

MESSAGE FROM THE PRESIDENT

At the time of writing, newspapers around the country have just published many stories on the school leavers of 1996. These articles usually feature small profiles of those students who have achieved exceptional marks, including a statement of their aspirations and career plans. As usual, law is a common choice, but this year I was struck by the number of students who indicated that they would like to specialise in international law or foreign affairs. The willing and eager international outlook of the Australian legal system, already well developed, has become entrenched. Australia is now no more a legal island than it is an economic island. Just as Australia's economy is open to the world economy, so too is Australian law part of an evolving international legal system.

There is no doubt that the work that the Australian Law Reform Commission must be performed with an eye to international developments. In some references, the connection is the subject matter with which they deal, but in all references the Commission must search the globe for the latest thinking on the subject and be aware of treaties and other international norms and standards. The Commission is also part of an international network of law reform agencies. As Deputy President David Edwards found out when attending last year's convention of over 20 Commonwealth law reform agencies in Vancouver, the potential to learn from each others work is enormous.

This issue of **Reform** examines just a few of the areas in which these international influences have evidenced themselves in the Australian legal system: criminal law and the criminal justice system; the work of the High Court of Australia, environmental law, refugee law and transnational litigation.

Australia signed the UN *Convention on the Rights of the Child* in 1990, and the Commonwealth now has the power, and the obligation, to safeguard the rights and interests of all children in Australia, irrespective of where they live and without differentiation or discrimination. Children caught up in care and protection or the juvenile justice system need a co-ordinated national approach in dealing with their difficulties. The Australian Law Reform Commission is currently assessing the performance of our legal system with respect to those 4.7 million Australians who are under 18 and examining the legislation that administers Australia's archives. The Commissions' work has raised doubts about whether Australia really is meeting its international obligations or, in terms of the resources, is prepared to give the nurturing of children in contact with the legal system appropriate priority. This judgment, we believe, is supported by a recent international report based on OECD statistics which shows that Australia has a higher proportion of children living in poverty than any other industrialised country except the USA.

The Australian Law Reform Commission is also currently in the midst of a review of the adversarial system of civil litigation. Although the review is restricted to federal jurisdictions, the issues the Commission will be investigating go to the heart of our legal system. This issue contains two articles on the adversarial review, one of which emphasises the importance of a truly global outlook when considering alternative approaches to the intractable problems faced by our legal system today.

The Australian Law Reform Commission has also recently completed references on: the complaints and disciplinary systems of the Australian Federal Police and the National Crimes Authority; federal disability services legislation; and the legal risks of international transactions. Information on all these references and reports can be found in this issue of **Reform**.

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To cap what was a busy and exciting year, the Commission is now operating under a new Act, the *Australian Law Reform Commission Act*, passed on 10 September 1996. Coming twenty years after the Commission opened its doors, the new legislation incorporates the findings of the 1994 review of the Commission by the House of Representatives Standing Committee on Legal and Constitutional Affairs. No longer are we the 'Law Reform Commission' — for the first time the Commission can legitimately claim its trade mark, the well known acronym 'ALRC'.

The new Act is drafted in accordance with modern drafting styles, is consistent with legislation that covers other independent statutory authorities and, most significantly, will improve the structure and functions of the Commission. The new Act requires the Commission to consider proposals for complementary laws between the Commonwealth, States and Territories, to have regard to such of Australia's international treaty obligations as are relevant, and to take into account the implications of its recommendations on lowering the costs of justice.

One of the Commission's recent success stories has been the commencement of the *Family Law Reform Act 1995* (Cth), on June 11 1996. The Act implements recommendations made in the Commission's 1995 report *For the sake of the kids – complex contact cases and the Family Court*, replacing the concepts of access, custody and guardianship in the *Family Law Act 1975* (Cth) with updated concepts of parental responsibility.

There are now four types of parenting orders:

- *contact orders*, which equate with the old concept of access
- *residence* and *specific issues orders*, which replace the concepts of guardianship and custody
- *parenting plan orders*, which provide for child support agreements outside of the child support legislation.

The Act also sharpens the primary focus of the court on considering the best interests of the child and provides for mediation of disputes, consistent with the recommendations of the report.

There have been some encouraging steps towards implementation with respect to two other reports. The Australian Intellectual Property Organisation (AIPO) is currently preparing a cabinet submission based on the recommendations contained in Commission's report *Designs* (ALRC 74, 1995). The report aims to improve the law of designs by providing for clearer definitions, stricter eligibility and infringement tests, a more streamlined registration system and better enforcement and dispute resolution procedures. It also advocates a broad based anti-copying law. AIPO expects to have draft legislation ready by January 1997.

The Commission's 1993 report *Personal Property Securities* (ALRC 64) addressed an area of law that has long been criticised as being fragmented, complex and cumbersome. The Law Council has shown a continuing interest in this report and has set up a sub-committee to discuss implementation of the Commission's recommendations with the finance and banking sectors.

I will end with a brief notification of some of the major events that the ALRC has planned for 1997. In August, in conjunction with Griffith University we are presenting a conference on Inquisitorial and Judicial Decision Making and in September there is an Australia/Indonesia legal conference on dispute resolution processes within and between the two jurisdictions. It will be organised jointly with the Australian National University, Indonesian government and university authorities and will take place in Canberra and Sydney. In October we are organising a conference on all aspects of advocacy to be held in Sydney.

Alan Rose