

2.3 Enlivening Law Reform

The Attorney and the Secretary have both emphasised the importance that the Rudd Government attaches to an active program of law reform. The Audit has been surprised by the number of comments that has been made to it about the slowness, complexity and cost of the ALRC processes. It has apparently been difficult to convince governments in recent years of the merit of referrals to the ALRC. When referrals are given the work done is of outstanding quality but slow to produce, reflective of an extended and extensive consultation process and often not easy to digest. The Audit was told that reports tend to be long and not particularly user friendly for a policy-making audience.

The other main formal vehicle of law reform, particularly the harmonisation of state and Commonwealth law, SCAG also gets very mixed reviews. While it has had some successes it is not seen as possessing the reform dynamism that has been typified by the Senior Officers Group that supports COAG, or the Heads of Treasuries forum.

If the Secretary wishes to take a strong leadership role in these areas it would be appropriate to bring them into the corporate centre, and to consider alternative strategies and delivery mechanisms.

At the very least, it has been suggested, ALRC should be given some crisper references, with tighter timelines and strong guidance on the need for producing its reports in a form that is accessible and useful for those who are vested with the responsibility for determining whether and if so how they should be actioned.

Tabled Document

Tabled by:
Inquiry:

Attorney-Generals Department
Inquiry into the Australian
Law Reform Commission

Date:

Friday, 11 February 2011

CHIEF: Legal + Constitutional References ette

Others have suggested that a bolder solution would be to replace the ALRC as a standing independent statutory authority with permanent members and a separate staff with a principally part time statutory advisory panel – say the Australian Law Reform Council – with a charter to advise on fruitful areas for law reform, a slim secretariat and a research budget – akin perhaps to the Administrative Review Council.

This would free a considerable budget [\$5m] which could be used flexibly to advance the Government's law reform objectives. This could involve the use of techniques including:

- wholly independent inquiries with membership chosen to suit the topic
- mixed departmental and external groups
- wholly internal Task Forces – involving membership from other departments if that is thought desirable
- externally contracted research papers either for publication or use by the government in the development of law reform proposals.

Because of the constraints of time and budget, the Audit has consulted neither with the ALRC, nor with external stakeholders. Nor has it examined ALRC reports and the action taken on them. However, there is at least a *prima facie* case that an alternative approach is worth examining.

Recommendation 3

Create a new Portfolio Governance and Priorities Group headed by a Deputy Secretary comprising:

- *Priorities and Coordination Division*
- *Constitutional Policy and Legal Services Division*
- *Finance and Property Division*
- *People and Information Technology Division*

with the structure proposed in Figure 2.1.

Recommendation 4

Abolish the Departmental Executive Committee and replace it with two departmental governance bodies:

Secretary's Leadership Group

- *Chaired by the Secretary, with membership restricted to the three Deputy Secretaries and the Associate Secretary. Division heads and other staff could attend by invitation depending on the topics under discussion.*
- *The Leadership Group would advise the Secretary on key strategic issues, including:*
- *Approving the Departmental corporate plan*