

3 February 2011

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Secretary and Senators

Submission to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Australian Law Reform Commission

Introduction

I welcome this opportunity to contribute to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Australian Law Reform Commission (ALRC). I preface my remarks by noting that I have read the submission to this inquiry prepared by Professor David Weisbrot AM, and I agree entirely with his conclusions. In this submission, therefore, I will focus on the impacts of the cuts to the ALRC's budget that cause me particular concern, namely:

- the inability of the ALRC to consult widely with relevant stakeholders and members of the public in relation to its inquiries;
- the impact on the ALRC of the failure to appoint full-time Commissioners; and
- the apparent inability of the ALRC to retain experienced legal officers.

Background

I was appointed as a full-time member of the ALRC on 16 December 2004, and was reappointed to that position by both the Howard and Rudd governments. My last appointment came to an end on 30 November 2009. While a full-time member of the ALRC, I was Commissioner in charge of the following inquiries:

- Review of the Evidence Act 1995, which culminated in the report, *Uniform Evidence Law* (ALRC 102, NSWLRC 112, VLRC FR, 2005);
- Review of the Privacy Act 1988, which culminated in the three volume report, *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008); and
- Review of the Royal Commissions Act 1902 and related issues, which culminated in the report, *Making Inquiries: A New Statutory Framework* (ALRC 111, 2009).

In addition to inquiry work, I chaired the ALRC's Audit Committee, edited editions of the ALRC's journal, *Reform*, represented and spoke on behalf of the ALRC at a variety of domestic and international fora, and was involved in the day-to-day management of the business of the Commission.

Inability of the ALRC to consult widely in relation to its inquiries

The nature and extent of the ALRC's engagement with stakeholders is determined by the nature of the inquiry. Some, such as the Uniform Evidence Law inquiry and the ALRC's current Discovery inquiry (in which I am currently involved as a member of the Advisory Committee), tend to be fairly technical and of interest primarily to the legal profession and departments of the state, territory and federal Attorneys-

General. Others, such as the Privacy inquiry and the recently completed Family Violence inquiry, attract significant interest from a wide variety of stakeholders, the general public and the media. Critical to the formulation of good recommendations for reform which will be understood, if not necessarily embraced, by members of affected communities and government is adequate consultation. Whether consultation is 'adequate' is dictated by the nature of the inquiry as discussed above.

In the Privacy inquiry, for example, the ALRC:

- published five consultation documents before the publication of the final report;
- held 250 face-to-face meetings with individuals, organisations and agencies in every capital city in Australia and in some regional centres;
- held three major public forums (in Melbourne, Sydney and Coffs Harbour);
- held six workshops for children and young people focusing on privacy issues for those aged 13-25;
- held a series of roundtables with individuals, agencies and organisations on a variety of themes including: credit reporting; telecommunications; the privacy principles; children and young people; and, health and research;
- conducted a highly publicized 'National Privacy Phone-In' at the beginning of the inquiry to heighten public awareness of the inquiry; and
- established a 'Talking Privacy' website designed specifically to appeal to young people.

The degree of consultation has a direct impact on the quality of the final report, and in particular the report's recommendations. As a consequence of budget cutbacks, the ALRC has had to curtail the number of consultation documents produced in advance of the final report, and curtail the scope of its engagement with relevant stakeholders and the general public. This will have a negative impact on the quality of its reports.

Impact on the ALRC of the failure to appoint full-time Commissioners

Currently, the ALRC has no full-time Commissioners. While it has excellent part-time Commissioners, these individuals do not have the time to be involved in the day-to-day management of inquiry teams and undertake the other responsibilities of full-time Commissioners noted by Professor Weisbrot in his submission (at pages 5-7).

It is my understanding that what was formerly the full-time Commissioner's role is now being shared amongst Senior Legal Officers assigned to a particular inquiry. This, in my view, is unsatisfactory. Senior Legal Officers generally have responsibility for researching and writing significant sections of consultation documents and reports. Their detailed and time consuming involvement in specific aspects of an inquiry makes it difficult for them to engage in the overall strategic research planning and management of teams that an inquiry requires. This, in turn, has a negative impact on the quality of ALRC reports and report recommendations.

Apparent inability of the ALRC to retain experienced senior legal officers

A related, but separate, concern to the failure of the government to appoint full-time ALRC Commissioners is the disturbingly high turnover of staff since Professor Weisbrot and I left the ALRC in November 2009. For example, of the four Senior Legal Officers employed by the Commission at that time, only one has not secured other employment. The loss this represents to the ALRC in terms of skills and institutional knowledge is significant. Further, the closure of the Michael Kirby Library and the elimination of the Research Manager's position will have a significant impact on the ability of inquiry teams to engage in the depth of research for which the ALRC is recognized nationally and internationally.

Conclusion

The ALRC is an institution with a proud history. Since its establishment in 1975, it has been a model for law reform commissions around the country and around the world. It has made a significant impact on legislative reform and good governance in Australia. The fact that 90% of the recommendations in ALRC reports have been either substantially or partially implemented highlights the relevance of the ALRC, both to government and the wider community (*ALRC Annual Report, 2009-10*, at 26.).

Without a return to adequate levels of funding, the ALRC will wither on the vine. This is not in the best interests of Australia or Australians, and the result will be the silencing of a well informed independent voice on matters of public policy.

I am happy to answer any further questions members of the Legal and Constitutional Affairs Committee may have.

Kind regards

Les McCrimmon
Professor of Law