

In this issue

SAL Law Reform Committee – Our Recent Highlights and Ongoing Work

- ❖ FT ranks SAL co-authored White Paper “highly commended” in Innovative Lawyers Awards ▼
- ❖ Law Reform Committee launches *Impact of Robotics & AI on the Law* series with two reports ▼
- ❖ Join the Law Reform Committee at TechLaw.Fest 2020 ▼
- ❖ Looking Ahead: ongoing Law Reform Committee projects ▼

International Perspectives

SPOTLIGHT ON: Defamation law reform ▼

Australia: Law Reform Commission publishes corporate criminal responsibility report ▼

Australia: Law Reform Commission hosts *Future of Law Reform* Webinar series ▼

UK: Law Commission recommends changes to leasehold property ownership law ▼

UK: Law Commission consults on modernisation of transfer of ownership of goods rules ▼

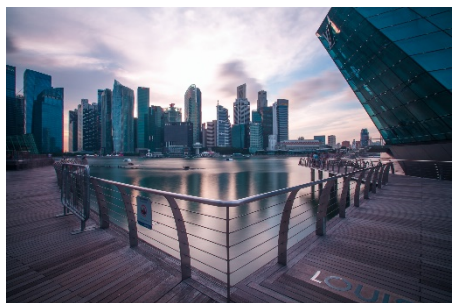
*Keeping up with reforms to the law can be challenging, particularly in a time of such change. With this in mind, the **SAL Law Reform Committee Bulletin** summarises some of the key recent developments in law reform, at home and internationally.*

In this issue, we examine recent reports published by SAL’s Law Reform Committee to further discussion – and help policymakers advance the law – in areas impacted by the emergence of new technologies.

Beyond Singapore, there have also been significant recent reform proposals emanating from the UK and Australia. Plus, we take a deeper look at an issue that has been on the radar of a number of counterpart agencies overseas – defamation – where, in our digitally-enabled world, lawmakers face the challenge of balancing the rights of free speech with the protection of individuals’ reputations.

SAL Law Reform Committee – Our Recent Highlights and Ongoing Work

FT ranks SAL co-authored White Paper “highly commended” in Innovative Lawyers Awards



The “*Private international law aspects of smart derivatives contracts utilizing DLT*” White Paper – co-authored by SAL, ISDA, Clifford Chance and R3 – was recently ranked ‘highly commended’ in the ‘thought leadership and social responsibility’ category of the **Financial Times Innovative Lawyers Asia Pacific Awards**.

The paper, published in January 2020, considers the private international law (or 'conflict-of-law') aspects of derivatives contracts governed by the laws of Singapore and England and Wales involving distributed ledger technologies (DLT).

While the borderless, decentralised nature of DLT systems – in particular ‘blockchains’ – is often seen as one of their defining features, those same attributes can also leave participants based in different jurisdictions vulnerable to multiple – and potentially inconsistent – assertions of governing law. There may also be conflict-of-law issues regarding where any assets native to a DLT platform are treated as being located for legal purposes, given that traditional geographic boundaries may be more difficult to establish in the context of financial transactions (and related assets) conducted on a DLT platform.

The White Paper identifies specific private international law issues with respect to contract law that may arise when trading derivatives in a DLT environment and proposes recommendations on how these issues might be clarified or resolved.

Read the full White Paper [here](#), or click [here](#) to watch a panel discussion on the relevant issues hosted by ISDA in February 2020.

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Law Reform Committee launches *Impact of Robotics & AI on the Law* series with two reports

On 9 July, the Law Reform Committee published two reports by its Subcommittee on Robotics and Artificial Intelligence focused on the application of Singapore’s laws to robotic and AI systems.

The first – “*Applying Ethical Principles for Artificial Intelligence in Regulatory Reform*” – identifies issues that law and policy makers may face in promoting ethical principles when reforming laws and regulations to adapt to AI, and provides examples of human-centred approaches that could be taken to address these. While the report does not advocate specific means or level of intervention, it provides a framework for broader consideration by policymakers and others on the best means to achieve human-centred, ethical norm-making and calibration of regulatory responses regarding AI.

The second – “*Rethinking Database Rights and Data Ownership in an AI World*” – considers whether Singapore’s data-related laws currently operate effectively to promote the beneficial production of, and access to, databases, while also protecting individual rights over personal and non-personal data. Its recommendations include clarification and refinement of certain existing intellectual property laws relating to databases and computer-generated works, and that further consideration is given to a new right for non-personal data, akin to the incoming personal data portability rights.

The reports are the first in a series focusing on different legal areas impacted by the increasingly widespread deployment of robotics and other AI-powered technologies across society. Two further



reports in the *Impact of Robotics and AI on the Law* series – addressing questions of liability where AI systems’ actions result in harm – are due to be published later this year.

The Law Reform Committee hopes this series will stimulate systematic thought and debate on these issues, not only by policymakers and legislators, but also industry, the legal profession and the public.

You can read both reports, and summaries of their findings, [here](#). An interview with two of the reports’ authors, discussing their findings and the wider implications of the growth of AI technologies, is also available [here](#).

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Join the Law Reform Committee at TechLaw.Fest 2020



The Law Reform Committee’s *Impact of Robotics and AI on the Law* series will be the focus of three sessions at this year’s [TechLaw.Fest: Cyber Edition](#), being held online from 28 September – 2 October.

Panel discussions covering the *Rethinking Database Rights and Data Ownership in an AI World* and *Applying Ethical Principles for Artificial Intelligence in Regulatory Reform* reports will be held on 29 and 30 September respectively. The latter date will also see a ‘Knowledge Café’ session at which participants can debate the issues raised by the Committee’s two upcoming reports on liability for harms caused by AI systems.

Attendance is free, and [online ticket registration is now open](#).

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Looking Ahead: ongoing Law Reform Committee projects

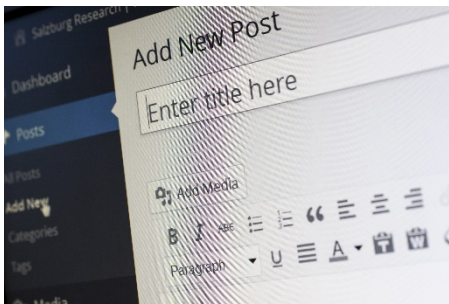
The Law Reform Committee has published six reports since the start of 2020 – on issues including [arbitration award appeals](#), [insurance law](#), [trusts law](#) and [restructuring and insolvency law](#). In addition, however, it has a broad programme of ongoing work, with projects spanning topics such as:

- the misuse of private information and the remedies available to those affected by malicious disclosures;
- the attribution of civil liability for accidents involving automated cars;
- the application of criminal law to the operation of AI systems and technologies;
- the civil remedies available to judgment creditors when attempting to enforce judgments; and
- the applicability of existing contract law principles to smart contracts.

The Law Reform Committee expects to conclude a number of these projects in the coming months. New reports will be published on its [webpages](#), alongside copies of all its past publications, and announced through SAL’s [social media channels](#).

International Perspectives

Spotlight on: Defamation Law Reform



Laws on alleged defamation have recently come under scrutiny in numerous Commonwealth jurisdictions. Not least, the impact of new technologies – particularly on the speed at which information can be publicly disseminated and by whom – has created new issues with which defamation laws need to grapple. In this ‘Spotlight’, we provide a brief overview of some key recent proposals.

Legislators in England & Wales led the way, **passing a new Defamation Act in 2013**, aimed at reversing the perceived chilling effect of the countries’ existing defamation laws on debate and free speech.

Most notably, the Act raised the threshold for making out a claim of defamation to proof of “serious harm”, and created defences of ‘truth’ and ‘honest opinion’ (replacing common law defences of ‘justification’ and ‘fair comment’). Greater protections were also given to peer-reviewed scientific or academic works and publications on matters of public interest, while a new ‘single publication’ rule sought to avoid repeat claims about the same material (previously, each hit on a website created a new cause of action). A recent **government memorandum** indicated that the Act appeared to have achieved its aims and had a “significant positive impact” on the law.

The reforms in England prompted the Scottish Law Commission in 2017 to **recommend similar changes** to Scotland’s defamation laws. The reforms proposed included adopting England’s ‘serious harm’, public interest and single publication protections, and barring claims for defamation where a statement was communicated only to the person who is the subject of it and no-one else. New legislation which broadly replicates the Scottish Law Commission’s recommendations is **currently progressing through the Scottish Parliament**.

Earlier this year, the Law Commission of Ontario became **the latest body to advocate changes to local defamation laws**. Its principal focus, however (in contrast to concerns in the UK and elsewhere about defamation laws being used to unduly quell free speech), was to ensure on the one hand that the law was adapted to new communication channels and, on the other, to enhance access to justice for the subjects of defamatory content. To that end, the Commission’s recommendations include measures to facilitate lower-cost, quicker alternative resolution of defamation disputes and to require online platforms to both notify publishers of defamation complaints they receive and take down content if those notices are ignored.

However, it is in Australia where the debate is perhaps most active at present. In December 2019, the Australian Law Reform Commission (ALRC) **identified defamation as one of its recommended priorities for review** in the coming years. As a follow-on, the ALRC also recently **hosted a webinar** at which speakers from the judiciary, academia and freedom of information groups gave their perspectives on any potential review and reform.

Should the Attorney General support the ALRC's recommendation and refer the matter to it for review, issues that may be considered include defamation online, whether additional remedies or resolution mechanisms are required, and whether nationwide defamation laws should be introduced (at present, defamation laws are governed at State level in Australia, albeit broadly harmonised in accordance with Model Provisions agreed in 2005).

In parallel, however, the Australian State Attorneys-General on 27 July **committed to enact in their state laws amendments to the Model Provisions**, including in particular mirroring the UK 'serious harm' threshold, single publication rule, and 'public interest' and 'peer-reviewed work' protections. The AGs also agreed to consider together further reforms on the responsibilities and liability of digital platforms for defamatory content published online and any other issues they identify as requiring amendment.

In Singapore, the statutory provisions governing both civil and criminal defamation (the Defamation Act and s499 of the Penal Code respectively) remain substantively unchanged since the pre-internet era. While the common law tort of defamation has evolved and adapted to address **several challenges emerging from online publication**, questions will doubtless continue to be raised as to whether these collective laws adequately reflect new paradigms and still strike the right balance between the protection of individuals' reputations and broader rights of free speech.

The challenges raised by the ever-increasing ease and rapidity with which information can now be disclosed also provide the context for the SAL Law Reform Committee's next report – due to be published shortly – which will consider legal issues regarding the **misuse of private information** and the remedies available to those affected by malicious disclosures.

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Australia: Law Reform Commission publishes corporate criminal responsibility report



On 31 August, the Australian Law Reform Commission (ALRC) published the **final report** in its review of Australia's corporate criminal responsibility laws.

To address concerns that existing rules for attributing the physical and fault elements of an offence to corporations are unjust and unfair, the ALRC has made **20 recommendations** to "significantly strengthen and simplify" the current regime.

These include standardising the attribution of criminal responsibility to corporations, and increasing the range of penalty and sentencing options available. The ALRC also suggests extending the law to make corporations criminally responsible for failing to prevent an associate from committing certain crimes overseas on their behalf.

Further details regarding the ALRC's inquiry and findings are available [here](#).

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Australia: Law Reform Commission hosts *Future of Law Reform* Webinar series

In December 2019, following a process of public consultation and engagement, the Australian Law Review Commission (ALRC) **published the areas it considers priorities for reform** and which it recommends reviewing in the coming five years: automated decision making and administrative law; principle-based regulation of financial services; defamation; press freedom and public sector whistleblowers; and legal structures for social enterprises.

As a follow-on, the ALRC recently held a series of four webinars to start a discussion of these issues and the potential focus of any review, should the matters be referred to it by the Attorney General of Australia.

Further details, including how to watch recordings of each webinar, are available [here](#).

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UK: Law Commission recommends changes to leasehold property ownership laws



The Law Commission has **recommended reforms to the leasehold property ownership system** in England and Wales, with a view to transitioning the property market towards greater freehold home ownership.

The reforms, set out in three reports published on 21 July, include facilitating freehold ownership of flats by “reinvigorating commonhold” as an ownership option for newly-built properties and making conversion from leasehold to commonhold ownership easier.

The Law Commission also proposes changes to improve the regime for existing leaseholders, including simpler, cheaper ways for them to extend leases, purchase their property’s freehold, or exercise a right to manage the servicing, maintenance and/or insurance of their building without acquiring the freehold.

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UK: Law Commission consults on modernisation of transfer of ownership of goods rules

On 27 July, the Law Commission **opened a consultation on draft legislation** to modernise the rules on when consumers acquire title to goods under sales contracts. The Law Commission’s focus is on ensuring clarity around online orders and what happens if retailers become insolvent before the consumer receives their goods.

The current law involves “complex, technical and outdated” rules and language on when ownership transfers to consumers, which are largely unchanged since the 19th century and not designed with online transactions in mind.

Broadly, the draft legislation seeks to state in simple terms that ownership of goods purchased online will typically transfer to the consumer when the retailer identifies the goods to fulfil the contract (e.g. by labelling them, setting them aside, or altering them to meet the consumer’s specification).