

# Commission news

## New reports

The Australian Law Reform Commission has finalised two significant inquiries with the tabling in federal Parliament of *Keeping Secrets: The Protection of Classified and Security Sensitive Information* (ALRC 98) on 23 June 2004, and *Genes and Ingenuity: Gene Patenting and Human Health* (ALRC 99) on 31 August 2004.

In November, the milestone of 100 published reports was achieved with the tabling of the ALRC's *Annual Report 2003-04* (ALRC 100).

The reports are available from the ALRC or on our website.

## Current inquiries

Significant work has been undertaken on the ALRC's two new references—reviews of federal sentencing laws and the uniform *Evidence Act* scheme. Both inquiries revisit the subject of past ALRC reports. Further information is available in articles elsewhere in this journal.

## 30th Anniversary

The ALRC will celebrate its 30th Anniversary in 2005. We plan to mark this occasion with a symposium and a celebratory dinner, to be held on 9 June 2005, and the release of a special publication later in the year.

Past Commissioners of the ALRC will be notified of the 30th Anniversary celebrations as plans are finalised—others who would like to register an interest in ALRC Anniversary activities should contact us (via email: [conference@alrc.gov.au](mailto:conference@alrc.gov.au) or phone: (02) 8238 6333) and we will keep you informed.

## Farewell ...

### Mr Ian Davis

Ian Davis served as a full-time member of the ALRC from June 2000 to June 2004. Ian made a highly significant contribution to the work of the ALRC. He was Commissioner-in-charge of three major inquiries: the review of the *Marine Insurance Act 1909* (Cth); a review of Civil and Administrative Penalties; and the Inquiry into the Protection of Classified and Security Sensitive Information. Ian was also the Commissioner responsible for overseeing *Reform*.

### Professor Anne Finlay

Anne Finlay came to the ALRC in November 2001 and has served a three-year appointment as a full-time Commissioner. Anne has now returned to the School of Law at the University of Newcastle. Her input into the ALRC's work program has been invaluable—she worked on the review of Civil and Administrative Penalties; co-led the inquiry into Gene Patenting and Human Health and was Commissioner-in-charge of the current *Evidence Act* Inquiry.

It is anticipated that a new Commissioner will be appointed to lead the *Evidence Act* Inquiry about the time of publication of this journal. Information on the new Commissioner will be published on the ALRC website and in the next edition of this journal.

### Ms Rosemary Adams

Rosemary Adams has resigned from her position as Executive Director of the ALRC after more than three years. The ALRC is enormously grateful to Rosemary for her contribution to the smooth running of the Commission. She was instrumental in strengthening the ALRC's planning of financial

management services, negotiating the ALRC's current enterprise agreement with staff; introducing a raft of new and revised policy documents; and in overseeing an administrative restructuring aimed at providing maximum support to the Commission's legal research teams.

Members and staff of the ALRC wish Ian, Anne and Rosemary well for their respective futures.

**... and welcome!**

#### **Mr Alan Kirkland**

Alan Kirkland has been appointed as the Commission's new Executive Director. Alan comes to us from the NSW Department of Ageing, Disability and Home Care, where he was Director of the Community Access Branch. He has also held senior positions at the NSW Council of Social Services and the Youth Action and Policy Association.

#### **Commonwealth Association of Law Reform Agencies**

After many years of planning, the Commonwealth Association of Law Reform Agencies (CALRAs) has been established. A Constitution has been approved, and an election for officeholders was conducted via the Internet. ALRC President Professor David Weisbrot is the inaugural Vice President. The first President, Justice Elton Singini SC, is the Chair of the Malawi Law Commission. The first formal CALRAs meeting is expected to take place in conjunction with the Commonwealth Law Conference in London, on 11 September 2005.

#### **Past reports update**

##### **Implementation of ALRC Reports**

The ALRC monitors reactions to its reports, and keeps a measurement of the formal implementation of its recommendations. Of a total of 70 ALRC reference reports (ie, leaving aside annual reports), 57% have been substantially implemented, and a further 27% have been partially implemented. Another 4%, including the ALRC's two new reports on security sensitive information and gene patenting, are currently under consideration for implementation. This leaves only eight reports (12%) that have received no implementation to

date. These include two reports on standing in the public interest that have been specifically rejected by the government, one on defamation—an area where reform has stalled in the past due to lack of agreement between the Australian Government, the states and the territories about uniform legislation—and other more recent reports that have not received government attention, such as those on personal property securities, freedom of information and complaints against police. However, a number of these issues are back on the political agenda, and the ALRC is hopeful that its reports will be considered as part of any future reform solutions.

##### **Keeping Secrets—ALRC 98**

Prior to completion of the ALRC's report on classified and security sensitive information, the National Security Information (Criminal Proceedings) Bill 2004 was introduced into Parliament. The Bill dealt with particular aspects of the use of national security-sensitive information in criminal proceedings. While the Bill covered common ground and in most instances reflected the ALRC's ultimate proposals, there also were some significant points of departure with the Bill proposing different ways of achieving similar aims and outcomes.

The ALRC's report ALRC 98 was completed in late May and tabled in Parliament in June 2004. Therefore, the ALRC was able to make a submission to the Senate Legal and Constitutional Legislation Committee's inquiry into the Bill, noting the divergences between the ALRC recommendations and the provisions of the Bill. The President of the ALRC also appeared before the Committee at a public hearing on 5 July in relation to the Bill.

The Committee's report on the Bill was published on 19 August 2004. The Committee recommended that the Bill go ahead subject to a number of suggested changes, many of which reflected the approach adopted by the ALRC, including:

- removal of proposed legislative requirements to hold closed hearings in particular circumstances, instead retaining court discretion to determine whether proceedings are open or closed;
- replacing the Bill's requirement that the transcript of a closed hearing be sealed and made available only to a court that hears an

appeal or review with a discretion for the court to determine to what extent a court transcript or parts of it should be sealed and any undertakings required for people to have access to the transcript; and

- adoption of the ALRC's proposed scheme in relation to security clearances for defence lawyers.

The Committee's report noted that there was support for a number of the ALRC's other recommendations to be included in the Bill, including the appointment of court security officers and protection for whistleblowers. However, only Senator Brian Greig considered that the Bill should be amended to include these items at this point in time.

When Parliament was dissolved for the federal election in October 2004, the Bill lapsed. It was reintroduced in November 2004 and passed on 8 December 2004.

For more detail on the *Keeping Secrets* report and its relationship to the Bill, see the article beginning page 53.

#### **Principled Regulation—ALRC 95**

In early April 2004, the Attorney-General's Department published on its website *A Guide To Framing Commonwealth Offences, Civil Penalties And Enforcement Powers*. The Guide is a resource to assist in the framing of proposed criminal offences, civil penalties and certain other enforcement provisions that are intended to become part of Commonwealth law. Many of the provisions in the Guide are based on principles discussed in the ALRC's report on federal civil and administrative penalties (ALRC 95), and in many circumstances it refers users directly to the ALRC report. However, the Guide itself notes that a formal government response to ALRC 95 is still in preparation.

#### **Managing Justice—ALRC 89; Open Government—ALRC 77**

On 8 June 2004, the Attorney-General released for public comment a draft Administrative Appeals Tribunal Amendment Bill 2004. The aim of the Bill is to improve operations without fundamental change to the purpose, structure or function of the Tribunal.

A number of the proposed amendments are based on ALRC recommendations, including:

- allowing the President to authorise conference registrars to issue directions as

to the procedure to be followed at, or in connection with, the hearing of a proceeding before the hearing has commenced (ALRC 89 *Managing Justice*, Recommendation 125);

- amending s 64 of the *Freedom of Information Act 1982*, which relates to production of exempt documents to the AAT (ALRC 77/ARC 40 *Open Government*, Recommendations 85, 86);
- imposing an obligation on the person who made the primary administrative decision to assist the Tribunal (ALRC 89 *Managing Justice*, Recommendation 121 suggested placing this obligation in the Legal Services Directions); and
- allowing the President to authorise members to give a party leave to inspect a document produced under summons (at present this can only be done by a Presidential or senior member) (ALRC 89 *Managing Justice*, Recommendation 126). The Bill was first introduced to Parliament in August 2004, and then reintroduced in November 2004 following the federal election.