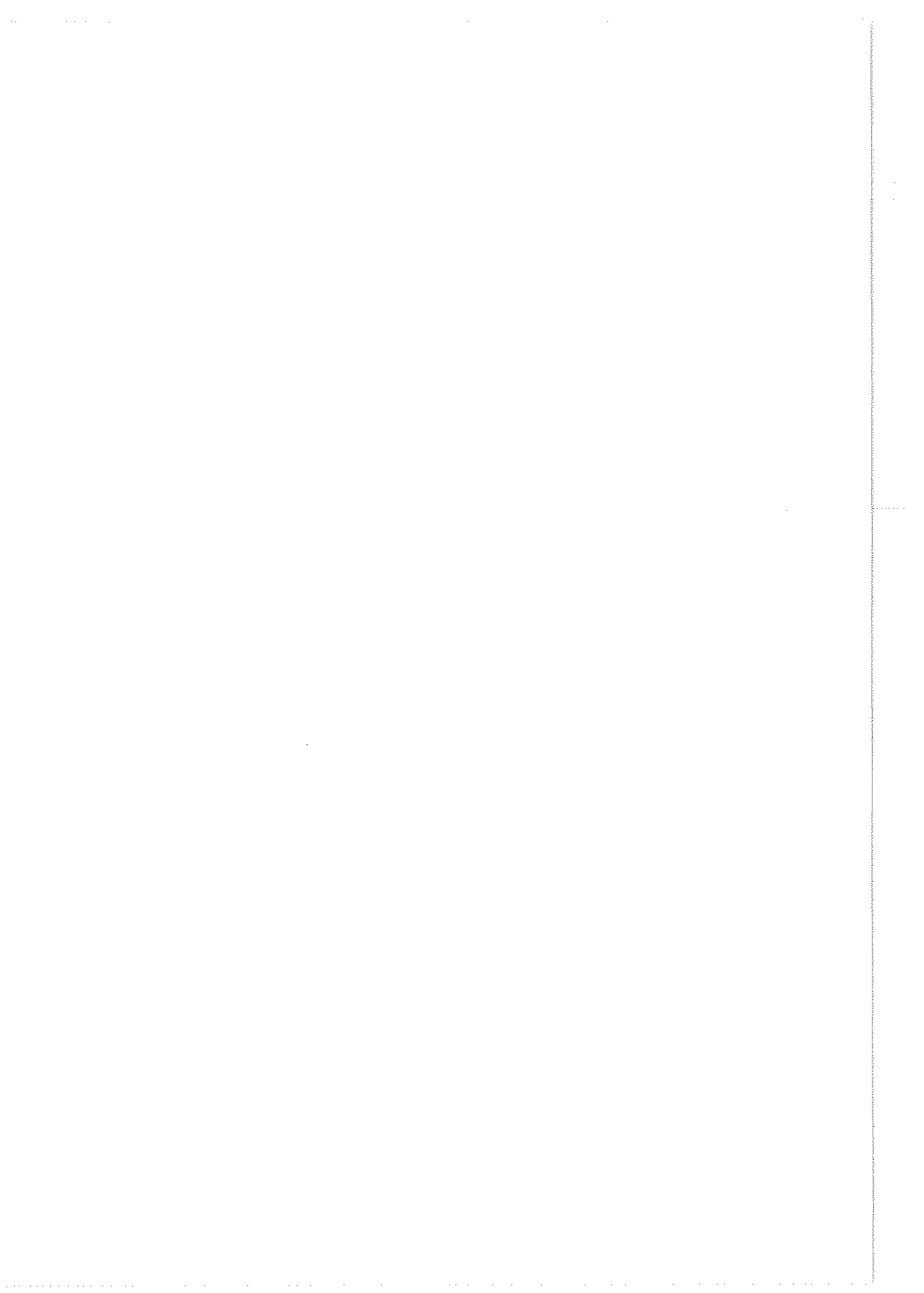
Reference received	18 August 1992
Preliminary papers	Designs ALRC DP 11, 1993

Trade Practices

Reference received	17 December 1992
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Equality before the law

Reference received	8 February 1993
Preliminary papers	Equality before the law ALRC DP 54, 1993



Appendix F

List of successive holders of office of the Law Reform Commission

(reproduced from submission no. 8 – volume one of the Commission's submission)

Successive Holders of Office under the Law Reform Commission Act 1973 (Cth)

	From		To
President (previously Chairman)			
The Hon Justice MD Kirby AC CMG	January 1975	September 1984	1984
The Hon Justice MR Wilcox (Acting)	September 1984	May 1985	1985
The Hon Justice FX Connor AO QC	May 1985	December 1987	1987
The Hon Justice EA Evatt AO	January 1988	November 1993	1993
 Deputy President			
Mr J Greenwell	October 1987	October 1992	1992
Ms S Tongue	September 1993	September 1996	1996
 Full-time Commissioners			
Mr D St L Kelly	August 1976	January 1980	1980
Mr MR Wilcox QC	July 1976	December 1977	1977
Mr R Scott	June 1976	June 1978	1978
Professor D Chappell	September 1978	September 1979	1979
Mr BM Debelle	August 1978	June 1983	1983
Associate Professor R Hayes	March 1980	March 1983	1983
Mr TH Smith	March 1980	December 1983	1983
Dr JR Crawford	January 1982	June 1984	1984
Professor AD Hambly	June 1983	September 1986	1986
Professor MR Chesterman	July 1983	December 1986	1986
Mr RW Harmer	July 1984	June 1987	1987
Mr G Zdenkowski	July 1984	December 1987	1987
Professor JL Goldring	December 1987	June 1990	1990
Mr CD Sidoti	February 1992	February 1997	1997
Mr S Mason	February 1992	October 1993	1993
 Part-time Commissioners			
Professor AC Castles	February 1975	December 1981	1981
Mr GJ Evans	February 1975	November 1975	1975
Associate Professor GJ Hawkins	February 1975	December 1981	1981
The Hon Justice FG Brennan	February 1975	March 1978	1978
Mr J Cain	February 1975	June 1977	1977
Emeritus Professor Sir Zelman Cowan	June 1976	August 1977	1977
Mr HMS Schreiber	August 1976	August 1981	1981
Mr J Spigelman	August 1976	February 1979	1979
Mr JQ Ewans CMG CBE	January 1978	January 1980	1980
Mr AN Hall	July 1977	June 1979	1979
Mr BJ Shaw QC	July 1977	June 1981	1981
Mr MR Wilcox QC	January 1978	July 1979	1979

From To

Part-time Commissioners
(continued)

Dr JA Seymour	March	1979	June	1980
Mr J Mazza	August	1979	August	1984
Mr D St L Kelly	February	1980	June	1981
Mr GWP Aarons	July	1980	July	1983
The Hon Justice FM Neasey	October	1980	October	1984
Mr GE Fitzgerald QC	July	1981	June	1984
Mr BM Debelle	July	1981	June	1983
Mr T Simos QC	January	1982	December	1986
Professor A Erh-Soon Tay	February	1982	February	1987
Dr MC Pryles	June	1983	June	1987
Professor D St L Kelly	July	1983	November	1985
Professor JR Crawford	June	1984	June	1987
Associate Professor R Hayes	May	1984	May	1985
Mr TH Smith	January	1984	December	1986
Sir Maurice Byers CBE QC	May	1984	December	1985
The Hon Justice JM Maxwell	March	1984	November	1988
The Hon Justice DM Ryan QC	April	1984	April	1990
Mr NC Seddon	April	1985	April	1988
Professor RW Harding	September	1984	August	1989
Associate Professor R Hayes	June	1986	June	1989
The Hon Justice MR Wilcox	February	1986	February	1988
Mr R Fisher	April	1986	April	1989
Mr J Basten	April	1986	April	1987
Mr P Cashman	April	1986	April	1987
Professor MR Chesterman	January	1987	September	1992
Professor D Hambly	December	1986	June	1989
Mr T Simos QC	April	1987	April	1990
Mr J Basten	August	1987	December	1987
Mr P Cashman	August	1987	December	1987
Professor J Crawford	April	1988	December	1990
Mr NC Seddon	August	1988	December	1991
The Hon Justice MR Wilcox	August	1988	December	1989
Mr G Zdenkowski	January	1988	March	1988
The Hon Justice P Nygh	February	1989	July	1992
Mr RW Harmer	July	1987	July	1988
Ms G Bird	February	1990	September	1991
Dott P Totaro AM	February	1990	September	1991
Professor JL Goldring	June	1990	December	1992
Mr J Armitage	October	1991	December	1992
Mr L Hall	December	1991	December	1992
The Hon Justice J Von Doussa	September	1992	September	1996
Professor J Lahore	January	1993	December	1995
Professor B Cass	January	1993	December	1995
Professor P Baume	January	1993	December	1995
Professor R Bailey-Harris	January	1993	December	1995
The Hon Justice I Coleman	January	1993	December	1995
Professor B Fisse	September	1993	August	1994

