

# SALC BULLETIN

Newsletter of the South African Law Commission

## Expiry of Term of Office of Commission

The Commission's term of office expired on 31 December 2001. A new Commission is in the process of being appointed.

## Issue Papers

Since publication of the previous Bulletin, two Issue Papers have been published for general information and comment.

### Domestic Partnerships (Issue Paper 17)

The Commission is involved in an investigation dealing with the question of the legal recognition and regulation of domestic partnerships - that is, established relationships between people of the same or opposite sex. The investigation is aimed at harmonising family law with the provisions of the Bill of Rights and specifically, with the constitutional values of equality and dignity. As a first step in this process the Commission released an Issue Paper dealing with domestic partnerships, in the form of a questionnaire, for comment and discussion.

Marriage is currently the only legally recognised form of intimate partnership. Domestic partnerships, on the other hand, are virtually unrecognised and partners are excluded from the rights and obligations which attach automatically to marriage.

The number of people living in non-marriage relationships has, however, increased worldwide and also in South Africa. In research on marriage conducted by Statistics South Africa, approximately 40 percent of African Diminished capacity can be the result

and Coloured women indicated that they had been in marriages of one kind or another (religious, customary or civil). This suggests that large numbers of South Africans live with their intimate partners without marrying.

Social customs have changed radically, outdated early notions of marriage as the only form of acceptable relationship. Domestic partnerships have come to be perceived in many cases as functionally similar to marriage. More and more legal problems associated with domestic partners and their families are coming to the attention of the courts and of lawyers generally. South Africa is, however, far behind many countries in its development of appropriate laws. Tanzanian law, for example, protects the rights of couples in opposite-sex partnerships, Denmark recognises same-sex partnerships, while the Netherlands and Germany recognise same-sex marriage.

In the recent past the courts have carried much of the responsibility for crafting family law and policy with regard to domestic partners by creatively applying non-family laws, including the law of unjust enrichment, estoppel and contract, to domestic partners who have been excluded from family law regimes. The Constitutional Court has furthermore upheld a constitutional challenge under sec 9 (equality) on the ground of sexual orientation. With the extension of statutorily defined benefits (sometimes including domestic partnerships into the definition of "spouse" for various purposes), there has also been increasing recognition of these relationships outside marriage. The law of marriage itself has undergone major changes, for example with the recognition of the "no-fault" divorce, of mental illness, inability to

the recognition of customary marriages and changes in matrimonial property rules. These developments have led to a patchwork of laws that do not express coherent family policy.

The Commission is consequently considering proposals for possible law reform with regard to the following issues:

- \* Whether domestic partnerships should be legally recognised and regulated.
- \* Whether marital rights and obligations should be further extended to domestic partnerships.
- \* Whether a scheme of registered partnerships should be introduced.
- \* Which marital rights, obligations and benefits should require registration or marriage and which should depend only on the existence of a domestic relationship.
- \* Whether legislation should provide for same-sex marriage.
- \* Whether marital rights and obligations should be further extended to people living in interdependent relationships having no sexual element.

*The closing date for comment on Issue Paper 17 had been 30 November 2001 and was extended to 31 December 2001.*

### Incapable Adults (Issue Paper 18)

The Issue Paper deals with the need for measures to protect the interests of adults whose capacity to act in the legal sense and to litigate has for some reason been diminished.

communicate because of a physical or

other disability, head injury, stroke, learning disability, a specific disease (including diseases such as Alzheimer's and Parkinson's diseases) or may be related to ageing in general.

The legal principles governing mental incapacity are the same, irrespective of how the incapacity was caused. Any mental incapacity that affects a person's intellect and judgment will in terms of South African private law affect his or her capacity to act in the legal sense (eg to enter into a contract) and to litigate (ie to appear in court as a party to a suit). These capacities depend on whether the person in question is "insane" or not at the relevant time.

A person is insane if he or she is incapable of managing his or her affairs. An insane person's capacity to act is determined by common-law principles as extended by the courts and is currently not all regulated by legislation. Current statutory measures (the Mental Health Act 18 of 1973) applicable to mentally ill persons must be distinguished from the common-law principles and apply to the reception, detention and treatment of mentally ill persons. Measures contained in the Act concerning the care and administration of the property of a mentally ill person likewise only relate to "patients" (ie persons detained, supervised, controlled and treated in terms of the Act).

At present the legal solution to the problem of persons who cannot manage their own affairs takes the form of curatorships: A curator can be appointed by the court to an individual's person (a *curator personae*) to see to his or her personal welfare (including making decisions eg on where the person should stay, and whether he or she should be admitted to an institution or undergo medical treatment). A *curator bonis* can be appointed to protect the proprietary interests of a mentally ill person. The aim of the discussion paper is to determine whether there is a need in

incapacitated person. In addition to these, an individual can allow another to act on his or her behalf, for certain purposes or generally, through a power of attorney. However, for a power of attorney to be valid, the person granting the power must have contractual capacity. A change of status (which could be caused by insanity) will thus terminate the agency.

The existing system of curatorships has been criticised on the ground that it suffers from a number of serious and frustrating difficulties. The problem of a power of attorney ceasing on incapacity has also caused concern. As early as 1988 the Commission undertook an investigation with a view to improving the plight of mentally incapacitated persons. Recommendations by the Commission for the provision of enduring powers of attorney (ie for providing that a power of attorney remain in force despite the fact that the principal has become mentally incapacitated) were, however, not promoted by the government at the time.

The number of persons suffering from diminished capacity are increasing worldwide and also in South Africa. The aged population (ie the elderly over pensionable age) in South Africa currently consists of about 7% of the total population.

Many of these persons will gradually lose their ability to administer their assets and to care for themselves. The number of persons with dementia (a broad term referring to a condition in which a person's cognitive functions decline) are also increasing and although little is known about the specific prevalence of dementia in South Africa, it is expected that it would increase because of the ageing of the population in accordance with world-wide trends. Moreover, in 1996 7% of the South African population was classified as disabled. These South Africa to develop procedures that provide for the settling of criminal

included persons suffering from disabilities relating to sight and hearing as well as mental disabilities. In several comparable legal systems enduring powers of attorney have been introduced in the 1980's. More recently comprehensive legislative schemes to deal with the problems faced by incapable adults, their families and caregivers have been introduced through law reform. The latter include reform in England, Australia, Canada and most notably and recently in Scotland. In some of these countries completely new systems comprising substitute "decision-makers" have replaced old and intrusive systems, which required appointment of public officials where it was unnecessary.

*The closing date for comment on Issue Paper 122 is 28 February 2002.*

## Discussion Papers

Since publication of the previous Bulletin, four Discussion Papers have been published for general information and comment:

### **Simplification of Criminal Procedure: Out-of-Court Settlements in Criminal Cases (Discussion Paper 100)**

An interim report which recommended the formal recognition of a process of plea negotiations in the Criminal Procedure Act 51 of 1977 was submitted to the Minister for Justice and Constitutional development in 2001. In this report the Commission concluded that the process of plea bargaining should be statutorily recognised and that a separate investigation should be launched into out-of-court settlements of criminal cases.

cases without having to go to court, and if so, the best way in which this

can be achieved within the South African context.

Particular attention is given to the international trend to have certain criminal cases dealt with out of court. This trend is based mainly on two considerations: firstly to increase the cost-efficiency of the criminal justice process through simplified and streamlined procedures, and secondly to deal with mass crime outside of the traditional criminal process, so that the courts have more time to deal adequately with increasingly complex cases.

In the discussion paper an out-of-court settlement is defined as an agreement between the prosecution and the defence in terms of which the accused undertakes to comply with conditions as agreed upon between the parties, in exchange for the prosecutor discontinuing the particular prosecution. Such conditional discontinuation of prosecution results in the diversion of the matter from the trial process. An out-of-court settlement needs to be distinguished from other pre-trial procedures and agreements. It is distinct from *sentence* and *plea agreements* in that these follow upon a decision by the prosecutor to institute a prosecution. The agreement may affect the offences for which the accused is finally charged, but it invariably results in the conviction and sentence of the offender. Therefore, such offender will have been put through the entire criminal process and will end up with a criminal record. An out-of-court settlement does not involve the entire criminal process, does not lead to a conviction and does not result in a criminal record.

On 17 September 1987 the Committee of Ministers to member states of the Council of Europe accepted a document which is pertinent to the present discussion and many European countries introduced legislation relating to speedier criminal procedures and which allows

for discretionary prosecution of cases.

The Committee recommended that member states should introduce the principle of “discretionary prosecution” and make use of several measures to settle criminal cases out of court when dealing with minor and mass offences. The main consideration behind the recommendation was to accelerate and simplify the working of the criminal justice system, while taking due consideration of articles 5 and 6 (the right to speedy trial) of the European Convention on Human Rights, as well as the increase in the number of criminal cases and the fact that delays in dealing with crimes bring criminal law into disrepute and affect the proper administration of justice.

Having considered these developments in Europe and current South African law, the Commission has concluded that formal recognition of a procedure to settle criminal cases out of court will have particular advantages for the criminal justice process in South Africa. Such a process will, among others -

- \* contribute to saving precious court time and costs, since cases can be finalised without going to court, and without the time-consuming task of settling factual disputes;

- \* save time which will mean that more cases can be dealt with more rapidly, something that should improve the public's perception of the administration of justice;

- \* give the accused person certainty regarding the outcome of the case, provided the conditions of the agreement are complied with;

- \* provide the accused person the opportunity not to end up with a record of previous convictions, a factor which often prompts people to dispute a criminal charge;

- \* provide ample opportunities for the application of restorative justice

initiatives as an outcome of an out-of-court settlement;

- \* protect victims from publicity, and from having to be subjected to cross-examination, and yet benefit from compensation or restitution by the accused.

The Commission has therefore concluded that there is a definite need for legislation which will formalise out-of-court settlements in criminal cases in South Africa and recommends that the legislation provide for the following principles:

- \* The prosecutor may, before substantial evidence has been adduced against the accused and considering all the facts at his disposal, if he or she is satisfied that it is in the public interest to do so and that the court would upon conviction impose a sentence other than imprisonment or imprisonment for a period not exceeding one year, enter into an out-of-court settlement with the accused.

- \* In terms of the settlement the prosecution may undertake to discontinue the prosecution on condition that the accused complies with the conditions as agreed upon in the settlement.

- \* In considering whether it will be in the public interest to enter into an out-of-court settlement, the prosecution must have regard to whether the accused poses a significant threat to the community and is likely to benefit from the settlement; the effect of a conviction on the accused; whether, in the case of an accused with two or more previous convictions for the same or similar offences or an accused who has entered into a settlement on two or more occasions for the same or similar offences, there are substantial and compelling circumstances meriting the settlement; and the interests of the victim of the crime.

\* An out-of-court- settlement can only be entered into once a charge sheet, setting out the offence or offences for which the accused is being charged, has been served on the accused; if the prosecution is satisfied that there is sufficient evidence to warrant the prosecution of the accused; and through the accused's legal representative, if the accused is legally represented.

\* In exercising its discretion the prosecution must, if circumstances permit, obtain the views of the investigating officer and the victim of the offence, and must consider such views, before entering into a settlement with the accused.

\* An out-of-court settlement is, for a period as agreed upon between the parties, but not more than two years, subject to one or more of the following conditions:

· Compensation.

·The rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss.

·The performance without remuneration and outside the prison of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, in the opinion of the court, promotes the interests of the community.

· Payment of an amount of money of not more than the amount prescribed from time to time by the Minister in the *Gazette*, to the State or a state agency as directed by the prosecution.

·Submission to instruction or treatment.

· Submission to supervision or control (including control over the earnings or other income of the person concerned)  
The Law Commission published an Issue Paper for public comment in

of a probation officer as defined in the Probation Services Act 116 of 1991.

·The compulsory attendance or residence at some specified centre for a specified purpose.

·Referral to community dispute resolution structures that have been put into place in terms of an Act of Parliament.

\* If the conditions to a settlement require the accused to perform community service, to undergo instruction or treatment, or to attend or reside at a specified centre for a specified purpose, the prosecutor must cause a notice to be served on the accused, directing him or her to report on a date and time specified in the notice to undergo that instruction or treatment or to attend that centre or reside thereat.

\* The terms of the out-of-court settlement must be in writing, and must be signed by the prosecutor and the accused; it has to be approved by the Director of Public Prosecutions having jurisdiction and may be amended on good cause shown, with consent from both parties.

\* If the accused fails to comply with any of the conditions of the out-of-court settlement and the prosecutor is satisfied that such failure was beyond the accused's control, or for any other good and sufficient reason, the prosecutor may, having due regard to the extent to which the conditions of the prior settlement have been complied with, enter into a further out-of-court settlement.

\* If the accused fails to comply with any of the conditions of the out-of-court settlement, the criminal proceedings against the accused on that charge can be resumed from the point when the out-of-court settlement was entered into.

July 2000. The purpose of the Issue Paper was to identify the issues and

\* Once the accused has complied with the conditions of the out-of-court settlement, the charge is considered finalised and no prosecution resulting from the same offence may be instituted.

*The closing date for comment on Discussion Paper 100 had been 31 December 2001 but was extended to 31 January 2002 .*

### **Islamic Marriages and Related Matters (Discussion Paper 101)**

The Discussion Paper contains preliminary recommendations and a proposed draft Bill on the recognition of Islamic marriages.

Historically, and until the landmark 1999 Supreme Court of Appeal decision in *Amod v Multilateral Motor Vehicle Accidents Fund*, a marriage contracted according to Islamic law was regarded by South African courts as null and void and as being contrary to public policy, with the result that the marriage and its consequences were not legally recognised in any form. The decision in *Amod*, however, recognised a monogamous Islamic marriage for the purposes of support only, and did not deal with other crucial issues such as polygamy and the status of respective spouses, maintenance obligations, proprietary consequences of Islamic marriages, termination, etc. The result is that gross inequities and hardships arising from the non-recognition of Islamic marriages still prevail.

problem areas, arising out of the investigation, with a view to

maximum consultation with all interested parties and bodies, so as to obtain their inputs in arriving at an appropriate solution to the issues and problems identified in that document. The lively interest shown in the Issue Paper was illustrated by the significant number of comments on the proposals in that paper. These comments were duly taken into account by the Commission's project committee during the process of developing a draft Bill.

The proposed draft Bill contained and explained in the Discussion Paper draws a clear distinction between an Islamic marriage and a civil marriage. It is only Islamic marriages that would fall within the ambit of the Bill. Provision is *inter alia* made for the regulation of proprietary consequences, changes to matrimonial property systems (with due regard to existing and vested rights) and the regulation of polygamous marriages. In terms of the draft Bill all existing Islamic marriages would be recognised as valid marriages, for all purposes, upon commencement of the proposed legislation. This would cover both monogamous and polygamous Islamic marriages which, if applicable, may exist alongside a civil marriage (ie a marriage registered under the Marriage Act).

It is further proposed that, because the judges of secular courts are by and large non-Muslims, a judge be assisted by two assessors who are experts in Islamic law in the adjudication of all disputes relating to Islamic law. The appointment of assessors means that the court presiding over a dispute involving Islamic law would have the necessary expertise to resolve such disputes effectively.

The Commission's proposed draft Bill in addition addresses the registration of Islamic marriages, the dissolution of such marriages through the pronouncement of a *Talaq* (which, in terms of the proposals, must be

confirmed by a court), custody of and access to minor children and maintenance.

*The closing date for comment on Discussion Paper 101 had been 31 January 2001 but was extended to 1 March 2002.*

**The Issue Papers and Discussion Papers are available on request and are free of charge. Correspondence should be addressed to:**

**The Secretary  
SA Law Commission  
Private Bag X668  
PRETORIA  
0001**

**Telephone: (012) 322-6440  
Fax: (012) 320-0936**

**The Issue Papers and Discussion Papers are also available on the Internet at  
[www.law.wits.ac.za/salc/salc.html](http://www.law.wits.ac.za/salc/salc.html)**

### **Sexual Offences (Discussion Paper 102)**

As part of an incremental approach, the Commission has released the Discussion Paper on process and procedure relating to sexual offences, this being the second of a four part series, for general information and comment. The first Discussion Paper dealt with the substantive law relating to sexual offences, while the third and fourth papers will address the controversial issues of adult prostitution and pornography.

The Discussion Paper contains a draft Bill which embodies some progressive recommendations on the reform of the law relating to sexual offences. Although the Discussion Paper concentrates on aspects of the procedural law in relation to sexual offences the Bill which accompanies the Discussion Paper includes substantive law provisions, all of which have been revised following the

integration of submissions received on the Discussion Paper on the substantive law. An explanatory memorandum clearly sets out the reasons for the revision of the substantive law provisions.

The release of the Discussion Paper on process and procedure relating to sexual offences will be followed by a joint report on both the substantive and procedural law relating to sexual offences. The joint report on sexual offences will contain the final recommendations of the Commission and will be accompanied by a Bill on Sexual Offences. The report and the Bill will, once approved by the Commission, be handed to the Minister for Justice and Constitutional Development for his consideration.

The Discussion Paper on the procedural law relating to sexual offences includes a discussion of the various agencies or service providers responsible for dealing with the victims and offenders of sexual offences and the procedures for disclosure, reporting and investigation of sexual offences, the court hearing, rules of evidence and sentencing of the sexual offender.

The aim of the Discussion Paper is to test the preliminary recommendations contained in the Discussion Paper and to elicit comments which will be used to assist the Commission in preparing a report.

The revised substantive law provisions now include the following:

\* A revised statutory definition of the offence of rape. The revision of this offence includes the following:

· Penetration of a person by objects or human bodily parts should be limited to the anus and genital organs - in a manner which simulates sexual intercourse. In order to avoid any speculation as to whether penetration

extends to animal bodily parts, the Commission has decided to make it

· The definition of indecent act now provides for the indemnification of health professionals who employ these acts for proper medical purposes.

· The list of factors indicating the presence of coercive circumstances, originally proposed, has now been categorised in three categories, these being coercive circumstances; circumstances in which an act of sexual penetration is committed under false pretences, and finally, circumstances in which a person is incapable in law to understand the nature of an act of sexual penetration.

\* The Commission holds the view that the non-disclosure by a person that he or she is infected with a sexually transmissible disease prior to sexual relations with another (consenting) person would amount to sexual relations by false pretences and would therefore constitute rape.

\* Child prostitution now constitutes what was previously referred to as Commercial Sexual Exploitation of Children due to the fact that the divergent role-players targeted in the original provisions are all in some way involved in child prostitution. These would include pimps, clients, brothel-keepers and people trafficking in children for purposes of sexual offences.

\* Provision has been made for the prohibition of the organisation or promotion of child sex tours. This provision criminalises the actions of both persons and bodies that facilitate such tours within or to South Africa in any way, whether by making travel arrangements for potential perpetrators or advertising such tours.

\* The Commission is of the opinion that everybody is in need of increased protection as far as sexual offences are concerned - both locally and internationally. Therefore the original provision allowing for extra-territorial jurisdiction in respect of all offences under the Act and not only those committed in relation to children, is

clear that objects include any part of the body of an animal.

retained.

\* Some of the areas of the process and procedural law relating to sexual offences that have received attention are as follows:

· Agencies or service providers who are involved with or play a key role in the prosecution of a sexual offence, including those tasked with providing services to victims of sexual offences, are identified and critically analysed in respect of existing practices. This analysis is followed, where applicable, by recommendations for change.

· The Commission holds the opinion that it is the responsibility of the state to provide the financial means to cover the cost of prescribed medication for victims of rape, as well as costs for treatment and counselling as a result of the rape.

· The Commission recommends that criminal sexual activity compounded by deliberate or reckless exposure to HIV/AIDS should be subject to criminal sanction. It provisionally endorses the view that a separate offence should be created which specifically criminalises harmful HIV-related behaviour in the context of committing a sexual offence, coupled to the proviso that HIV should not be singled out to the exclusion of any other life-threatening sexually transmissible disease or condition.

\* Due to numerous problems in practice which have been brought to the Commission's attention, it has considered the system of criminal procedure that should govern the conduct of trials in relation to sexual offences. In doing so the Commission has critically assessed the rules of evidence and procedure which govern and/or are applied in sexual offence trials. In this regard the Discussion Paper gives attention, amongst others, to the following:

· The creation of a category of vulnerable witnesses which will include all complainants in sexual

offence cases and which will afford them new protective measures, in addition to protective measures already provided for in the Criminal Procedure Act, 1977 (such as *in camera* hearings, the appointment of intermediaries and the use of closed circuit television). The new protective measures would include the appointment of a support person to assist the witness during the trial as well as at pre-trial procedures.

· The abolition of the cautionary rule in relation to complainants in sexual offence cases, single witnesses and children, which currently requires or allows that such evidence should or can be treated with caution.

\* Some of the issues which have received attention in relation to sentencing and the post-trial phase of the criminal procedure process in relation to sexual offences are:

· Drug and alcohol rehabilitation orders where it appears that a person convicted of a sexual offence may benefit from treatment for the misuse of alcohol and drugs.

· Sex offender orders which will prohibit a person convicted of a sexual offence from acting in a way that may cause harm to others, from frequenting specified locations and from contacting specified persons.

· The possibility of increasing the penalties for persons contravening the prohibition against publication of information or revealing the identities of complainants and witnesses in sexual offence cases.

· The possibility of providing compensation to the victims of sexual offences who suffered physical, psychological or other injury, loss of income or support.

· The placement of dangerous sexual offenders under long term supervision upon their release from imprisonment or release on parole.

These are a few of the issues that the Commission addresses in the

Discussion Paper. It should not be *The closing date for comment on Discussion Paper 102 is 28 February 2001.*

**Copies of an executive summary on the process and procedural law relating to sexual offences are available free of charge from the office of the Law Commission. The executive summary will be made available on the Internet. Given the length of the Discussion Paper, it has not yet been made available on the Internet. Those wishing to access the complete text of the Discussion Paper will be provided with a WinZip file on request.**

#### **Review of the Child Care Act (Discussion Paper 103)**

The Discussion Paper contains the Commission's **preliminary** recommendations and findings following a comprehensive review of more than 24 statutes, including the Child Care Act, 1983, international law, the common law and religious and customary law affecting children. The Discussion Paper follows on the Issue Paper released in 1998 and is informed by an extensive consultation process involving the Portfolio Committee on Social Development, government departments, civil society and a child participation process.

The Discussion Paper is a substantial document of 1274 pages. Given the broad scope of the investigation, the Discussion Paper covers a wide range of issues:

\* The difficult issue of when childhood begins and when it ends. It further addresses the question of the best interests of the child, children's rights and responsibilities, and the Among the more contentious preliminary recommendations made in the Discussion Paper on the Review of the Child Care Act are the recommendations that the age of

seen as representative of all of its principles underpinning the new children's statute.

\* Aspects such as legitimacy of children, artificial insemination and surrogate motherhood.

\* The diversity of family forms in South Africa, the shift from parental power to parental responsibility, the acquisition of parental responsibility by persons other than biological parents and the termination of parental responsibility.

\* The Discussion Paper recognises prevention and early intervention services as vitally important components of a future children's statute.

\* Formal measures for the protection of children from abuse and neglect are the central focus of the Discussion Paper. The Discussion Paper considers legal provisions and interventions which are designed to deal with situations in which specific children are being harmed, or are at immediate risk of harm, through abuse or neglect. Exploitation and abandonment, being forms of abuse and neglect respectively, are included within the ambit of these protective measures. The Discussion Paper further addresses issues such as the protection of the health rights of children, the protection of children as consumers, children in need of special protection, and the protection of children affected by the divorce or separation of their parents.

\* It examines the issues of legislative support for early childhood development services and temporary care of children by persons other than their parents or ordinary caregivers.

\* It deals with the following forms of substitute care: foster care, adoption, and residential care. More specifically, it addresses aspects such as majority be lowered to 18; that more than one (even more than two) persons be allowed to acquire and manage parental rights and responsibilities, or components

proposals.

professional foster care, cluster foster care, parental rights and responsibilities for foster parents, the foster care grant, who may be adopted, who may adopt, subsidised adoptions, the rights of children to care and protection in residential care facilities, minimum standards and quality assurance in residential care, and funding of residential care.

\* It considers the issues of religious laws and customary laws affecting children. It further addresses international issues affecting children. These include, inter alia, inter-country adoptions, trafficking of children across borders, child abductions and refugee children.

\* It proposes a new court structure with extensive powers, and addresses the issues of grants and social security for children, and a monitoring system to ensure the effective implementation of the new children's statute.

The Discussion Paper specifically addresses the care of sexually exploited children. In this regard, the recommendations made in respect of child prostitution, child pornography and child trafficking focus on the child as a victim who may be in need of care. These are closely linked to the Discussion Paper on Sexual Offences, which focusses on the criminal law aspects which has also been released for public comment. Both these Discussion Papers aim to address holistically and in an integrative manner child sexual abuse, albeit from different perspectives.

thereof, in respect of the same child at the same time; that mothers and married fathers be accorded such parental rights and responsibilities automatically, while some unmarried

fathers and other persons will have to apply to court to acquire such rights and responsibilities; that local government be empowered and compelled to provide primary prevention and early intervention services for children and their families; that the common law defence of the right of reasonable parental chastisement to a charge of assault be repealed in order to protect children from serious breaches of physical integrity, which in effect will make some forms of parental chastisement a criminal offence; that all children over the age of 12 years may consent to HIV testing, with proper pre- and post-test counselling; that confidential access to contraceptives should be provided to all sexually-active persons, regardless of age; and that safety at places of entertainment should be regulated.

The Discussion Paper does not contain a draft Bill. The preliminary recommendations in the Discussion Paper, however, contain clear legislative proposals for inclusion in such a comprehensive children's Bill. The preparation of the comprehensive draft children's Bill is receiving attention. The Commission will conduct a consultation process with the Discussion Paper as basis during February and March 2002. An inter-sectoral workshop is planned for each province during this period and those interested in attending are invited to register with the Commission. At the conclusion of this consultation process, the Commission will prepare a report which will contain its **final** recommendations and a refined children's statute. This report will be submitted no later than June 2002 to the Minister for Social Development.

*The closing date for comment on Discussion Paper 103 is 28 February 2002.*

**An Executive Summary of the Discussion Paper is available free of charge on request from the offices of the Law Commission. The**

**Executive Summary is also available on the Commission's Website. Given the length of the Discussion Paper, it has not yet been made available on the Internet. Those wishing to access the complete text will be provided with a WinZip file on request.**

## Workshops

A discussion paper on a more inquisitorial approach to criminal procedure was published in April 2001. The closing date for comment was extended to 31 July 2001. Two regional workshops were conducted on 29 and 30 October 2001 in Cape Town and Pretoria respectively. A draft report is being developed.

A discussion paper on a compensation scheme for victims of crime in South Africa was published in April 2001. The closing date for comment was 31 July 2001. Six regional workshops were hosted as part of the consultation phase in 2001: 19 November - Pretoria; 20 November - Durban; 21 November - East London; 23 November - Kimberley; and 26 November - Cape Town. A draft report is being developed.

A discussion paper on succession in customary law was published on 8 August 2000. The closing date for comment on the discussion paper was 22 September 2000.

Comments received on the discussion paper have been evaluated. The Centre for Applied Legal Studies and the Law Commission hosted an experts meeting on 30 August 2001 to discuss the recommendations made by Commission. Nine workshops were held in all the provinces in 2001: 2 October - Cape Town; 25 October - Nelspruit; 31 October - Kimberley; 1 November - Bloemfontein; 8 November - East London; and 20 November - Durban. A draft report is being developed.

## Programme of the Commission

The following projects on the Commission's programme are currently receiving attention:

25	Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book
59	Islamic marriages and related matters
73	The simplification of criminal procedure
82	Sentencing
90	Customary law
94	Arbitration
95	The admissibility of computer-generated evidence
96	The Apportionment of Damages Act, 1956
105	Security legislation
107	Sexual offences
108	Computer-related crimes
110	Review of the Child Care Act
113	The use of electronic equipment in court proceedings
114	Publication of divorce proceedings
116	The carrying of firearms and other dangerous weapons in public or at gatherings
118	Domestic partnerships
119	Uniform national legislation on the fencing of national roads
121	Consolidated legislation pertaining to international cooperation in civil matters
122	Incapable adults
123	Protected disclosures
124	Privacy and data protection
125	Prescription periods
126	Review of the rules of evidence



## Invitation

The public are invited to submit proposals for law reform to the Commission and to give information in respect of any of the projects of the Commission.

The Commission is housed in the Sanlam Centre (12<sup>th</sup> Floor), c/o Andries and Schoeman Streets, Pretoria.

The postal address is Private Bag X668, Pretoria 0001.

Tel: (012) 322-6440

Fax: (012) 320-0936

E-mail: [lawcom@salawcom.org.za](mailto:lawcom@salawcom.org.za)

The Commission's office hours are from 07:15 to 15:45 on Mondays to Fridays.

## Internet

Most of the Commission's documents are also available on the Internet. The site address is:

**<http://www.law.wits.ac.za/salc/salc.html>**

Subscribe to listserv on the site address to be notified by email whenever there are new SA Law Commission publications. (Note that this is not a discussion group.)

Send e-mail to **[majordomo@sunsite.wits.ac.za](mailto:majordomo@sunsite.wits.ac.za)**.

Leave the Subject line **blank**, and type in **subscribe salcnotify** in the body of the message. Type **end** on a **new line**, then send the message.

You will soon receive a welcome message from the listserv.