offences committed within the jurisdiction of 'The Admiral' to colonial courts.

The report says Imperial laws relating to piracy should be repealed and, should be replaced by a single federal offence of piracy, drafted in accordance with the relevant provisions of the 1958 Geneva Convention on the High Seas (to which Australia is a party), and with the provision of seizure and forfeiture of pirate ships or property,' the Commission said.

Jurisdiction of those matter should be conferred on State and Territory Supreme Courts and the new offence should apply to acts in the Australian territorial sea, or on the high seas.

It should also be made clear that the internal seizure of a ship (by passengers or crew) did not constitute piracy.

The ALRC said that in order to ensure that the internal seizure of a ship remained an offence when piracy was redefined in accordance with the above recommendation, and to ensure, generally, that an effective regime of offences was in place to deal with acts at sea that endangered safe navigation, the federal Parliament should legislate to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its associated Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

It said that those provisions should be implemented with respect to ships (other than government ships) on international journeys, as required by the Convention, and with respect to fixed platforms on the Australian continental shelf or (where a suspected offender was found in Australia) on the continental shelf or State party to the Protocol as required by the Convention and the Protocol respectively. Jurisdiction should also extend over all matters referred to in Article 6 of the Convention and Article 3 of the Protocol, and a general provision should be inserted in the Extradition Act 1988 (Cth) to enable provisions such as Article 11 of the Convention to the implemented by regulation.

Concerning slavery, the ALRC said that, as in the case of piracy, the Imperial laws should be replaced with a single federal offence of slavery drafted in accordance with the relevant provisions of the 1926 Slavery Convention and the Supplementary Slavery Convention of 1956. □

Multiculturalism: family law

The ALRC has published an issues paper and a discussion paper on Multiculturalism and is conducting seminars and public hearings around Australia to obtain comments and submissions on its proposals.

A difficult area

Family Law can be a difficult and controversial and the diversity of cultures in Australia adds an extra dimension to the issues. It also makes it essential to ensure that the values underlying the law are clearly expressed and clearly understood, and to base the law on a proper weighing up of individual rights and community values.

Discussion paper

In January 1991, the ALRC published a Discussion Paper, *Multiculturalism: Family law* (ALRC DP 46), as part of its inquiry into Multiculturalism and the Law. The paper examines the law about families, marriage and children and outlines proposals for reform. The ALRC is asking for comments on the proposals.

General approach

The approach the ALRC has adopted is that, unless there is good reason to do otherwise, the law

should not inhibit the formation of family relationships and it should support and protect the family relationships, people choose for themselves. However, the law should not support relationships in which rights and freedoms of individuals are violated, but should intervene to protect these people.

Families

The DP recognises that government policies and programs which deliver more active support to parents and families generally, especially during the settlement process, and which enable families of different kinds to meet their common goals may have more real effect in the longer term than changing the law. Submissions are asked for on the best way of developing programs of these kinds.

Customary and polygamous marriages

The DP proposes that a marriage that has taken place overseas according to local custom but which is not recognised as a legal marriage should be recognised as a marriage for some purposes, in particular, maintenance and the distribution of property. It considered whether to extend the recognition of polygamous marriages. A polygamous marriage which took place overseas is already recognised for some purposes. The DP proposes that a polygamous marriage contracted in Australia should not be recognised as a legal marriage.

De facto marriages

Marriage is still the most common means of family formation. However families are formed without marriage and the legal distinctions between marriage and de facto relationships have decreased. The DP proposes that property and maintenance rights should be extended to established de facto relationships. In addition, a couple in a de facto relationship should have the right to make valid agreements about their property and financial relationships.

Minimum age of marriage

The DP proposes that the minimum age of marriage should be 18 for both sexes. At present, it is 18 for males and 16 for females, with provision for either to marry up to two years earlier in certain circumstances. The DP asks for submissions on whether there is any good reason for allowing a person between the ages of 16 and 18 to marry and, if so, in what circumstances.

Dissolution of marriage

A number of religious denominations have procedures for ending a marriage. The DP considers whether a dissolution of marriage effected under religious or customary law in Australia should be recognised as valid under Australian law. It proposes that a religious dissolution should not be recognised as a legal divorce. In some communities, a civil divorce is not recognised by the community. A person may apply for a civil divorce but refuse to do what is necessary to ensure a religious divorce is effected. A majority of the ALRC proposes that the Court should have the power to postpone an application for a divorce unless the applicant has done everything in his or her power to remove any religious barriers to the spouse's remarriage.

Pre-marriage contracts

When a couple's marriage has ended, the law encourages them to come to an agreement about how their property should be distributed. However, such agreements made before marriage or at the time of marriage are not enforceable. The DP proposes that pre-marriage contracts governing the distribution of property in the event of the dissolution of the marriage should be enforceable. This should be subject to a provision which would empower the court to set aside the contract if it would cause 'substantial injustice'.

Children

The focus of any law relating to children is, and should continue to be, the interests of children. However, the ALRC's view is that the focus of policies concerning the welfare of children should be broadened to include the context in which children are raised. People should be free to choose their own vision of family life but they should not be locked into any one vision. Many people told the Commission that the law does not give enough support to parents wishing to exercise their parental responsibilities. The DP asks if parental rights and duties should be more clearly defined in the law. It proposes that the law should be changed so that, in making decisions about children, courts, within the principle of the child's welfare being paramount, should be able

- to give greater consideration to the child's actual significant relationships
- to give some acknowledgment to the *effect* a decision may have on those with whom the child has a significant relationship and
- to take into account the effect of a decision on the child's cultural identity and on his or her continuity of contact, as long as it is done in a way that is consistent with principles of freedom and equality.

Education

The DP recognises that there is a need for greater education about Australian law and society and for greater understanding on the part of legal professionals about the diverse cultural values in a multicultural society. It seeks submissions on ways to achieve this. □

You can help

The Commission would like to know what you think about the proposals contained in its Discussion Paper, *Multiculturalism: Family Law*. A copy can be obtained by contacting: The Secretary, Law Reform Commission, GPO Box 3708, SYDNEY, NSW, 2001; Telephone: (02) 231 1733
Fax: (02) 223 1203.

Uniform defamation laws — a claytons reform?

by Evelyn McWilliams

Were libel a racehorse, its breeding would be by fear out of greed. Its sire was that ancient manifestation of fear the English Star Chamber and those potent representatives of anxiety, the English Ecclesiastical Courts of the middle ages. Greed, as we know, is a fertile mare.

Robert Pullan, Free Speech Committee Seminar on Defamation Reform, 19 October 1990

Those hoping for a clear cut pathway through Australia's labyrinthine defamation laws are likely to be only partially satisfied by the attempts of the Attorneys-General of Queensland, New South Wales and Victoria to reach a consensus on reforming their States' laws.

As reported in *Reform*, April 1990, the Queensland Attorney-General, Mr Dean Wells, revived flagging interest in achieving uniform defamation laws by placing it on the agenda for last year's June meeting of the Standing Committee of Commonwealth and States Attorneys General (SCAG). Two Discussion Papers later, the Attorneys have signalled their substantial agreement on the key issues of defamation law reform and targeted points for further discussion.

Topping the list of consensual achievements is justification. All three Attorneys have agreed that the defence of justification should consist of truth alone, except where publication is an invasion of privacy, in which case the publication will only be justified if it is in the public interest. At the moment Queensland and New South Wales laws have a defence of truth and public benefit and truth and public interest, respectively. Victoria has a common law defence of truth alone. Thus, in the interests of uniformity, Victoria has encumbered its truth alone defence with a privacy