RECENT PUBLICATIONS BY LAW REFORM BODIES WORLDWIDE

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A. Australia

Review of Sedition Laws
Issues Paper IP 30, March 2006
http://www.austlii.edu.au/au/other/alrc/publications/issues/30/
Discussion Paper DP 71 May 2006
http://www.austlii.edu.au/au/other/alrc/publications/dp/71/

The Australian Law Reform Commission (ALRC) has been asked to examine the offence of sedition as amended by Federal Parliament in 2005. The attempt to modernise the old sedition offences in the *Crimes Act* 1914 was part of the federal Government's *Anti-Terrorism Act (No 2) 2005*, which targets activity promoting terrorist violence. The sedition provisions were controversial, with concerns expressed through the media and identified by a Senate Inquiry that the laws may encroach unreasonably upon freedom of speech. In December 2005, the Attorney General foreshadowed an independent review of the new sedition laws and provided the Australian Law Reform Commission with formal Terms of Reference for this purpose in March 2006.

To help clarify the issues under consideration in this Inquiry, the ALRC has released two consultation papers: an Issues Paper, *Review of Sedition Laws* (IP 30) on 20 March 2006, and a Discussion Paper, *Review of Sedition Laws* (DP 71) on 29 My 2006.

In releasing the Discussion Paper, the ALRC President said the proposals aimed to ensure "there is a bright line between freedom of expression, even when exercised in a confronting or unpopular manner, and the reach of the criminal law."

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The discussion paper contains 25 proposals for reform, including the proposal for the removal of the term "sedition" from the federal statute book, because, given its history, the term "sedition" is much too closely associated in the public mind with punishment of those who criticize the established order. The ALRC recommends the redrafting of offences urging others to use force or violence to overthrow the Constitution or governmental authority, to interfere in free elections or to target particular groups within the community. In so doing, the ALRC wants to shift the focus away from "mere criticism" and to make clear that the Crown must prove beyond reasonable doubt that the person *intentionally* urged others to use force or violence and intended that this force or violence would occur.

The Commission also recommends that amendments be made to offences related to "assisting" an enemy at war with Australia or engaged in armed hostilities against the Australian Defence Forces and to clarify that this refers to *material* assistance, such as arms, funds, personnel or strategic information, rather than criticism of government policy.

The Commission proposes that, in applying the law to a particular case, a jury must take into account the context in which the conduct occurred, such as whether it was part of an artistic performance or exhibition, or a genuine academic, artistic or scientific discussion or an industrial dispute or in a news report or commentary about a matter of public interest. Other key proposals for reform include repealing the outdated provision in the *Crimes Act* 1914, concerning "unlawful associations," which has effectively been superseded by more recent laws on terrorist organisations and ruling out the need to introduce a UK-style offence of "glorification of terrorism."

The closing date for submissions on the Discussion Paper is 3 July 2006.

Review of the Privacy Act 1988

Inquiry

http://www.alrc.gov.au/inquiries/current/privacy/about.html

On 31 January 2006, The Attorney General asked the Australian Law Reform Commission (ALRC) to make an inquiry

into the extent to which the *Privacy Act* 1988 (Cth) and related laws continue to provide an effective framework for the protection of privacy in Australia.

The *Privacy Act* 1988 (Cth) is the product of a previous Inquiry started by the Australian Law Reform Commission in 1976 and which culminated in the *Privacy Report,* 1983. The ALRC also examined genetic privacy as part of its internationally acclaimed report, *Essentially Yours: The Protection of Human Genetic Information in Australia.*

The current Privacy Inquiry is prompted by a number of considerations, including: the rapid advances in information, communication, storage, surveillance and other relevant technologies; possible changing community perceptions of privacy and the extent to which it should be protected by legislation; the expansion of state and territory legislative activity in relevant areas; and emerging areas that may require privacy protection.

The Australian Law Reform Commission (ALRC) was asked to consider specifically the relevant existing and proposed Commonwealth, State and Territory practices, other recent reviews of the *Privacy Act* 1988 (Cth), current and emerging international trends in other jurisdictions, any relevant constitutional issue(s), the need of individuals for privacy protection in an evolving technological environment, the desirability of minimising the regulatory burden on business in this area and any other related matters.

In order to enhance harmonisation, the ALRC will develop cooperative relationships with other law reform bodies that are also examining privacy issues. The ALRC plans to produce at least two consultation papers – an Issues Paper to be released in September 2006 and a more detailed Discussion Paper in May 2007.

B. British Columbia

Reverse Mortgages
Report
February 2006

http://www.bcli.org/pages/projects/revmort/Reverse_Mortgages_Rep.pdf

A reverse mortgage is a type of loan secured by a mortgage of real estate. Reverse mortgages differ from conventional mortgages in a number of ways, but their most important differences involve repayment and eligibility. A reverse mortgage is a rising debt loan. Unlike conventional mortgages, reverse mortgages do not require a borrower to make periodic repayments of principal and interest. In most cases, borrowers invest the proceeds in an annuity or other asset that provides them with a regular income. The loan is repaid after the borrower's death or when the borrower's principal residence is sold or abandoned. In British Columbia (as in most other jurisdictions), only senior citizens are eligible to borrow under a reverse mortgage.

The existing law (and cost of consumer credit disclosure provisions of Part 5 of the *Business Practices and Consumer Protection Act*, which have yet to be proclaimed in force), does not provide an adequate legal framework for reverse mortgages. This Report recommends enacting legislation that will specifically address reverse mortgages. The proposed legislation is focused on disclosure and related consumer protection measures. It aims to ensure that reverse mortgage borrowers have the tools necessary to evaluate the legal and financial merits of the transaction.

Viatical Settlements
Study Paper
May 2006
http://www.bcli.org/pages/projects/viatical/Viatical_Settlements_Study_Paper.pdf

A viatical settlement is a transaction in which an insured person with diminished life expectancy transfers the entitlement to receive the death benefit under the policy of insurance to another person. This other person agrees immediately to pay the insured person an amount that is less than the face value of the death benefit and undertakes to pay the premiums for the insurance policy as them come due.

In most Canadian jurisdictions, legislation directed at trafficking in insurance polices, which has its origins in the Depression, renders viatical settlements illegal. There is a small viatical settlement industry in Canada, based in the provinces that lack this legislation. In addition, towards the end of the last decade, Ontario gave serious consideration to repealing its anti-trafficking provision and enacting a modern framework for a viatical settlement industry. In the five years since the Major Ontario Report was published, the viatical settlement industry in the United States has transformed itself from an industry focused on AIDS patients and others suffering from terminal diseases to one focused on senior citizens. This shift in focus, coupled with the rising numbers of senior citizens, has led to a notable expansion of the viatical settlement industry in the United States.

The purpose of this study paper is to provide the foundation for a law reform project that will make recommendations on whether Canadian provinces and territories should remove their barriers to the creation of a viatical settlement industry and, if so, what sort of legal framework should be created for the new industry.

Report on Unnecessary Requirements for Sworn Statements
Report
April 2006
http://www.bcli.org/pages/projects/swornstatements/Unnecessary_Requirements_Sworn_Statements_Rep.pdf

This report revisits a project which was carried out by the Law Reform Commission of British Columbia in the mid-1970s. The report, entitled *Report on Extra-Judicial Use of Sworn Statements* and published in 1976, recommended the repeal of a large number of legislative provisions that require the use of a sworn statement.

The term "sworn statement" is meant to embrace statements under oath or under affirmation, affidavits, solemn declarations and statutory declarations. There are corresponding similarities among all these documents in that each requires a person to perform certain formal requirements that are primarily intended to assure the truth of the statement. Requirements for

sworn statements in out-of-court settings appear in a wide variety of British Columbia statutes and regulations.

The Law Reform Commission's 1976 Report provided both a framework for analysing these provisions requiring sworn statements and recommendations for modernizing and simplifying the law. The framework for analysis and the recommendations for reform continue to have force. This report illustrates how both can be adapted to contemporary conditions and substantially implemented today.

C. England and Wales

Cohabitation: The Financial Consequences of Relationship Breakdown
Consultation Paper No. 179 and Overview
May 2006
http://www.lawcom.gov.uk/cohabitation.htm

Following from the publication of the *Discussion Paper on Sharing Homes* (Law Com No. 278) in 2002, the Law Commission was asked by the Government to examine options for reforming the law that applies to cohabiting couples on separation and death. The project focuses on the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death.

The project examines people who are living together in relationships bearing the hallmarks of intimacy and exclusivity, but who are not married to each other or who have not formed a civil partnership (the status available to same-sex couples who register their relationship).

This consultation paper rejects the view that cohabitants should have access to the financial regime that applies on divorce. Instead, it proposes a self-standing scheme of financial remedies for certain cohabitants on separation available only in strictly limited circumstances. The scheme would not apply to all cohabiting couples and only considers opposite-sex or same-sex couples in clearly defined relationships.

The Commission has produced two versions of the consultation paper. Consultation Paper (No.179) is a full consultation paper

which examines the issues more comprehensively and sets out in considerable detail a proposed scheme for cohabitants. A shorter "Overview" has also been produced which summarises the issues under consideration. Both papers contain questions and provisional proposals, but a larger number of consultation issues are discussed in the Consultation Paper than in the Overview.

The Consultation period runs from 31 May to 30 September 2006. A final report with recommendations for reform will be published in summer 2007.

Renting Homes: The Final Report
Law Com No. 297
May 2006
http://www.lawcom.gov.uk/docs/lc297_vol1.pdf
http://www.lawcom.gov.uk/docs/lc297_vol2.pdf

A third of the population of England and Wales – six million households – rent their homes. The law governing their relationship with their landlords has been described as an "irrationally complicated mess." The Law Commission's renting homes recommendations constitute a thorough-going reform of housing tenure law. A report of the Commission's conclusions was first published in November 2003 and entitled *Renting Homes* (Law Com. No. 284) in advance of the draft Bill and final report. This report recommended a new legal regime built on a consumer approach to the law, pursuant to which all individuals renting a home would have access to a definitive written agreement clearly setting out their rights and obligations. Prior to this, the Commission issued two consultation papers, *Renting Homes 1: Status and Security* (CP 162) in April 2002 and *Renting Homes 2: Co-occupation, Transfer and Succession* (CP168) in November 2002, following extensive consultation process on the matter.

This report, *Renting Homes: The Final Report* (Law Com. No. 297), was published in May 2006 and is divided into two volumes. Volume 1 explains the Commission's recommendations and contains an illustrative model *secure contract* and *standard periodic contract*. Volume 2 of the report contains the draft Rented Homes Bill. In this report, the Commission recommends that a simple system of secure and standard contracts replace the

existing multiplicity of tenancy and licence types with the result that landlords and occupiers would benefit from:

- Identical contracts for council and housing association tenants. This will increase the security of the nearly 1.5 million housing association tenant households;
- Improvements to council and housing association tenants' rights e.g. better succession rights and the right to apply to add a partner or flatmate to the contract;
- Government-approved model contracts to make private renting easier, cheaper and more flexible;
- A clear and practical legal framework for supported housing, which provides accommodation for people with drug or mental health problems, women's refuges etc.

The Commission's recommendations would allow for the abolition of secure, assured, assured shorthold, introductory and demoted tenancies in addition to various varieties of common law tenancies. The only major form of tenancy not to be abolished would be the *Rent Act* 1977 tenancies and their agricultural equivalents. However, there would be a power for the Secretary of State/ Welsh Assembly Government to do so.

Housing Proportionate Dispute Resolution
Issues Paper
April 2006
http://www.lawcom.gov.uk/docs/issues_paper.pdf

While the *Renting Homes: Final Report* and accompanying rented homes Bill (Law Com No.297) set out a coherent scheme for the legal regulation of rented homes, however effective this scheme may prove to be if adopted, disputes between landlords and their contract-holders will still arise. Following from the many criticisms received about current methods for resolving housing disputes and many suggestions for change during the *Renting Homes* consultation, the Law Commission, in this issues paper, asks how a more "holistic approach" for the "proportionate" resolution of housing problems and disputes can be developed to complement the Commission's

recommendations for a more coherent legal framework. The principles outlined in this paper also extend to the owner-occupier sector which, by definition, the *Renting Homes* project did not consider.

This issues paper sets out the Commission's proposals for a more coherent system of housing dispute resolution comprising:

- use of a "triage plus" process, diagnosing individual and wider housing problems, referring them to appropriate resolution methods, and collecting information about housing problems and how they are resolved;
- use of dispute resolution mechanisms such as mediation, ombudsmen and managerial techniques; and
- where needed, use of a court or tribunal.

The Commission recommends that the values underpinning such a system should be stated explicitly and the bodies involved in the different parts of this system should inform and learn from each other. The consultation period on this issue paper runs until 11 July 2006. The Commission intends to publish a consultation paper setting out its provisional recommendations at the end of 2006 and anticipates delivering a final report in the summer of 2007.

D. Hong Kong

Privacy: Report on the Regulation of Covert Surveillance
March 2006
http://www.hkreform.gov.hk/reports/rsurveillance-e.htm

The Hong Kong Law Reform Commission released its report on *Covert Surveillance* on 24 March 2006. This is the final report in a comprehensive review by the Commission of the law relating to privacy which began in 1989. Reports have previously been issued on (a) *The Protection of Personal Data*, (b) *The Interception of Communications*, (c) *Stalking*, (d) *Civil Liability for Invasion of Privacy* and (e) *Privacy and Media Intrusion*.

The report's recommendations are intended to provide adequate and effective protection and remedies against arbitrary or unlawful intrusion into an individual's privacy as guaranteed under the Basic Law and the International Covenant on Civil and Political Rights. The report recommends that a legislative framework should be set up to regulate covert surveillance and the obtaining of personal information through intrusion into private premises. The report recommends the creation of two new criminal offences:

- It should be an offence to enter or remain on private premises as a trespasser with intent to observe, overhear or obtain personal information
- It should be an offence to place, use service or remove a sense-enhancing, transmitting or recording device (whether inside or outside private premises) with the intention of obtaining personal information relating to individuals inside the private premises in circumstances where those individuals would be considered to have a reasonable expectation of privacy.

These offences will apply to all persons, though a law enforcement agency will not be liable where it has obtained a warrant or internal authorisation for the surveillance in question. The Commission proposes that law enforcement agencies would have to obtain a judicial warrant before undertaking covert surveillance where the surveillance would otherwise constitute one of the proposed criminal offences. The report also recommends that a new supervisory authority should be created to keep the proposed warrant and authorisation system under review. It proposes that the supervisory authority should be a serving or retired judge of the Court of First Instance, or a higher court, or a person eligible for appointment to the Court of First Instance. This proposed supervisory authority would review cases on a sample audit basis, consider complaints from the public and award compensation in appropriate cases. The authority would also be required to submit a public annual report to the Legislative Council, and a confidential report to the Chief Executive.

Report - eConveyancing: Modelling of the Irish Conveyancing System
(LRC79-2006)
April 2006
http://www.lawreform.ie/Word%20Documents/Formatted%20eConveyancing%20Report%2027%20March%202006.pdf

The background to this report stems from 2001 when the Commission began a review of its work to that point on the reform and modernisation of land law and conveyancing law in Ireland which had begun in the late 1980s. In 2003, the Commission launched its eConveyancing Project which would involve a comprehensive review of the substantive law and also included administrative elements with a view to the eventual introduction of eConveyancing. The Commission concluded that this major project could only be undertaken jointly with other major stakeholders. In December 2003, the Department of Justice, Equality and Law Reform agreed to engage in a Joint Project with the Commission on the reform of the substantive law. After an extensive consultation exercise, which included the Commission's inaugural Annual Conference in 2004, the Commission published its *Report on the Reform and Modernisation of Land Law and Conveyancing Law (*LRC 74-2005) in 2005. The report includes a draft Land and Conveyancing Bill which implements over 90 recommendations for reform and modernisation of land law and conveyancing and proposes the repeal in whole or in part over 130 pre-1922 statutes. Following the publication of the 2005 Report, the Attorney General and the Minister for Justice, Equality and Law Reform requested the Commission to continue to assist in preparing a Bill to give effect to its recommendations and the Commission agreed.

As to the administrative and procedural elements of the Commission's eConveyancing Project, the Commission decided that a thorough analysis was required to prepare a detailed process model of the current conveyancing process and to examine the state of readiness of public and private bodies for the application of eCommerce to conveyancing. In 2005, the Commission

received financial support for this study from the Information Society Fund and, after a public procurement tendering process, appointed Bearing Point Management and Technology Consultants to carry out the study.

This report sets out the views and recommendations of the Law Reform Commission on *Modelling of the Irish Conveyancing System* (Modelling Report), a report submitted to the Commission by Bearing Point and published in full in CD-Rom format as Appendix B thereto. The Modelling Report contains 3 major elements. First, it contains the first detailed "end-to-end" process model of the entire conveyancing process. In effect, this is the first detailed step-by-step analysis of the entire conveyancing transaction taking account of the roles played in the process by the vendor and purchaser, estate agents, solicitors, financial institutions, local and planning authorities, the Land Registry and Registry of Deeds, the Courts Service, the Revenue Commissioners and others. The second element of the Modelling Report is a comprehensive overview and analysis of the role played by the many public and private stakeholders associated with the current conveyancing process and their technological state of readiness for eConveyancing. The third element consists of a vision and strategy for eConveyancing in Ireland supported by conceptual models and an outline roadmap of how to achieve it.

The key recommendation in the Modelling Report is the establishment of a Project Board drawn from key public sector and private sector stakeholders with specific terms of reference to coordinate the next phase in development of an eConveyancing system for Ireland. The primary task of the Project Board would be to make a detailed assessment of the most appropriate model for eConveyancing in Ireland, including the preparation of proposals to Government as to the design, establishment, operation, governance and implementation of the proposed model. In this report, the Commission generally supports the content and analysis of the Modelling Report. It also acknowledges that, if eConveyancing is to be a reality, it will not, and should not, happen overnight, but is itself a process of incremental development. The Commission also agrees that there should be an early start to the next phase of the process to maintain the

momentum generated to date. The Modelling Report has also highlighted important developments in parallel projects, such as the digital mapping of the State, and that other immediate time-saving benefits, such as standardised documentation and better communication between those involved in the process, can occur on the road to eConveyancing.

Duress and Necessity
Consultation Paper (LRC CP 39-2006)
April 2006
http://www.lawreform.ie/Duress%20and%20Necessity%20CP9.pdf

This *Consultation Paper on Duress and Necessity* is the second paper in a series on defences to criminal charges. The first of these, the *Consultation Paper on Homicide: The Plea of Provocation* (LRC CP 27-2003), was published in 2003 and provisionally recommended that the subjective test currently applied in Ireland should be replaced with a version of the objective test, which is applied in virtually ever other common law jurisdiction. A third *Consultation Paper on Legitimate Defence* is forthcoming. This series is intended to provide a comprehensive review of defences in this jurisdiction with the eventual aim of codification.

The pleas of duress and necessity usually provide a defence to an individual who is constrained or coerced into committing a crime by reason of serious threats (duress) or dire circumstances (necessity). In many cases, the defences are discussed in relation to homicide. This consultation paper, however, notes that these defences have a more general application ranging from receiving stolen property to unlawful possession of firearms. While the Commission discusses duress and necessity as separate defences, it is clear that there is considerable overlap between them. The defence of duress *per minas* (referred to in this Consultation paper as duress) applies when a person's choice is constrained by threats to do an act which would otherwise be a crime. Necessity concerns a situation where a person's choice is constrained due to the circumstances. As with duress, the person acts because he is compelled to do so,

not by threats from a person, but by threats arising from the circumstances in which he finds himself.

Chapter 1 of this paper outlines briefly the defences of duress and necessity and introduces the concept of constrained choice to provide a general framework for discussion of the defences. Chapter 2 deals with the general scope of and limitations to the defence of duress. It considers whether duress should be regarded as an excusatory or a justificatory defence. It discusses whether the threat should be of "death or serious bodily harm" and whether this test should be objective or subjective. It also deals with the target and the effect of the threat. The chapter next includes a discussion of the reasonableness requirement in relation to both the belief in the threat and the response to the threat. It goes on to consider the requirement of imminence of the threat and how this relates to the requirement that the accused seek official protection. The chapter then examines whether a person ought reasonably to have foreseen the likelihood of being subjected to threats and, if so, whether this should be a reason to disallow the defence. It later considers the defence of marital coercion which existed at common law and its existence in other jurisdictions. Finally, the burden of proof that applies where duress is raised as a defence is discussed. Chapter 3 is concerned with the application of the defence of duress to murder. Under current Irish law, it appears that duress is a general defence to all crimes, except murder, attempted murder and treason. Chapter 4 reviews the scope of the defence of necessity and its relationship with duress. It also deals with the relatively new defence of duress of circumstances in English law and offers a comparison between this defence and both duress and necessity. Chapter 5 contains a summary of the Commission's provisional recommendations.

On the defence of duress, the Commission provisionally recommends that its current limitations should remain. These include that: the threat must be one of death or serious harm; the accused's resistance must have been overcome; and this resistance must be that of the ordinary person, taking into account the characteristics of the accused person. Although the defence does not apply to murder, the Commission provisionally recommends that it should be allowed as a partial defence, which would reduce it from murder to manslaughter.

On the defence of necessity, the Commission provisionally recommends that it should be retained in its current form so that it would apply in certain exceptional circumstances where a person is faced with a constrained choice regarding his or her actions, the constraint arises from extraneous circumstances and where the person, in choosing the course of action taken, breaks the law. As with duress, the Commission accepts that a coherent case can also be made for treating necessity as a complete defence where the accused's actions can be justified on the grounds of lesser evils. The Commission welcomes submissions on this paper until 30 September 2006.

F. Manitoba

Review of the Garnnishment Act
Report # 121
March 2006
http://www.gov.mb.ca/jsutice/mlrc/pubs/112.html

In response to a reference from the Minister of Justice and Attorney General, the Manitoba Law Reform Commission has made 30 recommendations aimed at modernizing the civil remedy of garnishment. Garnishment, one of a variety of enforcement legal tools, allows a creditor to attach money owed by a third person (e.g. an employer) to the debtor. It has been described as a powerful and harsh remedy relatively uncontrolled by judicial or administrative supervision and it differs from other enforcement remedies in that it draws a stranger into the enforcement process. In this report, the Commission points out that true modernization of any individual remedy cannot be achieved without a comprehensive and fundamental reform of the entire civil enforcement regime.

G. New South Wales

Review of the Law: Intestacy
Research Report 13: *I give, devise and bequeath: an empirical study of testators' choice of beneficiaries* (by J.E. Dekker and M. V.A. Howard)

April 2006
http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/rr13.pdf/$file/rr13.pdf

If a person dies without a will or with a will that only disposes of part of his or her property, the part of the property that has not been dealt with will usually be distributed according to a set of statutory rules that apply to intestate estates. Different rules of distribution apply in different States and Territories across Australia. The New South Wales Law Reform Commission is conducting a review of the law relating to intestacy as part of the work of the National Committee for Uniform Succession Laws. The National Committee was established by the Standing Committee of Attorneys General to review the existing State laws relating to succession and to propose model national uniform laws.

The Commission decided that, in framing recommendations relating to intestate estates, it would be useful to obtain information about the characteristics of both testate and intestate estates and also about how people who make wills choose to distribute their estates. This decision was made in light of studies that have informed recommendations for changes to the law of intestacy in other jurisdictions. These other reviews were considered useful in determining how people who do not write wills might have intended to distribute their property upon death.

This study involved a survey of 650 matters filed in the Probate Registry of the Supreme Court of New South Wales in September 2004. The survey elicited information concerning the demographic characteristics of the deceased persons, the nature of their estates and how they intended their property to be distributed.

This Research Report first sets out the methodology and parameters of the study in Chapter 2. This includes the process of data collection, an overview of the files examined and the characteristics of the deceased persons whose estates were studied. Chapter 3 details the results of the study, including the characteristics of estates with and without wills and, in the case of estates with wills, how the testators intended to distribute their estates. Chapter 4 discusses the results and compares them with

similar studies conducted in other comparable jurisdictions. A consideration of the limitations of this type of study is also included in Chapter 4.

H. New Zealand

Report on the Forfeiture under the Customs and Excise Act 1996
Report NZLC R 91
January 2006`
http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_116_324_Part_0_R91%20report%20only.pdf

In this report, the New Zealand Law Commission recommends legislative changes to the powers of customs officers to seize and keep goods in order to ensure greater transparency and fairness to those affected. The Commission makes 48 recommendations aimed at modernising Part 14 of the existing *Customs and Excise Act* 1996, which deals with the forfeiture and seizure of goods. The review of Part 14 of the Act draws on the existing practice and guidelines of the New Zealand Customs Service. The changes aim to simplify and modernise the law in keeping with international best practice and protection of citizens' rights without jeopardising the essential requirements of border security. The recommendations are incorporated into draft legislation attached to the report.

The Report advocates replacing the concepts of "forfeiture and seizure" with "detention and confiscation." Customs would be able to detain goods at the border on the same basis as at present, but there would be more safeguards for the rights of citizens in relation to goods being confiscated permanently. Key features of the draft legislation include:

- Categorisation of goods in three main categories: forbidden goods, restricted goods, and craft used in the commission of offences;
- Notices to people affected by the detention or proposed confiscation of goods;

- An opportunity for people to respond to the notice before a penalty is imposed or the goods confiscated;
- Introduction of administrative monetary penalties for less serious offences;
- An opportunity for people to appeal to the Customs Appeal Authority if dissatisfied by a Customs review of the original decision;
- Protection of the interests of third parties.

I. Queensland

Review of Queensland Guardianship Laws
http://www.qlrc.qld.gov.au/guardianship/index.htm

The Law Reform Commission has been asked by the Attorney-General to review Queensland's guardianship legislation and make recommendations as to how it could be improved. This legislation regulates the making of decisions by, and on behalf of, adults with impaired capacity and addresses a myriad of related issues. When is an adult unable to make her own decisions? If an adult is unable to make her own decisions, who should make them on her behalf? How should those decisions be made?

The Commission has been asked by the Attorney-General to report in two stages. The first stage will focus on reviewing the legislation's general principles and also its confidentiality provisions. A report outlining interim recommendations is due by 30 June 2006.

The second stage of the review, which will start in mid-2006, involves a review of Queensland's guardianship laws more generally, although particular regard will be had to the matters specified in the Commission's terms of reference. The Commission will present its final report to the Attorney-General at the end of 2008.

J. South Africa

Trafficking in Persons
Discussion Paper 111
May 2006

http://www.doj.gov.za/salrc/index.htm

Contemporary trafficking in persons is an organised business with linkages spread around the world and is often connected to organised crime, prostitution and modern-day slavery. Technology also makes it easier than before to deal in human commodities. The South African Law Reform Commission's investigation into trafficking in person is, therefore, aimed at addressing trafficking in persons within that jurisdiction by recommending legislative and non-legislative measures in order to facilitate the effective prosecution of traffickers, the protection of victims of trafficking and the prevention of trafficking in persons.

An issue paper on *Trafficking in Persons* was published in January 2004 with the aim of identifying aspects relating to trafficking in persons in need of legal reform. It also aimed to elicit comment and suggestions from relevant stakeholders and to disseminate information on the issue of trafficking in persons to the public at large. The purpose of this discussion paper is to set out the South African Law Reform Commission's preliminary recommendations for law reform regarding trafficking in persons. Amongst the Commission's legislative recommendations is a proposed Bill which criminalises the act of trafficking in persons and, in addition, criminalises the following acts: debt bondage, the destruction, confiscation, possession and concealment of documents, using the services of victims of trafficking and conduct facilitating trafficking in persons. The discussion paper is essentially divided into eight chapters: (1) the introduction; (2) the international framework; (3) the extent of the problem within the South African context; (4) trafficking in persons, gender and prostitution; (5) the prosecution of traffickers and other role-players; (6) the protection of victims of trafficking in persons; (7) the prevention of trafficking in persons; and (8) non-legislative measures. The South African Law Reform Commission invites comments and suggestions on the discussion paper. The closing date for comments or suggestions is 30 June 2006.

K. Victoria

Review of Family Violence Laws Final Report
http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/Final_report.pdf
March 2006

An alarming number of Victorians experience violence and abuse within their families. In many instances, victims find the justice system fails to protect them. Victoria has had a civil intervention order system to protect family members from violence since 1987. This report is the Victorian Law Reform Commission's Final Report on the *Crimes (Family Violence) Act* 1987. The Act has not been comprehensively reviewed since its inception and attitudes toward family violence have changed substantially since 1987. The Commission published a Consultation Paper in November 2004, accompanied by a separate publication, Outline and Questions, which facilitated wider access to their work. The Consultation Paper generated many submissions and the Commission has drawn extensively on them in this final report. In August 2005, the Commission published the *Family Violence Police Holding Powers Interim Report.* The recommendations in that report have been adopted in the *Crimes (Family Violence) (Holding Powers) Bill* 2005.

This report makes 153 recommendations to protect victims of family violence. The Commission recommends the introduction of a new Act to deal exclusively with family violence. It also recommends that the new Act should contain clear purposes and principles with its most important aim being to ensure the safety of all people who experience family violence. In addition, the Commission recommends that the new Act should also aim to prevent family violence, provide victims with effective and accessible remedies and promote non-violence as a fundamental social value. The report also recommends that those making decisions under the Act should give primary importance to the safety of the victims. Consequently, they must consider the gendered nature of family violence, the promotion of non-violence in society and the need to treat victims with dignity and must ensure that perpetrators of violence are held accountable for their actions. The report recommends training for police, registrars and magistrates in the dynamics of family violence, its myths and

stereotypes and barriers to the intervention order system, especially those faced by indigenous people, immigrants and persons with disabilities. The report acknowledges that the Victoria Police has already gone a long way to improving its response to family violence with its *Code of Practice* 2004. However, it recommends that this should be independently reviewed in the next few years to ensure its ongoing efficacy.

Residential Tenancy Databases Report
Report
April 2006
http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Community_Law_Reform/$file/Residential%20Tenancy%20Databases%20Report.pdf

Residential Tenancy Databases are currently unregulated in Victoria. Many problems and complaints arising from the operation of these databases have been brought to the attention of the Victorian Law Reform Commission by the Tenants Union of Victoria. This report examines the way these databases function and makes general recommendations for their regulation. The report explains what residential tenancy databases are, identifies who uses and operates them and describes their function in the residential tenancy market. In addition, the report examines recent legislative reforms in other jurisdictions aimed at regulating the operation of residential tenancy databases.

The issues examined in this report have particular significance for tenants and their access to housing in the private rental market. However, the Commission considers that ensuring accuracy and procedural fairness in the operation of databases would be beneficial to the whole community. The Commission believes that national regulation is appropriate to address the specific issues raised in this report. But if this is not feasible, it recommends amendments be made to the Victorian *Residential Tenancies Act* 1997.