

## PARTICIPANTS IN LAW REFORM

One feature of the Interim Law Reform Digest is the section containing suggestions for reform of particular aspects of the law proposed by judges and others. This section follows judicial and academic *cris de coeur* over the years concerning the oblivion to which their suggestions for legal renewal have been consigned. Fox J. lately proposed machinery at an appropriate level to process suggestions for law reform. 48 A.L.J. 416. Copy of the Digest has been sent to all Chief Justices. The Chairman of the A.L.R.C. has also written to all Supreme Court Judges in Australia and all Professors of Law in Australasia calling their attention to the new system. There has already been a good response to the letter. Two members of the Court of Appeal in N.S.W., for example, have called attention to the decision of that Court in Peckham v. Moore [1975] 1 N.S.W.L.R. 353. The Court called for urgent attention to the law relating to unincorporated associations. Other suggestions have been received and will be incorporated in the Supplement to this section of the Digest. As well, the Digest will automatically contain any suggestions appearing in the regular legal literature, including that from overseas. There are already a number of such suggestions since the distribution of the Digest in December 1975. Judges and academics have been invited specifically to refer recent and future proposals for reform of the law. Future editions of this Bulletin will contain a selection of them. Preservation of suggestions for legal reform may promote, at least in some part, the consideration of them called for by Fox J. and others over the years. We will collect these ideas and leave them prominently displayed. Hopefully they will prompt legislators to action.

## OVERSEAS DEVELOPMENTS

### The Commonwealth Secretariat

The Secretariat of the Commonwealth of Nations, in London, has put out a quarterly bulletin on law reform matters, commencing in 1974. The bulletin contains an epitome of important decisions of the superior courts of Commonwealth countries, together with reference to recent legislation of general importance. All references to Australian material have been particularly accurate and up to date. Those who have not seen this useful quarterly bulletin should secure a copy. It is worth examination. It contains from time to time the addresses of law reform agencies and law officers throughout the Commonwealth. Upon the establishment of new agencies, some details are given concerning their warrants and personnel.

On his recent visit to Australia the Commonwealth Secretary-General, His Excellency The Hon. Sir Shridath Ramphal met the Chairman of the A.L.R.C. As a former Minister of Justice in Guyana, the Secretary-General is keenly interested in law reform and in the Commonwealth Law Bulletin. The Director of the legal division of the Commonwealth Secretariat is Mr. A.T. Fuad. Mr. Fuad has already proved most helpful to a number of Australian agencies in collecting international material on developments relevant to law reform. Address : Marlborough House, Pall Mall, London, S.W.1., England.

### The Law Commission (England)

The doyen of law reform agencies, the Law Commission, has now completed its first ten years of operation. The achievements of the Commission were referred to by the Lord Chancellor on his visit to Australia in 1975. Lord Elwyn-Jones described the first decade as a "notable chapter" (June 1975) Law Institute Journal p.218. In the latest part of the New Law Journal to reach Australia, the present Chairman of the Law Commission, Sir Samuel Cooke, has this to say:

"What, then, have we achieved? There have been laid before Parliament thirty-seven Law Commission reports containing recommendations for law reform. Most of these reports have included draft Bills to give effect to their recommendations. Of these reports twenty-five have been

implemented, either wholly or in part, by Act of Parliament. I hope that the score will be increased to twenty-eight by the end of the present Session of Parliament. In addition, we have prepared ten reports containing proposals for the amendment of Acts to facilitate consolidation and six reports containing extensive proposals for statute law revision. Every one of those sixteen reports has been implemented by Act of Parliament. We have produced, and Parliament has passed, some seventy consolidation Bills ... We have so far published a total of sixty-six working papers ... There is no doubt in my mind that the field in which we have so far made the greatest impression is family law ...

We have currently a heavy programme of operations covering aspects of criminal law, contract, tort, conflict of laws, landlord and tenant and administrative law. Meanwhile, our work on consolidation and statute law revision continues.

What does the future hold? There is no doubt that we shall be extremely busy. We shall be heavily engaged on all kinds of law reform of all degrees of social significance. But I hope that the most socially significant objectives will always have first place in our minds and in our activities. And I do not use the words "socially significant" in a narrow sense. We sometimes say (it used to be a boast) that we have no written constitution. That was never an entirely accurate statement. It is less so since we joined the European Economic Community. It will be less so still when law-making powers are conferred on a Scottish legislature. In the last quarter of the twentieth century, is not one of the crucial social problems going to be the protection of the liberty, privacy and dignity of ordinary men and women against the great concentrations of power which abound in modern society? It is time we were thinking urgently in terms of an untrenched constitution and an entrenched Bill of Rights".

Sir Samuel Cooke "The Law Commission : The First Ten Years" 125 New Law Journal, October 30, 1975, pp.1036ff.

Not everybody loves a law reformer. To get a proper balance it is necessary to remind ourselves that some take quite a different view. John Munkman, writing in the same Journal in January 1974 expressed his rather unflattering opinions:

"The Law Commission was the creation of Lord Gardiner to give effect to his somewhat personal views on law reform. Its value has been marginal or negative, and it is surprising that the present Lord Chancellor did not at once abolish it. If the ultimate object is to codify English law, it would be easier to adopt the Code Napoleon".

John Munkman : "Good and Bad Law Reform" January 24, 1974, 124 New Law Journal 81 at p.83.

Others have called law reform a "damp squib" (C.J. Borrie, University of Birmingham, 1970). One of the reasons for now taking law reform out to the judiciary, the universities, the profession and elsewhere in Australia, is to avoid this judgment on law reform in Australia.

#### Canada L.R.C.

The Canada Commission has just put out a book by Dean M.L. Friedland "Access to the Law". It deserves the attention of all. It starts from the premise that "the State has an obligation to ensure that its laws are available in an understandable fashion to laymen". It points out that very little has been done to accomplish this objective in Canada "or indeed in any common law country". It underlines the consequent unfairness of the principle that ignorance of the law is no excuse. The book then proceeds to detail a variety of measures necessary to provide better access to the law in Canada. This is not just a book about legal aid. It contains discussion of legal data generally and other techniques of distributing legal information.

Pamphlets, newspaper advertisements, television shows and even "hot line" programmes are discussed. The need in Australia to reduce the proliferation of law reports and update the distribution of statutes was referred to in the Annual Report of the A.L.R.C., p.47. The need for a national set of law reports, akin to the D.L.R., to distribute throughout Australia the most important decisions of all of the Courts, requires scrutiny. Anyone interested in this problem should look at this excellent publication of the Law Reform Commission of Canada.

#### Fiji

The Attorney-General of Fiji has written to the Chairman A.L.R.C. welcoming participation by Fiji in the digest. He states that he is anxious to establish law reform machinery in Fiji and is thinking of a Law Institute with perhaps a facility for training legal draftsmen and providing a regional library. The last meeting of A.L.R.A.C. expressed interest in securing contact with Pacific and South Asian reform bodies.

#### The Philippines

The Secretary of Justice of the Republic of the Philippines has written to the A.L.R.C. Chairman concerning the work of the Law Center of the University of the Philippines on the review of the law. The Center has prepared reports on a nationality and immigration code, a judicial code, a consumer code of the Philippines and a Muslim code. The Center is at present at work on codes dealing with multi-national corporations and commercial law. It is also preparing annotations for the new Labor code of the Philippines and is updating the treaty series. A.L.R.C. can make these reports available on request. They will be included in the digest.

#### Singapore

The Attorney-General of Singapore, the Hon. Tan Boon Tiek is getting one of his officers to explore the possibility of sharing legislation and legislative ideas of relevance to Australasia, for inclusion in the digest. The University of Singapore is also to become involved.

#### Hong Kong

The five reports of the Hong Kong Law Reform Committee were recently sent to the A.L.R.C. No report has been produced by the Committee since 1964. A law reform drafting section has been established in the Attorney-General's Department. This is now responsible for preparing the law reform programme for Hong Kong. It does not issue publications.

### NEW REPORTS

The following are reports relating to law reform received between October 1975 and December 1975 by the A.L.R.C.

#### Australia:-

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| A.L.R.C.1    | : Complaints against Police  |
| A.L.R.C.2    | : Criminal Investigation   |
| A.L.R.C.3    | : Annual Report 1975   |
| S.A.C.L.R.C. | : Report No. 3 : Court Procedure & Evidence (August 1975)  |
| Tas. L.R.C.  | : Report and recommendations on the Road Safety (Alcohol and Drugs) Act 1970, together with a draft Bill and notes thereon. (Part Paper No. 43 of 1975). |
| Tas. L.R.C.  | : Report and recommendation on the Criminal Process (Bodily Descriptions) Bill 1974. (Part Paper No. 45 of 1975).  |
| W.A.L.R.C.   | : Annual Report 1 July 1974 to 30 June 1975.   |