

RECENT PUBLICATIONS BY LAW REFORM BODIES WORLDWIDE

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A. Alberta

Non-Disclosure Order Application Procedures in Criminal Cases

Report on Consultation Memorandum 12.15:

September 2005

http://www.law.ualberta.ca/alri/pdfs/cnslt_memo/FullRpt_Web.pdf

This final report represents a pre-cursor to what is hoped will be new criminal rules dealing with the matter of non-disclosure orders. The report represents the final policy positions of the working group, following the publication of, and consultation on, Consultation Memorandum 12.15 *Non-Disclosure Order Application Procedures in Criminal Cases*, one of a series which the Institute has issued as part of its Rules of Court Project. Following discussion of the comments and the merits of the issues, the Committee decided to maintain its proposals.

Matrimonial Property Legislation: Valuation Dates

Background Paper

November 2005

http://www.law.ualberta.ca/alri/pdfs/MPA_Background.pdf

This paper addresses the issue of the most appropriate date for the valuation of matrimonial property where a marital relationship has broken down while both spouses are alive. Alberta's *Matrimonial Property Act* does not specify a valuation date. In the recent case of *Hodgson v. Hodgson*, the Court of Appeal interpreted the Act to require valuation as of the date of trial. Formerly this date had been applied presumptively, leaving room to use another date in exceptional circumstances.

This discussion paper gives a description of the *Matrimonial Property Act* and the leading cases on the valuation date under the Act. This is followed by an introduction to matrimonial property regimes in other Canadian jurisdictions, identification of the approaches taken to valuation dates and an account of the valuation dates that are in effect. In Part III, a number of observations are made about the role of valuation dates in achieving a just and equitable division of matrimonial property and about some of the differences associated with the use of one or another valuation date. The discussion paper poses options for reform and suggests factors to consider in assessing the advantages and disadvantages of those options.

Self-Represented Litigants

Consultation Memorandum No. 12.18

March 2005

http://www.law.ualberta.ca/alri/pdfs/cnslt_memo/cm12-18.pdf

This Consultation Memorandum is issued as part of the ongoing Alberta Rules of Court Project. It raises questions about the operation of The Rules in cases involving self-represented litigants, and invites comment on the positions tentatively taken. The Committee's basic position is that the same procedural requirements should apply to all persons who turn to the civil justice system for the resolution of legal issues. Self-represented litigants must understand that they are responsible to perform the tasks and carry out the functions ordinarily required of professionally-trained lawyers.

B. Australia

Review of the Uniform Evidence Acts

ALRC Discussion Paper 69

NSWLRC Discussion Paper 47

VLRC Discussion Paper

<http://www.austlii.edu.au/au/other/alrc/publications/dp/69/>

On 12 July 2004, the Attorney-General of Australia asked the

Australian Law Reform Commission (ALRC) to conduct an Inquiry into the operation of the *Evidence Act 1995* (Cth). The New South Wales Attorney General had similarly asked the New South Wales Law Reform Commission (NSWLRC) on 2 July 2004 to conduct a review of the operation of the *Evidence Act 1995* (NSW) in almost identical terms. In November 2004, the Attorney-General of Victoria asked the Victorian Law Reform Commission (VLRC) to review the laws of evidence applying in Victoria. The ALRC, in consultation with the NSWLRC, published an Issues Paper, *Review of the Evidence Act 1995* (IP 28), in December 2004 (as detailed in Vol. 5 no.1 of this journal).

This discussion paper examines the Uniform Evidence Acts in detail. It considers such issues as examination, competence and compellability of witnesses, the hearsay rule, the opinion rule, judicial notice and comments, warnings and directions to the jury.

Sentencing of Federal Offenders

Discussion Paper 70

<http://www.austlii.edu.au/au/other/alrc/publications/dp/70/>

On 12 July 2004, the Attorney-General of Australia asked the Australian Law Reform Commission (ALRC) to conduct a review of Part IB of the *Crimes Act 1914* with respect to the sentencing, imprisonment, administration and release of federal offenders which has been the focus of a number of criticisms. This discussion paper follows from Issues Paper 29 which was detailed in Vol. 5 No. 1 of this journal.

The Terms of Reference require the ALRC to examine Part IB and report on whether the legislation is appropriate, effective and efficient and what, if any, changes are desirable. This discussion paper outlines the main criticisms of Part IB of the *Crimes Act* and proposes a new federal sentencing Act. It addresses issues of equality in the treatment of federal offenders and considers the sentencing options available in sentencing federal offenders and ancillary orders for restitution or compensation of victims. The paper examines a range of procedural and evidential issues in sentencing. It considers the administration of federal sentences; the release of federal

offenders into the community on parole and the concerns of special categories of federal offenders who are often the most vulnerable and disadvantaged in the federal criminal justice system: young offenders; those with a mental illness or intellectual disability; women; offenders from culturally or linguistically diverse backgrounds; and those with drug or gambling addictions.

C. British Columbia

Report on Leases of Unsubdivided Land and the Top Line Case

BCLI Report No. 38

July 2005

http://www.bcli.org/pages/projects/property/TopLine/Leases_Unsubdivided_Land_Report.pdf

This report focuses on the legal issues that have arisen in the wake of the Court of Appeal's decision in *International Paper Industries Ltd. v. Top Line Industries Inc.* The *Top Line* case involved a lease of a portion of a parcel of land. The parties in *Top Line* neglected to obtain approval to subdivide the land in this manner. The court ruled that, in consequence of this breach of the subdivision requirements of the *Land Title Act*, the lease must be considered void *ab initio*. This ruling surprised real estate lawyers. It has also proved to be a continuing source of frustration to persons involved in commercial leasing and agriculture. The *Top Line* case has imposed additional costs on these persons. In addition, by giving persons a means to escape from their contractual obligations, it has added uncertainty to the law and raised the volume of litigation.

This report will examine the decision in *Top Line*, commentary on and criticism of *Top Line*, and some recent developments in the courts after *Top Line*. It will conclude by setting out the Law Institute's recommendations for reform of the law.

The recommendations in this report provide a means for holding parties to such purported leases to the contractual obligations that they have entered into. This result may be achieved without undue harm to local control of land development and to the land title system because the law has evolved a variety of other

procedures, in addition to subdivision control, to protect those interests.

D. England and Wales

The Forfeiture Rule and the Law of Succession

Law Com No. 295

Report: July 2005

http://www.lawcom.gov.uk/docs/lc295_Final.pdf

In *Re DWS (deceased)* a person killed both of his parents, neither of whom left a will. The killer was not allowed to inherit from them, under a rule of law known as the forfeiture rule. The Court of Appeal decided that not only the killer, but also his son, was excluded from inheriting. According to the Commission, this outcome appears arbitrary: it is not based on public policy, but is a by-product of the way the intestacy legislation is drafted. Similar problems may arise in other situations, such as where the killer forfeits property under a will, or where a person refuses to accept an inheritance.

In October 2003, the Commission published Consultation Paper No 172, “The Forfeiture Rule and the Law of Succession.” The paper considered the problem which arose in the case of *Re DWS (deceased)* and discussed whether a similar problem arose in other contexts. This Report discusses the responses to consultation and sets out recommendations together with a draft Bill.

Company Security Interests

Law Com No. 296

Report: August 2005

<http://www.lawcom.gov.uk/docs/lc296.pdf>

This report is about the system for registering mortgages and charges over property owned by companies and about the “priority” rules that apply when there is more than one mortgage or charge over the same property. It also deals with similar issues when a company sells its “receivables,” for example, under a factoring agreement.

The reference for this project came from the Secretary of State for Trade and Industry. The terms of reference required the Commission to:

- (1) examine the law on the registration, perfection and priority of company charges;
- (2) consider the case for a new scheme of registration and priority of company charges, including charges created by
 - (a) companies having their registered office in England or Wales, wherever the assets charged are located; and
 - (b) overseas companies and companies having their registered office in Scotland, where the charge is subject to English law;
- (3) consider whether such a scheme should apply both to security in the strict sense and to “quasi-security” interests such as conditional sales, retention of title clauses, hire-purchase agreements and finance leases, including the extent to and means by which such interests should be made subject to the law governing securities;
- (4) examine the law relating to the granting of security and “quasi-security” interests by unincorporated businesses and individuals over property other than land, including the feasibility of extending any new scheme for company charges to such interests, and the extent to and means by which such “quasi-security” interests should be made subject to the law governing securities; and
- (5) make recommendations for reform.

The Commission makes many recommendations, including a recommendation that there should be a new system of electronic notice-filing for company charges, and that, as soon as possible, there should be further legislation to extend the scheme recommended for company charges to charges created by unincorporated businesses.

E. Hong Kong

Privity of Contract

Report

October 2005

<http://www.hkreform.gov.hk/reports/rprivity-e.pdf>

This report details proposals to reform the doctrine of privity

of contract. The privity doctrine has two aspects. As a general rule, a person cannot acquire and enforce rights under a contract to which he is not a party; and a person who is not party to a contract cannot be made liable under it. While the second aspect is generally regarded as just and sensible, the first aspect has been subject to widespread criticism by judges, academics and law reform bodies in a number of common law jurisdictions. The main concern of the report is, therefore, with this first aspect of the doctrine. The questions which fall to be considered are whether the anomalies of the privity doctrine are serious enough to warrant its reform and, if so, whether *ad hoc* reforms, either by the courts on their own initiative or by legislation, are adequate in the modern Hong Kong context, or whether an issue of this magnitude calls for comprehensive legislative reform.

The report recommends that the doctrine should be reformed (but not completely abolished), by means of a detailed legislative scheme which would provide a comprehensive, systematic and coherent solution. Chapter 1 of the report examines the doctrine of privity as well as the common law and statutory principles which have the effect of circumventing the doctrine. Chapter 2 discusses the arguments for and against reforming the doctrine, while Chapter 3 examines a number of options for reform and concludes in favour of recommending reform by means of a detailed legislative scheme. Chapter 4 examines the legislative schemes in other major common law jurisdictions and considers various options before making our provisional recommendations for a legislative scheme for Hong Kong. Chapter 5 summarises all recommendations.

Hearsay in Criminal Proceedings

Consultation Paper

November 2005

<http://www.hkreform.gov.hk/reports/crimhearsaye.pdf>

Under the existing law, hearsay evidence is inadmissible in criminal proceedings unless it falls within one of a number of common law or statutory exceptions. A major criticism of the hearsay rule, however, is that it is too strict and inflexible, and sometimes results in the exclusion of evidence which, by the

standards of ordinary life, would be regarded as accurate and reliable. In addition, the various exceptions to the rule are complex and uncertain.

The sub-committee examined the law and proposals for reform in a number of other jurisdictions and concluded that there should be a comprehensive and principled approach under which relevant and cogent hearsay evidence would be admitted where the need existed for such evidence. The sub-committee recommends that, as a general rule, the present rule against the admission of hearsay evidence should be retained, but there should be greater scope to admit hearsay evidence in specific circumstances.

Conditional Fees

Consultation Paper

September 2005

<http://www.hkreform.gov.hk/reports/conditional-e.pdf>

Conditional fees are a form of “no-win, no fee” arrangement. If the case is unsuccessful, the lawyer will charge no fees. In the event of success, the lawyer charges his normal fees plus a percentage “uplift” on the normal fees. Conditional fees are different from the American form of contingency fee, where the lawyer’s fee is calculated as a percentage of the amount of damages awarded by the court.

At present, conditional fees, like other forms of “no win, no fee” arrangements, are unlawful for civil legal proceedings involving the institution of legal proceedings. After examining the development of conditional fees in England and recent problems and litigation there, the sub-committee recommends, amongst other proposals, that existing prohibitions against the use of conditional fees should be lifted for certain types of civil litigation, so that lawyers may choose to charge conditional fees in appropriate cases.

It is also recommended that lawyers be allowed to use conditional fees in certain types of civil litigation, including personal injury cases, family cases not involving the welfare of children, insolvency cases, employees’ compensation cases, professional negligence cases, some commercial cases, product liability cases and

probate cases involving an estate. Conditional fee agreements should not be extended, at least initially, to defamation cases, criminal cases, and cases in which an award of damages is not the primary remedy sought.

F. Ireland

Report on Reform and Modernisation of Land Law and Conveyancing Law

(LRC 74 – 2005)

Report: July 2005

<http://www.lawreform.ie/Report%20on%20Reform%20and%20Modernisation%20of%20Land%20Law.pdf>

This Report primarily sets out the draft legislation which, it is recommended, should implement the various recommendations set out in the October 2004 Consultation Paper (LRC CP34 – 2004). The draft Bill, entitled the *Land and Conveyancing Bill 2005*, is set out in Appendix B to this Report. This also contains detailed explanatory notes to each part and section of the Bill. The following principles were adopted in carrying out the first phase of the Joint Project:

- (a) updating the law, so as to make it accord with changes in society.
- (b) promoting simplification of the law and its language, so as to render it more easily understood and accessible;
- (c) promoting simplification of the conveyancing process, in particular the procedures involved, including the taking of security over land;
- (d) facilitating extension of the registration of title system, with a view to promoting a system of title by registration;
- (e) keeping in mind the overall aims of the e-Conveyancing Project and facilitating introduction of an e-conveyancing system as soon as possible.

Chapter 1 of this Report contains some further explanation

of the drafting of the Bill and its contents. Chapter 2 discusses areas where the Bill does not conform strictly to recommendations in the Consultation Paper and explains why this is so.

The Court Poor Box: Probation of Offenders

(LRC 75-2005)

Report: September 2005

<http://www.lawreform.ie/files/Court%20Poor%20Box%20Report%20final%20version.pdf>

This Report, which follows a Consultation Paper published in 2004, examines the common-law disposition known as the Court Poor Box, with particular reference to the *Probation of Offenders Act 1907*. The Court Poor Box system has operated on an informal basis for many years, resulting in some debate as to its use in a modern sentencing framework. The Commission provisionally recommended in the Consultation Paper that the Court Poor Box should be replaced with a statutory disposition based on the positive elements of the current regime while omitting its negative elements.

In the Report, the Commission has moved towards building this statutory framework for a reformed Court Poor Box in the context of the dismissal of a charge under the *Probation of Offenders Act 1907*. The Commission envisages that a statutory disposition modelled on the Court Poor Box could be incorporated into a fully reformed Probation Act, thereby expanding the range of options open to the court in sentencing less culpable offenders. Appendix A contains a draft Probation of Offenders Bill to give effect to the Commission's recommendations.

Multi-Party Litigation

(LRC 76-2005)

Report: September 2005

<http://www.lawreform.ie/MPL%20Report.pdf>

This Report follows from and builds upon the work carried out by the Law Reform Commission in preparation for the *Multi-Party Litigation (Class Actions)* Consultation Paper (LRC CP 25-

2003), published in July 2003. The Consultation Paper opened with a discussion of the procedures currently available in Ireland to deal with multi-party litigation. The discussion pointed to the need for procedural reform in the area. To this end, a comparative review of selected multi-party procedures from a variety of jurisdictions was undertaken. On consideration of the options, a form of class action procedure was provisionally selected as being most appropriate in the Irish context.

Chapter 1 of the Report outlines the need for procedural reform in this area of the law. The Commission draws on the experience to date of multi-party litigation in this jurisdiction and sets out the procedures within which it has operated. Chapter 2 sets out the details of the envisaged multi-party litigation procedure tailored to meet the litigation needs of the jurisdiction. In Chapter 3, the issue of funding multi-party litigation is considered. Chapter 4 provides a summary of the recommendations contained in the Report. Appendix A contains the Commission's draft Rules of the Superior Courts to give effect to the principal recommendations in the Report. Appendix B contains further draft legislative amendments following from the recommendations in the Report.

Corporate Killing

(LRC 77-2005)

Report: October 2005

<http://www.lawreform.ie/Corporate%20Killing%20Report.pdf>

In October 2003, the Commission published its *Consultation Paper on Corporate Killing*. The Consultation Paper examined the scope of the debate on corporate killing and the current law in Ireland and reviewed the law in jurisdictions such as England and Wales and Australia. In the Consultation Paper, the Commission considered a number of reform options and was of the opinion that a statutory definition of the offence is needed. The Paper also contained provisional recommendations that this be complemented by individual statutory liability for managers who were culpable in the causation of death and that the sentencing options available for a convicted corporate entity be expanded to include remedial orders,

community service orders and adverse publicity orders, in addition to fines. The Commission still holds these views and so this Report follows on from and develops those provisional recommendations.

The Establishment of a DNA Database

(LRC 78-2005)

Report: November 2005

<http://www.lawreform.ie/DNA%20Database%20Report%20No1.pdf>

A DNA database is a repository of DNA profiles, generated from biological samples, which can be electronically stored for comparison with profiles generated from material found at the scene of a crime. The primary aim of a DNA database is to link individuals to unsolved offences and unsolved offences to each other by means of DNA profiling. DNA databases established in various countries worldwide have proved to be very successful investigative tools.

In examining the possibility of establishing a DNA database in Ireland, the advantages and disadvantages, and the human rights implications involved, this Report follows from and builds upon the work carried out by the Law Reform Commission which led to the publication of the *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004) in March 2004.

The Report also examines such issues as the purpose and scope of a DNA database; retention, destruction and analysis of samples; custodian of the database and information sharing. It also considers the issue of DNA evidence in court. The Appendix contains a draft Criminal Justice (DNA Database) Bill to give effect to the Commission's recommendations which require legislative implementation.

G. Manitoba

Private Title Insurance

Consultation Paper

June, 2005

http://www.gov.mb.ca/justice/mlrc/reports/mb-sk-consultation_paper.pdf

This paper was prepared jointly by the Manitoba Law Reform Commission and The Law Reform Commission of Saskatchewan and it considers the use of title insurance to protect vendors, purchasers, mortgagors, and financial institutions in conveyancing of residential real property. Both the impact of Title Insurance on individuals and its potential effect on the public interest are discussed and the paper sets out the issues that arise when private insurance is introduced into jurisdictions with the Torren's land title system, in which title is assured by registration.

Costs Awards in Civil Litigation

Report No: 111

September 2005

<http://www.gov.mb.ca/justice/mlrc/reports/111.pdf>

The cost of litigation has been increasing at a rate far outpacing the rate of inflation in Canada. This report considers the fundamental basis of the existing costs regime in Manitoba, and compares it with regimes in other jurisdictions, to assess whether reform is necessary to ensure that the rules best achieve the purposes for which they are intended. As well, it reviews the common law rules relating to costs awards to self-represented litigants in order to determine whether a legislated regime with respect to such costs is desirable.

H. New South Wales

Expert Witnesses

Report 109 (2005)

http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_r109pdf

This Final Report is published on foot of Issues Paper 25, which was published in November 2004 and which is detailed in Vol. 5, No. 1 of this Journal.

The Report provides a historical background to the use of expert witnesses. It reviews the current rules of court of the NSW Supreme, District and Local Courts relating to expert witnesses and

reviews reform developments in other jurisdictions, including England and Wales. It examines the problem of “bias” in relation to expert witnesses and deals with issues relating to standards of conduct for the expert witnesses, in particular: the code of conduct, “no win no fee” arrangements, accreditation of expert witnesses, and sanctions for inappropriate or unethical conduct. Chapter 6 deals with general procedural aspects of expert evidence including: the so called “permission rule,” disclosure obligations, conference requirements for experts, concurrent evidence, assumptions in expert evidence, and restrictions on a party’s ability to object to an expert’s qualifications and to the facts in an expert’s report. The Commission examines and supports proposals for the use of joint expert witnesses.

Uniform Succession Laws: Family Provision

Report 110 (2005)

[http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/r110.pdf/\\$file/r110.pdf](http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/r110.pdf/$file/r110.pdf)

Family provision legislation aims to ensure that the family and other dependants of a deceased person are adequately provided for. This is achieved, where a Court decides that provision ought to be made, by allowing it to override the terms of the deceased person’s will or the distribution of the deceased person’s estate upon intestacy.

The legislation relating to family provision in each Australian State and Territory has been reviewed by the National Committee on Uniform Succession Laws. This Report is a commentary on the draft model provisions as presented to the Standing Committee in July 2004.

Majority Verdicts

Report 111 (2005)

[http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/Report%20111.pdf/\\$file/Report%20111.pdf](http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/Report%20111.pdf/$file/Report%20111.pdf)

In NSW, all members of a jury in a criminal trial must unanimously agree with the decision either to convict or acquit the

accused. It is generally considered that the requirement of unanimity results in more hung juries than does the alternative system of requiring only a majority of jurors to agree on a verdict.

In this report, the Commission inquires into and reports on whether the unanimity requirement in criminal trials should be preserved in New South Wales. The Terms of Reference stated that the Commission should have regard to:

- Arguments for and against preserving the unanimity rule;
- The incidence of hung juries in New South Wales and the possible effect of majority verdicts on hung juries;
- The operation of majority verdicts in other Australian and international jurisdictions;
- The advantages and disadvantages of different models for majority verdicts currently operating in other jurisdictions;
- Whether any other procedures or measures could decrease the incidence of hung juries in New South Wales; and
- Any other related matter.

Uniform Succession Laws: Intestacy

Issues Paper 26 (2005)

[http://www.agd.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/c4bac0a498026160ca256fe300809220/\\$FILE/IP26.pdf](http://www.agd.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/c4bac0a498026160ca256fe300809220/$FILE/IP26.pdf)

At the request of the Attorney General, the Commission must inquire into and report on the existing law and procedure relating to succession and to recommend and draft a model State and Territories law on succession. In undertaking this inquiry, the Commission is to consult with the Queensland Law Reform Commission which has accepted responsibility for the coordination of a uniform succession laws project.

This Issues Paper is the first stage of the review of the law relating to intestacy and raises and invites comments on a number of issues in relation to the law of intestacy in the different Australian jurisdictions. The law in New Zealand and England has also been included for the sake of comparison.

I. New Zealand

The Infringement System: A Framework for Reform

Study Paper 16

August 2005

http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_117_319_SP16.pdf

This Study Paper has been prepared by the Law Commission as part of the review of the infringement offence system undertaken by the Ministry of Justice.

The Commission was invited by the Minister Responsible for the Law Commission to contribute to the Ministry of Justice review by providing advice on:

- the nature and purpose of infringement offences including: the types of conduct they should sanction and any limitations; whether they should be treated as civil or criminal breaches, or should have a separate jurisdiction; and the basis on which they should be distinguished from general offences;
- the desirability of subsuming minor offences into the infringement offence procedure; and
- the principles and process for determining penalty levels, including consideration of the relativities between court-imposed fines and infringement fees and the appropriateness and efficacy of fixed monetary penalties and other sanctions.

New Issues in Legal Parenthood

Report 88

April 2005

http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_91_315_R88.pdf

This report reviews the legal meaning of parent, the purpose of parenthood laws and the importance of the legal relationship between a parent and child. It recommends amendments and additions to the presumptions of parenthood and to the mechanisms

for proving and disproving parenthood to take into account the advent of DNA testing. With donor gamete conception, recommendations primarily relate to the legal status of known donors. In the area of surrogacy, the Commission recommends a comprehensive new legal regime for the transfer of parenthood. It also reviews embryo donation and mistaken implantation. Several recommendations are made with a view to repairing the gaps in existing law and practice which mean some children cannot obtain a record of their genetic parentage.

In reviewing the legal rules that determine parenthood, the Commission adopts five guiding principles, which need to be carefully weighed in making specific recommendations in this area. These are: the child's welfare and best interests; the desirability of clarity and certainty at the earliest possible time in the child's life and of simple procedures to achieve this; the need for individuals to access information about their genetic and gestational parentage; the desirability of autonomy and collaboration in parenting; and the equality of children regardless of the circumstances of their creation or family form.

Criminal Pre-Trial Processes: Justice through Efficiency

Report 89

June 2005

http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_97_316_R89.pdf

The terms of reference directed the Law Commission to review the purpose and practice of status hearings in the summary jurisdiction, and in particular to consider:

- whether status hearings improve the efficiency and effectiveness of the criminal justice system;
- the role of the judiciary;
- the role of the prosecutor and of counsel for the defendant;
- the observance of the rights of defendants and victims;
- media reporting of status hearings;

- the desirability and legitimacy of sentence indications;
- whether there is a need for regulation, either statutory or non-statutory; and
- whether status hearings should be extended to the indictable jurisdiction.

The Commission believes that the fundamental issue is not how status hearings might be improved. Rather, it is how the pre-trial process as a whole should function in either resolving cases or preparing them for trial. Accordingly, in this report, the Commission has recommended a major overhaul of the way in which criminal cases are handled from first appearance through to trial, with a view to greater pre-trial efficiency and therefore better justice.

New Zealand Court-Referred Restorative Justice Pilot: Evaluation May 2005

<http://www.justice.govt.nz/pubs/reports/2005/nz-court-referred-restorative-justice-pilot-evaluation/index.html>

The court-referred restorative justice pilot was one of the first in depth studies by any government of the use of restorative justice in cases of serious offending by adults. The project, established and managed by the then Department for Courts, piloted and evaluated a restorative justice process that operated on referral from the Court, following a guilty plea and before sentencing. The pilot was established in 2001 in four District Courts around New Zealand.

This evaluation examines the extent to which specific objectives are achieved through the introduction of court-referred restorative justice conferences. These objectives are:

- Increased resolution of the effects of crime for victims who participate in restorative justice conferences;
- Increased victim satisfaction with the criminal justice process; and
- A reduced rate of re-offending by offenders referred to restorative justice conferences compared with offenders dealt with through conventional criminal justice processes.

The evaluation also provides information on the effectiveness of the pilot in improving outcomes for Maori and Pacific victims and offenders and provides detailed information on the operation, and other impacts, of the scheme.

J. Queensland

A Review of the Uniform Evidence Acts

Report 60

September 2005

[http://www.qlrc.qld.gov.au/reports/r60.pdf](http://www qlrc.qld.gov.au/reports/r60.pdf)

The Australian Law Reform Commission is currently undertaking a review of the Uniform Evidence Acts. This Report focuses on areas of particular concern to Queensland by identifying differences between Queensland evidence law and the uniform Evidence Acts, and addressing the questions raised in the ALRC's Issues Paper and proposals made in the Discussion Paper (discussed above).

In its analysis of each of these areas, the QLRC has examined the advantages and disadvantages of the differing approaches to evidence law in Queensland and under the uniform Evidence Acts.

K. South Africa

Privacy and Data Protection

Discussion Paper 109

October 2005

http://www.doj.gov.za/salrc/dpapers/dp109_prj124/INTRO,%20PREFACE,%20SUMMARY,%20CONTENTS,%20BIBLIOGRAPHY.pdf

Privacy provides for the legal protection of a person in instances where his or her personal information is being collected, stored, used or communicated by another person or institution. In South Africa, the right to privacy is protected in terms of both common law and in sec. 14 of the Constitution. The constitutional right to privacy is, like its common law counterpart, not an absolute

right, but may be limited in terms of law of general application and has to be balanced with other rights entrenched in the Constitution.

Concern about information protection has increased worldwide since the 1960's as a result of the expansion in the use of electronic commerce and the technological environment and privacy is now an important trade issue because information privacy concerns can create a barrier to international trade. Considering the international trends and expectations, information privacy or data legislation will ensure South Africa's future participation in the information market, if it is regarded as providing "adequate" information protection by international standards.

This paper sets out recommendations and contains a Draft Bill on privacy and information protection. Respondents are requested to submit **written** comments, representations or requests to the Commission by **28 February 2006**.

L. Tasmania

Warnings in sexual offences cases relating to delay in complaint

Issues Paper No. 8

June 2005

http://www.law.utas.edu.au/reform/Publications/Warnings/Warnings_IssuesPaper_June05.pdf

The common law had expectations about the way that genuine victims of sexual assault would behave. In particular, it was believed that a genuine victim would complain about the offence as soon as possible after it occurred. Such an expectation, in the common law view, accorded with common sense understandings of human behaviour. Absence of complaint or delay in making a complaint was, therefore, considered to impact unfavourably upon the credibility of the complainant's account and suggested that the allegations made were fabricated.

The dubious assumption that anyone who has been sexually assaulted will naturally make an early complaint takes little account of the possible circumstances involved in the offence – the nature of the assault, the relationship of the perpetrator to the complainant,

any trauma resulting, and the complainant's age and her or his ability to relate what has occurred. Research has shown that delay in making a complaint is common among sexual assault victims and that many victims will make no complaint at all.

This issues paper discusses reforming the law in relation to the warnings and directions given to juries relating to delay in complaint in sexual offences cases.

M. Victoria

Assisted Reproductive Technology & Adoption

Position Paper One: Access

May 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/\\$file/Position_Paper_1.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/$file/Position_Paper_1.pdf)

This is the first in a series of position papers to be published by the Victorian Law Reform Commission. The purpose of this Position Paper is to set out the commission's preliminary views on access to, and eligibility for, assisted reproductive technology (ART). The paper also discusses gamete (sperm and ova) donation and posthumous use of gametes.

This Position Paper includes an explanation of the consultation process; a discussion of the issues relevant to the regulation of access to ART, gamete donation, and posthumous use of gametes; and a summary of the findings and arguments that have led the commission to its interim recommendations.

Assisted Reproductive Technology & Adoption

Position Paper Two: Parentage

July 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/\\$file/Position_Paper_2.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/$file/Position_Paper_2.pdf)

This paper addresses the question of who should be recognised as the legal parents of children born as a result of the use of donated gametes (in particular, of children born to women without male partners), the rights of donor-conceived children to information about their genetic origins, and who should be eligible to adopt children.

This Position Paper includes a discussion of the issues relevant to legal parentage, access to donor information and eligibility to adopt children and a summary of the findings and arguments that have led the commission to its interim recommendations.

Assisted Reproductive Technology & Adoption

Position Paper Three: Surrogacy

November 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/\\$file/Position_Paper_3.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Assisted_Reproductive_Technology_and_Adoption/$file/Position_Paper_3.pdf)

This paper addresses specific aspects of the law governing surrogacy. Because altruistic surrogacy is not prohibited by legislation, it is legally permitted in Victoria. However, because a woman cannot be treated in a clinic unless she is “unlikely to become pregnant” or is at risk of having a child with a disease or genetic abnormality, the circumstances in which a woman can act as a surrogate mother are very limited.

The paper includes: a discussion of the issues relevant to the regulation of surrogacy; a set of interim recommendations developed by the commission on the assumption that altruistic surrogacy is to be permitted in Victoria; what eligibility criteria should apply to the surrogate mother and the person or couple commissioning the surrogacy; whether any form of payment should be permitted in altruistic surrogacy arrangements; how the legal parentage of children born through such arrangements should be determined; and how to ensure that children born through such arrangements have access to information about their genetic heritage and/or their mode of conception.

The Commission welcomes submissions on this paper until 9th January 2006

Family Violence Police Holding Powers

Interim Report

September 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/\\$file/Interim_report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/Interim_report.pdf)

This Interim Report makes recommendations to confer on members of Victoria Police a power to remove, hold and detain persons pending an application for an interim intervention order. The nature and significance of family violence is considered to examine whether an extension of police powers is relevant and beneficial to victims, and the legal impediments police face in seeking intervention orders in a crisis situation is noted. These impediments put pressure on police resources and can expose victims to further violence.

In its recommendations, the Commission considers the safeguards for a person detained by police, including people from marginalised groups, as well as necessary protections for police.

Review of the Bail Act

Consultation Paper

November 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Bail/\\$file/Bail_Consultation_Paper_Final.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Bail/$file/Bail_Consultation_Paper_Final.pdf)

The purpose of this Consultation Paper is to explain the law governing bail and the way the bail system operates and to ask questions about possible reforms. This Consultation Paper is the first publication for the commission's reference to review the *Bail Act 1977* and its practical operation. The terms of reference direct the commission to make recommendations for any procedural, administrative and legislative changes that may be necessary to ensure the bail system functions simply, clearly and fairly. It examines the tests used for granting and refusing bail; issues relating

to bail of children and young people; and issues relating to court bail and police bail. The paper also considers bail support services, issues relating to disadvantaged and vulnerable accused, and victims and bail. The commission has also produced a booklet for victims of crime that provides information and asks questions about bail which are likely to be of particular importance to them, which is available at:

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Bail/\\$file/bail_victims_brochure.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Bail/$file/bail_victims_brochure.pdf)

The Commission welcomes submissions on this paper until 30th January 2006

Workplace Privacy

Final Report

October 2005

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Privacy/\\$file/Privacy%20Final%20Report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Privacy/$file/Privacy%20Final%20Report.pdf)

The right to privacy is a fundamental human right, recognised in international law, to which all people are entitled. This includes workers. However, like other human rights, privacy is not an absolute right. The way in which it is protected and regulated within the workplace must be balanced against other important social interests, such as allowing employers to manage their businesses productively and safely.

In the commission's view, workers' privacy is not adequately protected. There are significant legislative gaps in relation to the protection of privacy in workplaces, which require regulation at state level. The Commission proposes the creation of workplace privacy legislation, which will provide a comprehensive "one-stop-shop" for the regulation of potentially privacy-invasive acts and practices in the workplace. The proposed legislation has been included in this report.

Warrant Powers and Procedures

Final Report

November 2005

<http://www.parliament.vic.gov.au/lawreform/>

The Committee has sought to balance the legitimate need for warrant powers for criminal law enforcement and some civil enforcement purposes against individual and human rights, which the community expects will be protected unless there is good reason for overriding these rights in the public interest. In considering the appropriate balance between these competing interests, the Committee focused on the fairness of warrant powers and procedures and also on the related issue of creating greater consistency between numerous pieces of legislation which authorise various types of warrants. The Committee has made recommendations which will make both the source of the law which authorises a warrant and the steps involved in enforcing that warrant more logically located in legislation and, therefore, more readily accessible and understandable to both legal practitioners and other members of the community