

CHAPTER 6

Committee view

6.1 The committee notes that the ALRC was established for the purpose of enabling law reform in Australia to take place on a national scale, and to ensure that the law is responsive to the social needs of the day.¹

6.2 In 1994, the House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an extensive review of the ALRC. The first and third recommendations in the House of Representatives committee's report were:

...that the government recognise that there is a continuing need for a commission to carry out law reform functions.

...that the commission should continue to do high quality, well researched and well documented reports.²

6.3 It is the view of this committee that the original purpose of the ALRC, and the recommendations of the House of Representatives committee, are still relevant and important today. The committee believes that these functions are appropriately captured in section 21 of the *Australian Law Reform Commission Act 1996* (ALRC Act).

6.4 The ALRC is an international best practice organisation and it plays a key role in law reform in Australia. The committee agrees with the majority of submissions to this inquiry, which expressed strong support for an independent and well-resourced law reform commission in Australia.

6.5 However, in the committee's view, the introduction of changes to the ALRC's governance structure, in parallel with significant cuts to the ALRC's budget, places the ALRC in an extremely precarious position. While the committee accepts the Attorney-General's Department's (Department) evidence that it is only coincidence that these events are occurring together, the committee is very concerned about the overall impact of the changes on the ALRC and its capacity to continue to produce the high quality work for which it is renowned.

Changes to governance structure

6.6 In relation to the changes to the ALRC's governance structure implemented by the *Financial Framework Legislation Amendment Act 2010* (FFLA Act), the committee accepts the criticism by the Rule of Law Institute of Australia (RoLIA) that

1 Attorney-General's Department, *Submission 15*, p. 1.

2 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Law Reform: the Challenge Continues*, May 1994, pp 25-26.

the FFLA Act lacked sufficient parliamentary scrutiny. The committee agrees with the representatives of RoLIA that the legislation's seemingly innocuous title belied significant changes to the ALRC, and, further, that the explanatory memorandum 'glossed over the changes'.³

6.7 The committee notes the Department's explanation that the changes implement recommendations pursuant to the *Review of Corporate Governance of Statutory Authorities and Office Holders* (Uhrig Review), and are consistent with the *Governance Arrangements for Australian Government Bodies* policy. Further, the committee also notes that this is a policy which has bipartisan support.⁴

6.8 However, the committee considers that Professor David Weisbrot highlighted some significant issues as to the inappropriateness for a blanket application of the *Financial Management and Accountability Act 1997* (FMA Act) structures to the ALRC.⁵

6.9 Critically, in the committee's view, the changes in the FFLA Act place in jeopardy the perception that the ALRC is independent from government. The committee agrees with the observation of Professor Rosalind Croucher, President of the ALRC, that it will require 'confident management to preserve the perception of independence'.⁶ Members of the committee intend to use the Senate Legal and Constitutional Affairs Legislation Committee's estimates process to maintain close scrutiny of this aspect of the ALRC's operations.

Impact of budget cuts

6.10 The ALRC has had a budget cut of \$0.242 million in 2010-11 and will have further reductions of \$0.495 million per year over the period 2011-12 to 2013-14. These cuts are in addition to the government's two per cent efficiency dividend.

6.11 The submissions and evidence to this inquiry clearly refute the submission of the Department that the ALRC's resources are adequate to discharge its functions.⁷ The committee agrees with the evidence of Professor Croucher that these budget cuts

3 Mr Benjamin Giles, Rule of Law Institute of Australia, *Committee Hansard*, 11 February 2011, pp 30-31.

4 *Submission 15*, p. 5.

5 Attorney-General's Department, answers to questions on notice, received 25 February 2011 (Letter from Professor David Weisbrot, President of the Australian Law Reform Commission (ALRC), to Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review Branch, Financial Management Group, Department of Finance and Deregulation, dated 18 November 2008).

6 *Committee Hansard*, 11 February 2011, p. 74.

7 *Submission 15*, p. 6.

place the ALRC at the point of viability, fighting a losing battle, like the Black Knight in *Monty Python and the Holy Grail*.⁸

6.12 The committee also does not see how it is feasible, once the transitional funding from the Attorney-General's Department is exhausted, for the ALRC to continue to fund a second full-time commissioner position out of its reduced budget.

6.13 The committee believes that the savings measures that have been put in place by the ALRC in response to the budget cuts do not merely represent a different, more efficient, way of doing inquiry work. The budget cuts threaten the ability of the ALRC to continue to produce the high quality and highly respected work that it has undertaken for the last 35 years.

6.14 While the committee acknowledges that witnesses were unable to point to specific examples demonstrating a decline in the ALRC's work, the committee's view, based on the evidence provided by the ALRC, is that the staff at the ALRC have been working extraordinarily hard to ensure that there is no decline in the quality of the ALRC's work. This situation cannot continue. The ALRC cannot be expected to rely on a decreasing number of staff, particularly full-time commissioners, to produce the same volume and standard of work.

6.15 Further, the committee agrees with Professor Weisbrot that the current savings measures that have been implemented due to inadequacies in the ALRC's budget also highlight the potential for a reduction in the ALRC's independence from government.⁹ The committee agrees with Professor Weisbrot's sentiments that the ALRC should be given an adequate budget so that it does not need to rely on supplementary funding, or any form of assistance, from the government.

6.16 Therefore, the committee recommends that the budget cuts to the ALRC for the period 2010-11 to 2013-14 be restored as a matter of urgency.

6.17 The committee has some specific comments on issues arising out of the evidence in relation to the impact of the budget cuts on the ALRC, and those comments are set out below.

Full-time commissioners

6.18 The committee applauds the work that Professor Croucher has contributed to the ALRC since she was appointed President in December 2009, providing leadership at both an organisational and inquiry level. However, the committee is mindful of Professor Croucher's statement that it is 'impossible to be in three places at once'.¹⁰ Obviously it is not a sustainable situation to have a single person as the Chief

8 *Committee Hansard*, 11 February 2011, pp 49 and 51.

9 *Committee Hansard*, 3 March 2011, p. 8.

10 *Committee Hansard*, 11 February 2011, p. 52.

Executive Officer of the ALRC, and to also be the only full-time commissioner for at least two ongoing inquiries. This is not a reflection on Professor Croucher's abilities – it is simply impossible for one person to maintain that type of workload over an extended period of time.

6.19 The committee notes that the government has indicated an intention to appoint an inquiry-specific full-time commissioner for the ALRC's 'Review of censorship and classification' inquiry. However, in the committee's view, there is a need for a legislative safety net to ensure that leaving the ALRC bereft of standing, fixed-term, full-time commissioners does not occur again. As the ALRC notes in its Supplementary Submission, the spirit and intent of the ALRC Act is that a full complement of commissioners would constitute the proper leadership of the commission.¹¹

6.20 As Professor Croucher stated, the appointment of an inquiry-specific full-time commissioner is 'better than nowt'. However, in the committee's view, the appointment of standing fixed-term full-time commissioners is imperative to the operation of the ALRC. The ALRC needs to be led by specialists in law reform, and it needs to retain this intellectual capital.

6.21 Therefore, the committee recommends that the ALRC Act should be amended to provide for a minimum of two standing, fixed-term (not inquiry-specific), full-time commissioners at all times. Further, the committee recommends that an additional full-time commissioner be appointed, for each additional inquiry referred to the ALRC, in circumstances where the ALRC already has two or more ongoing inquiries.

Moving premises

6.22 The committee is unconvinced that the sublicensing of new premises will, in fact, generate savings for the ALRC in the short term. The committee accepts that it may be necessary for the ALRC to reduce its rental expenditure in the longer term by moving to lower cost premises at the end of the current lease. However, any new premises will need to have adequate meeting room space; allow for the retention of the ALRC's library; and be located in an area that ensures that the ALRC can continue to benefit from the honorary contributions it currently relies on from the legal community.

6.23 In the committee's view, the ALRC should have remained in its former premises until the expiry of the lease. The committee notes that the ALRC has been given a 'rent-free' period in its new premises until July 2011.¹² However, the ALRC will only benefit from this rent-free period if its current premises are sublet, a situation that is by no means guaranteed. The committee is very concerned that this situation has exposed the ALRC to a double commitment for rent. The committee appreciates

11 *Supplementary Submission 2*, p. 9.

12 Professor Rosalind Croucher, ALRC, *Committee Hansard*, 22 February 2011, p. 24.

that little can be done about this situation now. However, members of the committee will continue to follow the outcome of the situation through the Senate Legal and Constitutional Affairs Legislation Committee's estimates process.

Other savings measures

6.24 The committee is of the view that the savings measures of discontinuing the public information and educational services programs, and reducing travel for consultation for inquiries, are not areas where it is appropriate for the ALRC to be reducing expenditure. These areas are central to the work that the ALRC does: the value of the ALRC's work is that it is accessible to the whole community, not just the legal fraternity or well-resourced stakeholders. For this reason, the committee believes these elements of the ALRC's work should be maintained. The committee recommends that the public information and education services program of the ALRC resume. Further, the committee recommends that the ALRC be provided with the necessary resources so it can continue to travel to undertake face-to-face consultations as part of the inquiry process.

Turnover of legal staff

6.25 The committee did not receive definitive evidence as to the reason for the high turnover of legal staff at the ALRC in recent years. The committee readily accepts that the experience that a person gains while working at the ALRC would open doors for them to pursue excellent alternative opportunities. However, the committee believes that restoring the budget cuts and ensuring that a minimum of two full-time commissioners are appointed to the ALRC will provide the elements of leadership and stability that are fundamental in attracting and retaining appropriate staff.

Conclusion

6.26 The ALRC is critically important to the development of legal policy in Australia. It has a proud history of undertaking important reviews and inquiries into key areas of law and making significant recommendations to unify and improve Australia's laws. The ALRC's high quality of work cannot continue on a shoestring budget.

6.27 In order to maintain this important organisation, the government must provide the ALRC with the necessary funds to enable it to have a full complement of qualified staff, including full-time commissioners; to be accommodated in premises that cater to the nature of the ALRC's work; to provide a comprehensive public information and education program; and to allow the ALRC to travel to undertake extensive consultations for the purposes of its inquiries.

Recommendation 1

6.28 The committee recommends that the Australian Government restore the ALRC's budget cuts for the period 2010-11 to 2013-14 as a matter of urgency.

Recommendation 2

6.29 The committee recommends that the ALRC Act be amended to provide for a minimum of two standing, fixed-term (not inquiry-specific), full-time commissioners.

Recommendation 3

6.30 The committee recommends that an additional full-time commissioner be appointed, for each additional inquiry referred to the ALRC, in circumstances where the ALRC already has two or more ongoing inquiries.

Recommendation 4

6.31 The committee recommends that the ALRC's public information and education services program be resumed immediately.

Recommendation 5

6.32 The committee recommends that the ALRC be provided with all necessary resources to enable it to continue to travel to undertake face-to-face consultations as part of its inquiry processes.

Senator Guy Barnett

Chair