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## Product liability

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Australia is to have a new product liability law which will conform to standards currently applying to countries of the EC, making our export manufacturers more competitive internationally. In announcing the proposal, the Federal Minister for Justice and Consumer Affairs, Senator Michael Tate, drew on the ALRC's report on Product Liability (ALRC 51) as well as the recommendations of the Industry Commission which reported on the economic effects of the ALRC's proposals.

Both reports found the present product liability laws to be unnecessarily complex and unfair. For example, they fail to impose liability on producers in some cases for goods which cause loss, and they impose liability on producers in cases where the consumer is at fault. But they can also disadvantage non-owners who have suffered loss as a result of defective goods and are seeking compensation.

The Industry Commission recognised that the ALRC's proposals would eliminate many of the present laws' deficiencies, particularly relating to equal treatment for owners and non-owners of goods, and providing easier means to obtain compensation for people injured by faulty goods.

In assessing both reports, the Government followed the broad direction for reform drawn up by the ALRC but decided not to adopt the ALRC's 'no defect' product liability scheme, opting instead for the European Community model. There are also a number of issues on which the government has not yet indicated a position.

The legislation will be introduced during the Budget session.

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## Commonwealth innovations in adoption law

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### Step-parents and the law

Adoption has traditionally involved a complete replacement of the rights and responsibilities of a natural parent with those of the adopting parent. Policy mak-

ers are increasingly regarding this as inappropriate, particularly where the person seeking adoption is a new spouse or de facto spouse of the child's parent (ie a step-parent). The Family Law

Council in its 1986 report on step-families concluded that, in general, the settling of the legal status of children in step-families is better achieved by means of guardianship, custody and access

orders under the Family Law Act. New federal legislation (Family Law Amendment Act 1991) will ensure that step-parent adoption which extinguishes custody, guardianship or access orders will not take place without the leave of the court. Future further amendments may be introduced by the federal Government to make proceedings for this leave the exclusive jurisdiction of the Family Court.

### **Transferring guardianship or custody to non-parents**

Earlier amendments to the Family Law Act allowed the registration of 'child agreements' which had the force of a court order, and meant that custody or guardianship of a child could be transferred without any court scrutiny. Consent orders could also have this result. The new legislation is designed to plug this

gap and will ensure that such transfers of responsibility will not be able to take place unless a court has determined that it is in the interests of the child.

### **Inter-country adoption**

The federal Attorney General's Department is co-ordinating Australian input to a draft UN convention on the Adoption of Children Coming from Abroad. The Hague Conference on Private International Law in October 1988 undertook to become involved in this because there are a number of problems which are not sufficiently dealt with by existing international instruments including

- the need to establish legally binding standard which should be observed in connection with inter-country adoption

- the need for a system of supervision to ensure that these standards are observed
- the need to establish channels of communications between authorities in country of origin of children and of those where the children live after adoption and
- a need for co-operation between the countries of origin and of destination.

The view of the federal Departments of Foreign Affairs and Trade, Immigration, Local Government and Ethnic Affairs, and of State and Territory welfare and Attorneys-General Departments, are being co-ordinated in preparation for the Special Commission of the Hague Conference in April or May 1991 on this issue. □

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## **Parliamentary inquiry into family law**

*by Robin McKenzie*

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The federal Government has agreed to an Opposition request for a joint parliamentary inquiry into family law.

The terms of reference for the joint select Committee cover:

- the role, funding, effectiveness and availability of:

- Family Court Counselling service;
- approved organisations providing marriage counselling and family mediation services;
- the proper resolution of custody, guardianship, welfare and access disputes;

- the proper resolution of family law property disputes including the question whether the Family Law Act should be extended to cover property disputes of those in defacto relationships;
- the effective enforcement of rights and duties under the Family Law Act;