

MACQUARIE UNIVERSITY LAW SOCIETY

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Chairman of the Australian Law Reform Commission

FIRST, THE GOOD NEWS

During my term as Chairman of the Australian Law Reform Commission, I have seen three governments and seven Federal Attorneys-General. The interaction between permanent institutions and the changing face of politics is an attractive and beneficial feature of countries tracing their legal and constitutional history to Britain. The election on 5 March 1983 of the Hawke Labor Government in Australia brings to the office of Federal Attorney-General Senator Gareth Evans. Senator Evans is no stranger to law reform. He was one of the foundation Commissioners of the Australian Law Reform Commission. He took an important part in the establishment of the Commission. He is the principal author of the Commission's report on Criminal Investigation (ALRC 2). He taught Law at Melbourne Law School. He has a sharp mind of great distinction and is a person impatient to see results.

The good news for law reformers in the program of the new government is the emphasis placed both by Mr Hawke and Senator Evans upon institutional law reform. Mr Hawke, for example, in his Policy Speech specifically promised the establishment of a national Law Reform Advisory Council. This body is apparently intended to bring together the law reforming agencies of Australia (Federal and State). It will also include representatives of major political parties of all of the parliaments of Australia. The United States has had a Uniform Law Conference since the 1890s. Canada has had one since 1918. In Australia, the Standing Committee of Federal and State Attorneys-General has done some good uniform law work. But Senator Evans wants better machinery, describing the Standing Committee as more a graveyard for law reform proposals than a body apt to achieve reform.

The Labor Party, on the eve of the election, delivered three important policy documents which give a glimpse of the program and policies of the new administration. These documents are the Party's policies on 'Law and Justice', 'Constitutional Reform' and 'Business Law'. There is no space in a short note such as this for a thorough review of all of the proposals put forward. Certainly, they represent a most comprehensive program. Lawyers and future lawyers do well to look at these documents. If the Labor Government achieves only part of the program it has set itself, it could significantly change not only the law of Australia but also the work done by the Australian legal profession. Take, for example, the following proposals, as a sample of the program put forward:

- * Accident compensation. There is to be consideration of the introduction of a national compensation scheme. But this is to be done in consultation with the States and introduced in stages. Obviously the present work being done by the New South Wales Law Reform Commission will be most influential in this regard.
- * Legal aid. Legal aid expenditure and administration are to be reviewed. It is clear that the ALP favours what it sees as the more cost-effective procedures of employed legal aid officers rather than support of the private profession.
- * Human rights. Senator Evans promises a national Human Rights Act as a prelude to constitutional human rights reform. Clearly this will require imagination on the part of lawyers and, perhaps, a franker consideration of social factors than has been the case in the past.
- * Family law. Important changes are promised in the Family Law Act. There is to be an inquiry into reform of matrimonial property law. Long-delayed legislation to enhance the jurisdiction of the Family Court, is to be introduced in co-operation with the States.
- * Uniform courts. The government promises attention to the establishment of a national court system in Australia, a matter presently under consideration in the Constitutional Convention.
- * Constitutional reform. Numerous proposals are made for constitutional reform, the top priority being given to four-year parliaments and more specific provisions to govern double dissolutions.

- * Computerised information. An example of the detail into which the ALP policy goes is attention to highly specific projects. One of these is the encouragement of 'compatible' computerised legal information throughout Australia.
- * Imperial links. Those who looked for trips to the Privy Council had better get in quickly. Senator Evans has committed the new government to terminating as quickly as possible the remaining Imperial links with Britain, save for those with the Crown.

This list only scratches the surface of the program of the new Government. Whether one agrees or disagrees with the policies of the government, it is important for lawyers to alert themselves to what the new Government has on its agenda.

AND NOW THE BAD NEWS

In achieving the high office of Federal Attorney-General at the age of 38, Senator Evans brings abundant energy and considerable intellectual gifts to the task. But even Senator Evans will face obstacles that stand in the way of the rapid implementation of reform in Australia. The obstacles are many. They have been learnt by me during the past eight years with the Australian Law Reform Commission. Amongst them I would list, especially, the following:

- * The Constitution. It is not always easy to do things in a Federal country where Federal power must always be found for initiatives. The early attention being given by Senator Evans to the power of the Commonwealth to prevent the Franklin dam in Tasmania will illustrate this point. The work of the Australian Law Reform Commission on many projects, eg defamation law reform, indicate the difficulty of working in a modern technological age with a Constitution drafted a century ago.
- * Resources. The resources available for law reform are small. They represent but ten cents a year for each person in Australia. Senator Evans has said that this is inadequate. He has promised an immediate increase in the resources of the Australian Law Reform Commission. But the resources will remain small and the tasks of the removal of injustice will be significant and ever-growing.

- * Public opinion. Public opinion moves slowly in Australia. This country is a generally contented and rather conservative place. One of the obstacles to Senator Murphy's Human Rights Bill, in which Gareth Evans was closely involved, was the resistance of public and professional opinion. It will be important for Senator Evans to use his considerable skills of communication to carry his audience in the legal profession and in the community. This has been a major priority of the Australian Law Reform Commission since its establishment

- * Parliamentary processing. The difficulty of getting Bills through Parliament is well known. Senator Evans has referred to the report of a Senate Committee of which he was a member urging a better system for processing law reform reports. It may be hoped that he will achieve such a better system.

- * Bureaucratic resistance. Administrative resistance for various reasons is not unknown in Australia. It is not simply found in the BBC Program 'Yes Minister'. Resistance can sometimes be alive and well in our own country. Determined Ministers can move mountains. But they can also be worn down by the fight.

- * Costs and benefits. There is an increasing concern about the costs of justice. In the old days people thought justice was beyond price. Now we realise that lawyers must become economists and law reformers especially. The aspirations must sometimes be cut back by the costs of achieving reform. I am sure this will be a major preoccupation of all governments in Australia, whatever their political complexion.

- * Evaluation. Finally there is the issue of whether reform works. We have very little social and legal research in Australia. We have poor justice statistics and little interest among many lawyers in the actual operation of the legal system. It will be important to follow up reform measures to make sure that they operate in the way that was intended. Nowhere will this be more important than in the promised initiatives on a Bill of Rights.

DOORS WILL OPEN

The change of government and the important new program put before the Australian electorate present opportunities and challenges to young lawyers throughout Australia. There will, as usual, be winners and losers. Doors will shut. But doors will also open. Accident compensation work may fall off. Family law work may change. Work for the protection of the unrepresented defendant and for the assertion of basic human rights may become a greater part of the Australian lawyer's vocation in the future. No-one can afford to ignore the program of the new Australian Government. Students and teachers, practitioners and judges, do well to familiarise themselves with it. It represents an agenda for a great deal of action, affecting all of us.