

Commission resurrection

JULIE MCCROSSIN talks to Alan Cameron AO about his new role with the NSW Law Reform Commission and why it is time to review the guardianship legislation.



When Alan Cameron AO greets me just before Christmas at the reception desk of Ashurst Australia, high above Martin Place, he immediately puts me at ease with his warmth and affability.

Late last year, when NSW Attorney-General Gabrielle Upton appointed Cameron, the former Chairman of the Australian Securities and Investments Commission (ASIC), to chair the NSW Law Reform Commission and review the State's guardianship legislation, she described her new appointee as "a legal all-rounder". With a career comprising more than 40 years in senior roles, including ASIC chair from 1993 to 2000, Commonwealth and Defence Force Ombudsman, principal solicitor of the NSW Aboriginal Legal Service in the mid-1970s, and Consultant to the Australian Law Reform Commission (ALRC) on its reference into criminal investigations in 1975, the description is apt.

Cameron was also the first national managing partner of Blake Dawson Waldron (now Ashurst Australia) from 1989 to 1991. He has played a pivotal role in reviews of financial and market

regulation in Hong Kong, Indonesia, Japan and the UK, and in specific areas of law in NSW and the commonwealth in particular over the past 15 years. The review of the guardianship law in NSW will get fully under way in early 2016. It is likely to include conversations with people under guardianship and their family members, as well as the judiciary, members of the profession, academics and community members. Cameron clearly has the charm and communication skills to probe the views of all these people who have an interest in substitute and assisted decision-making.

The NSW Law Reform Commission's most recent chairman was James Wood QC, a former judge of the Supreme Court. He left the commission in December 2013. The government's failure to appoint a new commissioner, or give the commission new work, led to speculation in the media about its future.

"I can't really comment," Cameron demurs with a smile when I seek his views on this history of uncertainty, "other than to state the obvious. Namely, that there was an extended period when there was no person appointed as chairman. But

the current Attorney-General has made it clear that she wishes the commission to continue and this review to happen. The government has appointed me and I intend to make it happen.”

According to Cameron, the purpose of the Law Reform Commission is to advise the government on specific areas of law that the government thinks need to be revisited and reviewed, to get rid of things that are out of date, and also to meet modern needs.

“It’s really that simple,” he says. “The assumption I make, and I do have some background in law reform, is that the profession is a major stakeholder – but not the only stakeholder – in the exercise. Frequently there are people who know more about a particular matter, that is the subject of law, who are not themselves lawyers. So it is clearly not exclusively the profession we refer to, but the profession is obviously a very large and important stakeholder in everything that we do.”

The commission consists of a chairman and part-time commissioners who are appointed to work on particular references. “The commission needs to be quorate by having several commissioners at a time,” explains Cameron. “My role, as a statutory officer, is to bring together my part-time colleagues and work out how we will settle matters. We’ll have project officers working for us and I’ll be actively involved in that work as well.

“One of the formal steps that needs to be taken is consideration of the membership of the commission, including the possible appointment of part-time commissioners to help on this project. I would expect there will be expressions of interest called for from within the profession, as well as from academia and the wider community, in the next month or so.”

Cameron is disarmingly frank about the fact he has very little knowledge or experience of guardianship law per se.

“My mind is, to a significant extent, open on all of this,” he explains. “Guardianship is not a particular area of the law I’ve had occasion to deal with, but I find that a lot of people I know well are experts in the area. There is other work that has been done by law reform commissions

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around Australia. On top of that there is the newish UN Convention on the Rights of People with a Disability. This is mentioned in the formal reference.

“The NSW Government last legislated in this area in 1987 and the impact of the convention on the way we do things in NSW and the approach taken in other places is one of the issues.”

It is Cameron’s preference, he explains, that we do not have idiosyncratic differences between laws around Australia in a matter like this.

“Clearly we have to have regard to what is happening elsewhere nationally and internationally,” he says. “A key issue is the distinction which can be drawn between ‘substitute decision-making’ or ‘assisted decision-making’. From a point of significant ignorance, I would assume the difference between the two is that the former model was that if you were regarded as no longer fully competent, then all decision-making was taken away from you. But with assisted-decision making, if there are decisions that you can be involved in, then you ought to be involved in them.



Your views would be either dominant or determinative. That is what I am assuming the distinction might be, and I shall see if it is so.

“We need to bear in mind

that there is an ageing population and that is producing greater numbers of people with increasing levels of dementia. There is also a lot of people suffering various brain injuries, who might in former days have passed away, but are now living with some degree of disability.

“The other major change is the National Disability Insurance Scheme. With that scheme coming in, how guardianship relates to that will be an issue, too.”

Cameron believes his lack of direct experience with guardianship legislation could be an advantage in his new role.

“It may be an advantage that I am not simply bringing my own agenda to whatever the outcome is,” he says. “If you are given a job to do where you’ve already been heard on the subject, then people assume you’re going to stick to your existing view, or that they have to work

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to change it. I hope I have the credibility of independence but with a deal of experience of seeing how the law actually works and what the relationship is between how we might draft the law and what actually happens.”

For example, explains Cameron, it may be all very well in theory to construct a model under which independent legal advice would always be obtained in a particular context, but if that independent legal advice is not readily available in a country town, then how useful is that model?

“In turn, how is that now affected by the new digital reality, under which a lot of people – not everyone – are connected digitally much more easily than they are connected physically?” he asks.

“One of the other things I do and will continue to do is chair the board of Property Exchange Australia Limited, which is the new electronic hub for the settlement of land transactions.

“This is important to the solicitors of NSW and many of them are now signed up and are transacting on it. This required a national legal framework to be created and made to work with a system of interstate cooperation as the regulator. This was quite a significant challenge. But it is highly digital in its concept and in its operation.”

While Cameron’s career includes many examples of providing advice on law reform, including participating with the Law Council’s Business Law Section in seeking to rewrite company law in the 1980s and being an active member of the Companies and Securities Advisory Committee while at ASIC, it still seems surprising that he would turn his mind to state law reform at a time when he is active as a company director and consultant. So why was he attracted to his new part-time role?

“A lot of people of my age, with something like my background, are moving more fully into directorships, rather than law. But I have been doing that for a while now,” he says.

“What I am looking forward to is going back to the law. This is an opportunity to take on areas of the law, think them through thoroughly, and, with the assistance of others, try to work out what the right outcome might be. I’m looking forward to that.” **LSJ**