

dp 14: omnibus provisions to replace provisions in common form in particular acts. As part of its Terms of Reference, the Review Committee was required to examine the possibility of including in the future consolidating law omnibus provisions creating general offences that would do away with the need for provisions in future particular Acts creating like offences and result in the repeal of some particular provisions to similar effect in existing Acts. Omnibus provisions were considered for:

- offences relating to the administration of legislation
- offences relating to licences and permits
- offences relating to Commonwealth officers
- offences relating to procedures to obtain evidence under relevant legislation.

In respect of most of the offences considered, the Review Committee did not favour the creation of Omnibus provisions because of the need to give consideration to the user of the legislation and the inconvenience of having to refer to two Acts. In two areas in particular, however, the Committee did favour omnibus provisions. The first of these was in respect of offences relating to obstructing or hindering Commonwealth officers in the execution of their duty. Here it was thought that a general omnibus provision in the consolidating law would be desirable, particularly as the offence provision here would not need to be as intimately linked with provisions in other Acts. In respect of offences relating to the obtaining of information it was thought that much of the area could be covered by an omnibus provision similar to s 39 of the National Companies and Securities Commission Act 1979 (Cth), though modified in respect of the protection against self-incrimination. This

course was favoured because the issues involved are 'of such significance in the administration of law and justice that there would seem merit in developing provisions capable of application in relation to particular Acts on thoroughly thought out principles rather than relying on ad hoc solutions as each case arises'.

submissions sought. The Review Committee invites comments on all matters raised in their Discussion Papers. Comments should be addressed to The Secretary, Review of Commonwealth Criminal Law, PO Box 237, Civic Square, ACT, 2608.

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the 1988 review of ancerta

Merchants have no country. The mere spot they stand on does not constitute so strong an attachment as that from which they draw their gains.

Thomas Jefferson, 1814

The 1988 review of ANCERTA (The Australia New Zealand Closer Economic Relations Trade Agreement) produced agreement between Australian and New Zealand Government Ministers on full free trade in goods across the Tasman by 1 July 1990. Agreement was also reached on the harmonisation of business laws and technical barriers to trade, the harmonisation of customs policies procedures, and a protocol of quarantine. The agreement aims to further accord with the objectives of ANCERTA developing closer economic relations between the two countries, eliminating trade barriers and developing trade while ensuring fair competition.

Under the Memorandum of Understanding on the Harmonisation of Business Law signed by the governments of Australia and New Zealand on 1 July 1988

each government will examine areas of business law and regulatory practice with a view to removing any impediments to trade that arise out of the different business laws and practices in the two countries. The Memorandum of Understanding requires each government to consult with the business community and other relevant interests in carrying out the review of a number of areas of law. These areas of law include

- consumer protection including consumer credit laws and post sale consumer protection;
- companies, securities and future laws including cross recognition of the central elements of corporate status ('one place of registration'), share requirements, fund raising, regulation of unit trust, registration of charges, disclosure of company operations, take over laws, insolvency and future industry regulation;
- competition laws;
- copyright law;
- commercial arbitration;
- the sale of goods and services between the two countries;
- mutual assistance between regulatory agencies and the enforcement of business laws;
- reciprocal of enforcement of injunctions and orders for specific performance and revenue judgments between the two countries.

Several of these topics, namely copyright law and consumer protection were identified by the ALRC in its 1986 Annual Report (ALRC 34) as being matters in need of reform.

A significant degree of co-operation between Australia and New Zealand has already occurred in a number of areas of business law including restrictive trade

practice laws, consumer affairs, particular pre-sale consumer protection, intellectual property law and company share prospectuses.

A second Memorandum of Understanding the Harmonisation of Customs Procedures is of particular interest to ALRC in the context of its review of Customs and Excise legislation. This Memorandum of Understanding is to be signed in August 1988. It deals with such matters as rules of origin, tariff protection, export subsidies, anti-dumping, countervailing forces, and the reciprocal pre-clearance of passengers. The ALRC's work on the barrier control aspects of the Customs reference has taken account of the need to co-ordinate customs procedures relating to the arrival and departure of passengers and the import and export of air and sea cargo.

The ALRC's review of the Customs and Excise Legislation coincides with a similar review of the New Zealand Customs Act by Sir George Laking, Chairman of the New Zealand Legislation Advisory Committee. The ALRC has been consulting with the New Zealand Advisory Committee and is to meet the Advisory Committee and New Zealand customs officers in Canberra in September.

Further matters covered in the 1988 ANCERTA review included Government purchasing, margins of tariff preference, export prohibitions, industries assistance, bounties and subsidies and the cessation of the Memorandum of Understanding between the Australian and New Zealand Dairy Industries on 1 July 1990.

The review on technical barriers will be reviewed by 31 December 1990 to be followed by a full and comprehensive review of ANCERTA in 1992.