346

INNER SYDNEY REGIONAL COUNCIL FOR SOCIAL DEVELOPMENT

SEMINAR ON COMMUNITY INFORMATION AT THE REGIONAL LEVEL

SYDNEY 20 JULY 1982

REFORM AND THE NEED TO BE KNOWN

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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THE AUSTRALIAN LAW REFORM COMMISSION

In this talk, I propose to identify the composition, work program, past reports and achievement of the Australian Law Reform Commission. I will then proceed to discuss the efforts of the Commission, which I believe to be in large part unprecedented, to secure the views of ordinary people (as well as powerful interest groups and lobbies) concerning the projects of law reform assigned to the Commission by the Federal Attorney-General.

The Commission is established in Sydney. It has eleven Commissioners. There are four full-time Commissioners. The Commissioners are mostly lawyers. Recently the first woman has been appointed to the Commission (Professor Alice E-S Tay). Only one non-lawyer has ever been appointed (Professor Gordon Hawkins, criminologist). Most of the members, part-time and full-time come from the judiciary (Federal and State), the Bar, solicitors and law teachers.

The Commission has received a number of projects from successive Federal Governments of relevance to regional communities. They include:

* Provision of new laws on the independent handling of complaints against police.
* Review of the law governing criminal investigation.
* Review of the law in alcohol, drugs and driving.
* Reform of laws concerning consumer indebtedness and debt recovery.
* Reform of defamation laws.
* Review of Federal compulsory acquisition of property.
* Review of the law governing sentencing of Federal offenders.
* Reform of insurance law.

Amongst projects currently before the Commission are:

* Provision of new laws for the protection of privacy in Australia (especially computerised personal information systems).
* Review and reform of the law by which evidence is taken in Federal and Territory courts.
* Development of new laws concerning Aboriginal customary rule.
* Consideration of reform of the law of standing and class actions.

A common feature of all of these projects given to the Australian Law Reform Commission, whether by Labor or non-Labor Governments, has been the high policy content, the room of controversy and for genuine differences of view, depending upon the starting point taken.

Although enactment of reforms based on reports of the Commission have not always been prompt, the Commission has quite a good record in follow-up of its reports - certainly by the standards of Royal Commissions and other committees of enquiry in Australia. Legislation - Federal and State - has been introduced to implement some of the principal ideas in many of the reports already delivered. Others are under consideration. Only one report has been rejected by the Federal Government, namely the proposal for a system of registration and trust accounting for insurance brokers to meet problems of broker default. See Insurance Agents and Brokers (ALRC 16, 1980). But even in this case, the Senate last year voted to enact the draft Bill attached to the Law Reform Commission's report. In the Senate, the Bill had the support of the Labor Opposition, the Australian Democrats and a sizeable number of members of the Government Parties. This may be an indication that the care with which interest groups in the community are consulted by the Law Reform Commission can lead on to legislation even where the issues involved are controversial and, possibly, even where there has been initial government opposition, at a high level, to the report's proposals. The insurance legislation is still in the House of Representatives and awaiting reconsideration by the Government in the light of the Senate vote.

THE RATIONALE OF BEING KNOWN

This Seminar is an exploratory one. It is concerned with community information at the regional level. The need for government agencies, particularly those enquiring into matters which might affect the rights, privileges and duties of ordinary citizens - to be known is obvious. It has several aspects:

* Securing views: Unless the agency and its work are known, there will be little opportunity for the input of the variety of viewpoints that exist on most controversial subjects in the community. The risk will be run that a distorted viewpoint may emerge as a result of the processes of public consultation. Such processes may descend into a sham and cosmetics, if the community with relevant interest is not alerted to the fact that those interests may be affected.

* Avoiding backlash: Unless the community does know about the work and enquiries of bodies such as the Law Reform Commission, there is a political risk that the relevance of that work to local concerns will be discovered too late. If this occurs after legislation has been enacted, there may be a backlash against the government (and indirectly against the enquiring agency). If the discovery is made when the Bill is in Parliament, the backlash, public agitation, outcry and openly expressed resentment, may destroy much valuable work and condemn the reform proposal to political oblivion. Even if only a small issue in the reform package is the source of strongly felt public anxiety, it can be sufficient to sink the whole endeavour. A discussion paper of the Law Reform Commission on privacy protection, dealing with the whole issue of protecting individual privacy in respect of computerised data systems, caused a large and unexpected outcry because of what appeared to be a minor suggestion relating to children's rights of access to personal records. The value of public consultation is to expose such proposals, including to vigorous public criticism. This is not to say that all criticism needs be heeded. Some can come from particular, vocal but unrepresentative bodies or groups. By the same token, the sooner criticism representative and unrepresentative, is brought out into the open, the more likely it is that a reform idea will have a smooth passage. The price of this is a greater endeavour to secure the community input.

* Helping Parliament: The need for enquiring bodies to be known has a political aspect over and above the collection of criticisms and objections. The ventilation of reform proposals widely and with time for adequate digestion, throughout the community, should have a positive aspect. It provides politicians with appropriate routine machinery for dealing with difficult, controversial, sensitive questions. If the parliamentary institution is to survive, it must deal with questions of this order as well as vote catching questions. Parliamentarians need institutional support and to some extent they need to distance and protect themselves from outcry

and strongly held views in minority groups. Unless there has been an adequate exposure of sensitive and controversial issues before they are considered in Parliament it is possible, indeed likely, that parliamentarians will take the easy course and shelve what may be important and generally accepted reform measures. Modern democrats will work to improve and uphold the parliamentary institution. But that institution needs help, not least in the time when the modern media of communication can exacerbate and exaggerate controversy and encourage the tendency to avoid difficult problems. Parliaments and parliamentarians, of all political persuasions, need expert assistance, provided by bodies which have faced the 'test of fire' of media, lobby and public scrutiny of tentative reform proposals.

* Raising Reform expectations: There is also the issue of momentum. Being known can build up a momentum for action. It can provide an antidote to that special enemy of reform in Australia - apathy, and to indifference to injustice, ignorance and uncertainty about what should be done. The harnessing of public controversy and its channelling into a routine mechanism for assisting parliamentarians and those who advise them to face squarely hard choices, may have a further political impact. It may raise widespread expectations of reform which cannot be dashed without perceived adverse political consequences. Not only is this true of particular projects of inquiry. It is also true about the whole process of law reform, legal development, social development and popular movements to right wrongs and cure injustices.

THE METHODOLOGY OF BEING KNOWN

I propose to outline some of the methods adopted by the Australian Law Reform Commission to ensure that as wide a community as possible get to know of what it is doing. These methods are used also to secure feedback on typical and important reform questions within the Commission's program, so that this can be available to the Commissioners in delivering their final report to the Government. Amongst the methods that have been used are:

* recruitment of interdisciplinary teams of honorary consultants.
* preparation and widespread distribution of informal discussion papers and summary discussion papers identifying the chief problems perceived in the area of law under question and in simple lay language, proposing tentative ideas for improvement of the law.
* translating summary discussion papers into other languages (including Aboriginal languages) and into 'plain English' for distribution to the particular groups likely to be most affected by law reform ideas.

* presentation of lectures, attendance at seminars, workshops, conferences and so on to explain particular ideas and work generally and to promote great consciousness about law reform in all parts of the Australian continent.
* conduct of informal public hearings in all parts of the country and sometimes in the suburbs.
* conduct of seminars in all parts of the country with industries, professions and other groups of powerful interests especially involved in reform proposals.
* conduct of public opinion polls to secure the opinion of representative samples of the general community on key questions.
* use of specialised surveys of particular groups e.g. in the recent sentencing inquiry, surveys of judges and magistrates, prisoners and of the general public.
* widespread distribution of media releases, including to minority and ethnic media outlets.
* unabashed and unembarrassed willingness to take part in media discussion about law reform and the program of the Commission including in television, radio talk-back, print media and other means.
* securing points of contact with relevant powerful interests, lobbies, consumer bodies, community groups and so on.

These and the other methods used by the Law Reform Commission are not entirely adquate. The procedures of consultation are still being refined. But the dedication is there to seek out the views of all those members of the Australian community who are prepared to contribute comments and criticism, suggestions and ideas for law reform. One of the reasons for coming to this Exploratory Seminar is in the hope of securing suggestions for still more means by which the Australian Law Reform Commission and its programs can be made better known to interested citizens, particularly in the regional centres that are likely to become more important in Australian political organisation in the future.