

NOTE FOR THE DEPARTMENT OF FOREIGN AFFAIRS

THE AUSTRALIAN LAW REFORM COMMISSION

ITS ORGANISATION, WORK AND PROGRAMME

May 1978

THE AUSTRALIAN LAW REFORM COMMISSION

ESTABLISHMENT OF THE COMMISSION

The Australian Law Reform Commission was established by the *Law Reform Commission Act 1973*. The first Members were appointed in 1975. The current Chairman is Mr. Justice M.D. Kirby. There are normally four full-time Commissioners, chosen from among the legal profession in all parts of Australia. The current full-time Commissioners are Mr. Russell Scott, a Sydney solicitor and Mr. David St.L. Kelly, formerly Reader in Law in the University of Adelaide. Mr. M.R. Wilcox Q.C., now a part-time Commissioner, was until recently a full-time Member of the Commission.

In addition to the full-time Members, part-time Commissioners are appointed from different parts of the country. Among the current part-time Commissioners are Mr. B. Shaw Q.C. of the Melbourne Bar, Associate Professor Gordon Hawkins of the Sydney Law School; Mr. J.Q. Ewens, formerly First Parliamentary Counsel of the Commonwealth and Professor A.C. Castles of the University of Adelaide. Sir Zelman Cowen, now Governor-General of Australia, was, until his appointment, a part-time Member of the Commission.

The Commission is set up in Sydney with a staff of twenty of whom about half are legal researchers. The Commission receives references from the Commonwealth Attorney-General and is then obliged to inquire into and report upon the subject matter referred. Reports must be delivered to the Attorney-General, who must table them in the Parliament within a short time of receipt. They then become public documents. Once the reference is received by the Commission, it is fully independent of government and proceeds, collecting public submissions and expert opinion, in developing proposals for the reform of Australian law. The Commission has already delivered a number of reports, to which it has attached draft legislation, some of which has passed into law.

METHODS OF THE COMMISSION

In all of the references received by the Commission a careful process of public consultation is engaged in before the Commission delivers its final report. Expert consultants from all relevant disciplines are appointed with the approval of the Attorney-General. Field visits and empirical research are conducted, where relevant. Public sittings and public seminars with interested groups are conducted in all parts of the country and ordinary citizens are encouraged to come forward with their criticisms of the actual operation of the law. The media have been extensively used to promote discussion in the Australian community of the problems referred to the Commission for report. The Prime Minister, Mr. Fraser, has described this as a deliberate policy of "participatory law reform", which has the full support of the government. Awareness of the need for reform and of the problems facing the law generally has been enlivened by the work of the Commission. The Commission also publishes discussion papers briefly setting out proposals for reform. These are widely distributed to elicit comment and criticism before the final report is made.

WORK OF THE COMMISSION

The Commission has delivered a number of important reports. These include *Annual Reports* for 1975-6-7, which set out details of the history of law reform in Australia, the problems of achieving reform in a federation, where there is divided responsibility for reform and the programme and methods of the Australian Commission.

Substantive reports have been delivered on the following subjects :

- * *Complaints Against Police 1975.*
- * *Criminal Investigation*
- * *Alcohol, Drugs & Driving*
- * *Insolvency : The Regular Payment of Debts*
- * *Human Tissue Transplants*

The report on *Criminal Investigation* is the source of the Criminal Investigation Bill 1977 which Attorney-General Ellicott described as a "major measure of reform". The Prime Minister pointed out that "this is an area in which there has been much dissatisfaction, considerable writing, many proposals for reform, but not much legislative action". The report on *Human Tissue Transplants* has been widely praised in *The British Medical Journal* and *The Australian Medical Journal*. It emerged from close interdisciplinary work involving some of Australia's top medical practitioners and lawyers. Legislation based upon its recommendations is currently being prepared.

In addition to the substantive reports, a large number of consultative papers have been widely distributed for comment :

- Discussion Paper # 1 - Defamation - Options for Reform
- Discussion Paper # 2 - Privacy and Publication - Proposals for Protection
- Discussion Paper # 3 - Defamation and Publication Privacy -- a Draft Uniform Bill
- Discussion Paper # 4 - Access to the Courts - I Standi Public Interest Suits
- Discussion Paper # 5 - Lands Acquisition Law : Reform Proposals

In addition to preparing these papers, the Commission distributes quarterly bulletin *Reform* with up to date news on law reform move Commonwealth and State, in all parts of Australia and also overseas. The Commission also services the ten law reform bodies in the States of Australia with full details of international law reform developments.

PROGRAMME OF THE COMMISSION

Successive Australian Governments have given the Commission important references requiring report upon some of the most contentious and difficult problems facing the law in our time. The current programme of the Commission is as follows :

- * Defamation reform
- * Privacy protection
- * Debt recovery reform
- * Insurance contracts
- * Standing to sue in federal jurisdictions
- * Class actions in Australia
- * The recognition of Aboriginal Customary Laws
- * Compulsory land acquisition: reform of law and procedures.

Other important references are about to be given to the Commission by the government upon its recommendations in connection with

OVERSEAS ASSISTANCE

The Commission has already had a great deal of assistance from Australian representatives overseas and from overseas Law Ministries, in the several tasks before it. This assistance is acknowledged in the successive reports of the Commission. The Commission has emphasised the need to use comparative law materials in developing Australian law. Evidence of its procedures here can be especially seen in the reports *Alcohol Drugs & Driving* and *Human Tissue Transplants*. The discussion papers on defamation proposed adoption, for the first time in the English speaking common law world, of the civil law remedy of "right of reply". Assistance provided by overseas sources is therefore having a direct impact on the work of the Commission. The aim of this procedure is to make Australian law more eclectic in legal matters than it has been to date.

FURTHER INFORMATION

The Commission is prepared to make copies of specific reports, discussion papers and of its bulletin *Reform* available for overseas distribution, where requested. It is also prepared to supply details of its work programme and general information on law reform in Australia. Inquiries can be directed to Mr. G.E.P. Brouwer, Secretary & Director of Research, The Law Reform Commission, G.P.O. Box 3708, Sydney, N.S.W., 2001 (telephone (02)231-1733).