

# Setting the legal zeitgeist

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The Australian Law Reform Commission (ALRC) has entered its 40<sup>th</sup> year with around 70 per cent of its recommendations being encoded in law.

However, its influence also extends well beyond the legislative realm, according to the body's president.

"You've got the hard data of implementation but there is also this penumbra effect or the ripples in the pond," Professor Rosalind Croucher told *Lawyers Weekly*.

"We can have quite an enduring impact in the way people approach problems."

Professor Croucher said the ALRC's year-long inquiries frame the way the judiciary, policy makers and lawyers think about legal issues.

“Our reports have such a finely crafted analysis of the law at the moment and where the law might go [that they] are an incredibly useful resource for the courts ... and provide a really important first-reference point for many judges when they are presented with novel problems,” she said.

Professor Croucher said it was an “idiotic idea” to merge the ALRC with the Attorney-General’s Department, a proposition that has regularly come up in her five years as president.

She argued that the value of the ALRC lies in its ability to consider issues at arm’s length from parliament and outside government departments.

“We start with questions... and only work our way to a conclusion through a year of research and consultation and quite considerable reflection,” she said.

Government departments, on the other hand, may be given an outcome that the government wishes to reach and have to back-fill to that outcome, she added.

The ALRC’s work is crucial because it looks to the longer term and concentrates on how the law can change in an enduring way, according to Professor Croucher.

“While mindful of the pace and demands of the political cycle, our work stands apart from those sorts of demands and can reflect upon the issues in a very deep and principled way, which means that the reports will provide a significant contribution,” she said.

*Lawyers Weekly* asked whether Professor Croucher felt it was dangerous for politicians to encourage the public to doubt the independence of commissions such as the ALRC, to which she simply replied, yes.

She said it was probably best that she did not comment specifically on the political attacks on the Australian Human Rights Commission (AHRC) “for the same reason that as an independent body I don’t engage in political commentary”.

“But I think the independence of the ALRC, of statutory agencies, is crucial to our ability to leverage public participation and is essential to our continuing good will and standing,” she added.

The ALRC reports benefit from in-depth conversations with key stakeholders and from submissions by law firms, collective groups such as law societies and individual judges, among others.

When asked about the role that community legal centres (CLCs) should play in this process, Professor Croucher said, “What I can say is that the ALRC has benefited greatly by the involvement of CLCs ... particularly [in] the inquiries that have had a social justice focus (but not only such inquiries).”

She explained that because CLCs work at the coalface on so many issues, the insights that they can bring to bear by way of making submissions are an important part of the ALRC’s consultative mix.

State and federal governments have [recently moved](#) to strip CLCs of their right and ability to contribute to law reform.

Despite budget cuts of 20-25 per cent in 2010, which Professor Croucher likened to the plight of the Black Knight in *Monty Python* who had all his arms and legs chopped off, the ALRC has continued to produce a number of significant reports.

Last year, parliament tabled two ALRC reports: one on serious invasions of privacy and a report on how to achieve equality for people with disabilities in Commonwealth laws.

“I think we’ve learned to manage with our legs and arms chopped off but we can’t afford to lose any more limbs, shall we say,” joked Professor Croucher.

“We are probably at the lowest core complement that we could ever go but we still keep our spirits high and love the work we do, and that’s pretty sustaining,” she said.

Professor Croucher is now in the last year of her presidency and said she was on the hunt for new challenges.

“The law reform work I’ve enjoyed enormously but all things have to come to an end, as they say. I have an opportunity to return to my academic life at Macquarie University but I am also looking around for other possibilities,” she said.

**On February 25, Professor Croucher will be the guest speaker at the Women Lawyers Association of NSW’s Cocktail Launch of 2015 Program, which will raise money for The Katrina Dawson Foundation.**

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