



## FOREWORD

### WORDS IN THE SERVICE OF LAW REFORM

These volumes contain the speeches and other articles written by me, whilst Chairman of the Law Reform Commission. They are not, I am ashamed to say, all of the articles written. They actually fall far short as a record of all of the speeches I delivered in the period in which I held that office (1975-1983). For every written speech, four or five were delivered ex tempore, with no notes at all; or conjured up from the diagrammatic charts of speeches developed by me from University days. Somewhere amongst my papers are all of these discarded charts. They look like nothing so much as computer programs, with arms leading off to this or that thought: a word sufficient to enliven my mind and to release the tongue - yet more words offered up in the service of law reform.

Some few of the articles recorded were later published in law journals, popular magazines, professional newsletters and newspapers. But many of them were not published. And rightly so. Upon one view they represent nothing more than the transient record of some of the public utterances offered during my time as Chairman of the Law Reform Commission. Why bother to collect them?

### A COHERENT APPROACH

The history of the Commission has been remarkable. From the beginning, the foundation Commissioners brought a special mixture of professional skill, worldly wisdom and political nous to the very difficult task of achieving national law reform in the Australian Federation. The Commission was set up in the heady, optimistic reform days of the Whitlam Labor Government. It survived, and indeed flourished, during the more austere period

of the Fraser Government. It is now busily at work, responding to the program of the Hawke Government. In nearly ten years with the Commission I saw three governments and eight Attorneys-General.

This foreword is not the occasion for yet another speech. Suffice it to say that each of the governments and each of the law Ministers had their own personality and interests. The Commission, as a permanent institution, had to respond to the needs and opportunities, as these changed year by year. It had to adapt to the changing membership of the Commission and to the inevitably differing viewpoints of new Commissioners and staff members. Throughout all of these changes, the Commission exhibited a coherent, intellectual and organisational approach to national law reform.

#### THE "EXTRA STEP" OF CONSULTATION

One of the principles which the Commission adopted to guide it, virtually from the outset, was that law reform should be conducted in a transparent way with opportunities for widespread public and professional consultation. Consultation had always been an attribute of organised law reform, at least after the creation of the English Law Commission in 1965. But the Australian Law Reform Commission took this theme one step further. It encouraged the use of the public media, the public lecture hall, public hearings, and other means, to promote a much more general debate about the work of the Commission and the policy options which confronted it.

In part, this "extra step" was the product of the personalities of the original Commissioners. All, or most, of them had some exposure to public life and some knowledge of the ways of the media. Some of them, particularly Gareth Evans, saw the public exposure of ideas as an important feature of public policy development in a modern, liberal democratic community. To some extent it was the program of references given, first by the Whitlam Government, and later by the Fraser Government which necessitated and encouraged the public consultation and community controversy that was to follow. It is much easier to confine a debate about a Statute of Limitations to lawyers in a booklined office than it is to resolve in private the quandries of Aboriginal customary laws, the balances to be struck in a modern

law on human tissue transplantation or the design of efficient and just machinery for handling complaints against the police. Such projects required new techniques. This collection of essays illustrates the techniques that were used.

Of course, the public controversy was not without its critics. The legal profession, and especially the judiciary, were unused to the public ventilation of ideas and conflicting viewpoints in these ways. There is a personal convention of silence and modesty which was breached by the appearances on radio, television and talk back programs, and in unconventional lecture halls. I was not unaware of the criticism of myself as a "grand stander" and a person devoted to personal publicity. Those who know me will be aware that I found public performances painful on occasions. But they were all part of the role of the Commission, as conceived from the outset. They added to the obligations of the task of the Chairman of the Commission especially. But also of the Commissioners, particularly the full time Commissioners. I remain convinced that no other methodology would have been appropriate to the nature of a new national law reform agency in Australia and the performance of its functions, in modern circumstances, with the special challenges presented by the controversial tasks assigned by successive Federal Attorneys-General.

#### SOFTENING UP A CONSERVATIVE CULTURE

There are doubtless some who will say: it would have done him better to have spent more time in day to day work on the reports of the Commission than in preparing all these articles and delivering so many speeches, some only of which are recorded here. But for the most part, the essays and speeches were prepared without diminution in active involvement in each and every project of the Commission. And even if there was some time devoted to a speech or an article which might otherwise have been spent on a report, I remain unrepentant. The promotion of the idea of law reform in a country as resistant to its necessity as Australia was, required something of a national "softening up". That could only be achieved by the active promotion of reform ideas. Those ideas could only be promoted effectively by utilising the modern media of communication and by remorselessly

moving the professional, industry and community organisations to an appreciation of the necessities and urgencies of law reform. In this concept of the function of the Australian Law Reform Commission and the role of its Chairman, I had the support of Commissioners, full and part time, over nearly a decade and of a dedicated, talented and highly motivated staff. The Commission worked well as a team. It is now an established institution in law development in Australia. It still tends to get extremely difficult, controversial and problematic tasks which make the achievement of "runs on the board" difficult, though not impossible. Yet some organisation must attend to these tasks if our laws are not to atrophy. I am grateful to Fate that I was given a chance to play a part in the early life of the Law Reform Commission.

These collected articles and speeches represent a record of some of the work of the Commission. Some future student of the legal institutions of Australia may find it interesting to reflect upon the controversies of the 1970's and 80's. They demonstrate a country undergoing great changes, stimulated particularly by the changes of technology and in society. The defects of these pages are many: repetition, banality, tedium, humour which has lost its bite and ideas of dubious intellectual distinction. Doubtless there is much that should just be forgotten. But it is also a record of a busy time in the early life of a new national institution of great potential significance. For that reason, I am glad that the Commission decided to collect these efforts of mine.

#### PRAISE AND BLAME

Tribute should be paid to the succeeding law associates who read many of the speeches and articles and offered suggestions and criticisms that doubtless led to the removal of the most egregious of my infelicities. The associates were William Koeck (1975), Steven Crawshaw (1976), John Hipsley (1977), Susan Pattison (1978), Damian Murphy (1979), Margaret Allars (1980), Jeffrey Barnes (1981), Peter Macfarlane (1982), Stephen Curran (1983) and Richard Phillipps (1984). Their assistance was circumscribed by the fact that each was busily engaged in research work for the Commission. The speeches and

articles had, in the nature of things, to be prepared virtually exclusively by myself, and usually in a hurry. Warts and all, they represent my work. Others cannot be blamed for them. Most of them were typed up by my then secretary, Mrs. Rae Hay, whose prodigious capacity was a legend in the Commission and beyond and deserves full acknowledgement. She was my personal secretary virtually for the whole period of my service as Chairman of the Law Reform Commission. I also express thanks to the Commission's Librarian, Virginia Pursell for her untiring help with research material and for initiating this project. I express my appreciation to Melissa Hood, a research officer who took part in the compilation of these volumes.

In one of the poems of Friedrich Ruckert, now immortalised in song by Gustav Mahler, the lover is told by the poet to foresake human love. Amongst the alternatives offered is the Mermaid. "She has the shining pearls". In the sea of words contained in these volumes, there may be occasional shining pearls. It is in that hope that they are now collected.

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