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THE VICTORIA POLICE

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LAW REFORM : NOW THE GOOD NEWS

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

Police in the past have expressed concern that law reformers only make the work of police harder. This view has been expressed especially in relation to the proposed Federal Criminal Investigation Bill. In this article, the Chairman of the Australian Law Reform Commission points out that law reform can be extremely useful to police. He urges police to take a more active role in the work of law reform bodies in Australia.

A DAY'S RESEARCH

Never was a truer word said than when Lord Devlin claimed that it was unreasonable to expect a policeman to comply with the law when it took a day's research to find out what the law was. The work of the Australian Law Reform Commission is dedicated to making the law simpler and more accessible. The Commission is a Federal body. So it is limited to reform of Federal laws. There are State law reform bodies. In Victoria, where things are always different, there are three such bodies. They are : the Law Reform Commissioner (Professor Louis Waller), the Chief Justice's Law Reform Committee and the Legal and Constitutional Affairs Committee of the Victorian Parliament.

The Australian Law Reform Commission has attracted a lot of flak in police circles because of repeated attacks on its proposals for criminal investigation law reform. No-one has been more vigorous in those attacks than Chief Inspector Tom Rippon.

However, many police have never seen the actual proposals of the Law Reform Commission. Many police know very little about law reform bodies, how they operate and what they aim to do. This article is designed to point out that it is not all bad news. In fact, law reformers and police are in the same business : the orderly functioning of Australian society under the law.

To Lord Devlin's assertion, I would add one of my own. It is not reasonable to expect police to enforce laws which reflect the attitudes of earlier times and which do not today command general community support. Yet that is the sworn duty of police officers. Unless there is an efficient and effective procedure for law reform, policemen have to enforce laws where they have little public support. Unfortunately it is policemen who often get the blame for enforcing those laws, not the politicians and administrators who fail to tackle the needs for reform.

Take nude bathing as an example. In New South Wales nude bathing has become extremely popular during the summer, despite the warnings given by dermatologists about the dangers of exposing sensitive parts of the body to the hot Australian sun. But for a long time no change was made in the law relating to indecent exposure. All that was done was that a press release was issued indicating that certain beaches would henceforth not be patrolled. The result is that public nudity occurs on those beaches. The law remained the same. Police duties were modified not by legislation but by a press release. The old promise in the Bill of Rights of 1688 that the law would not be applied differentially was broken. I have seen the report that in Victoria a Bill is being proposed to permit 'legal nude bathing' as early as Summer 1983. The Festival of Light has condemned it as a part of 'a sick society and sick minds'. Yet if police sought to vigorously enforce the present laws, they would run into opposition and possibly widespread community opprobrium. 'Why do they not get on with other more important things?'; the community and the media would ask.

There are many similar laws which remain very much as they were enacted during the reign of Queen Victoria. I do not have to list them. At least, in Victoria, the laws on homosexual crimes have been reformed. Enforcement of those laws continue to bedevil police and police administrators in other States. But there are plenty of other laws that need reform where current public attitudes and police duties are out of kilter. They include laws relating to some forms of gambling, prostitution, indecent publications and liquor and drug intake. All too often, the laws impose on police the duties of moral guardians of society. Yet when they try to enforce such laws many people are sincerely outraged and condemn the police as oppressive and authoritarian. The condemnation should be directed at our law makers who fail to bring the laws into line with modern community views and current standards and expectations.

These are matters upon which police can rarely win. If they enforce the law they are condemned. If they fail to enforce the law they are condemned by other groups. Cynicism (sometimes justified) spreads about police corruption. None of this can be good for police morale or for police relations with the community served.

The ultimate job of law reform is to bring the law up to date. It is to ensure that the criminal law reflects today's standards. That means:

- * removing crimes that enforce yesterday's morality, and
- * enacting crimes relevant for the society of today and the future (such as adequate crimes to catch the computer criminal and to overcome the jurisdictional problems of trans border data flows).

CRIMINAL INVESTIGATION

Having outlined what law reform commissions are about, I now want to tackle a bone of contention, the Criminal Investigation Bill. We have to take the Bill seriously. It was largely drafted by Senator Gareth Evans, now the Federal Attorney-General, when he was one of the foundation Commissioners of the Australian Law Reform Commission. The Federal Government's policy documents include the promise to enact the Bill. Senator Evans is personally committed to it. As he is now the Federal Attorney-General, it would appear likely that it will come into law.

Let me say at the outset that it is not the monster Mr Rippon has portrayed. The team which drew up the report included Mr John Cain, who was also one of the foundation ALRC Commissioners and Sir Gerard Brennan, now a High Court judge. The proposals were prepared after detailed consultation with police. The immediate past Commissioner of South Australia Police (Commissioner Brian Giles GM, BEM, QPM) was one of the chief consultants to the Commission. I sometimes suspect that the critics have not bothered to look at the Bill itself:

- * it applies only to Federal police
- * it defines police rights and duties in a simple, single document of 40 pages — to replace the welter of case law, Commissioners' instructions and folk lore
- * it contains new powers for the police, including a power to require identification by suspects
- * it does not provide criminal punishments for police who breach its terms. It simply requires judges and magistrates to decide whether they will exclude evidence unfairly or unlawfully obtained
- * most of the rules in the Bill are simply reproductions of the present rules governing Federal police anyway.

Frankly, I do not know how young police learn their basic rights and duties. I regard it as ridiculous that we, as a society, spend so little time in the preparation of police for their vitally important duties : about three months in college as against two years for a primary school teacher. But the first step towards improving this position is getting the basic rules down in black and white in a simple statute. I urge police not to swallow the generalised criticisms of the Criminal Investigation Bill. It provides many pluses for police. The proposed introduction of sound recording as standard interrogation procedures will greatly advantage police. The Victoria Police have already led the way in Australia in the use of sound recording in homicide cases and with great effect. The best way to destroy the damaging and repeated comments about 'police verbals' is to out-manoeuvre the critics by laws which facilitate and encourage the use of tape recorders for confessions to police. There is no more powerful evidence at the trial than the abject confession of the accused recorded in his own words. No-one can doubt that sound (and video) recording of police confessions will come in Australia. Does anyone doubt that it will be standard police practice in the 21st century? It is only a matter of time. The Criminal Investigation Bill takes the vital first step.

OTHER INITIATIVES

There are many other initiatives being taken by the Australian Law Reform Commission in other fields designed to improve the position of police in the important and difficult work they are doing for Australian society. Of course, our work is directed towards Federal responsibilities. It will be up to the States to decide whether they copy the reform proposals made. I mention a few past and current projects:

- * The report on Alcohol, Drugs & Driving suggested new laws to permit blood and body samples to assist in the identification of intoxicated driving where drugs other than alcohol are involved. The report also proposed the use of the modern Breathalyzer with a printout facility to lay at rest further disputes. This law has been introduced in the ACT with the full support of the police.
- * A major inquiry is proceeding currently to reform and modernise the laws of evidence in Federal and Territory courts. Here too the Commission has the active involvement of police consultants. We are looking afresh at numerous rules of the law of evidence that have developed over the centuries but that may be out of tune with today's needs and values. The unsworn statement from the dock is one such rule. So too are the limitations in the use of hearsay evidence. Likewise, rules on the compellability of spouses and other witnesses and the admissibility of computer printouts. Unless we improve our laws of evidence, the police may 'get their man' but not be able to prove the case when it comes to trial.

One of the latest projects given to the ALRC is review of the law on service and execution of process, including criminal process throughout Australia. The present legislation was enacted in 1901 before planes made interstate travel fast and relatively inexpensive. The law has not kept up to date. We have not developed the 'long arm' legislation so useful to police and prosecutors in the United States. Again, the ALRC will be developing its proposals in close consultation with police.

THE FUTURE OF POLICING

Since my appointment in 1975 I have got to know and respect police in all parts of Australia. None do I respect more than the Chief Commissioner of Victoria Police, Mr Miller. I admire the way he is always prepared to speak out clearly for a police perspective on the problems facing society. Though we sometimes differ in the solutions, I think it is vitally important that police should be able to have their voice heard, loud and clear. In the past, all too often, they have adopted a 'reactive' role to law reform. They have waited till others took the initiative, and then complained. I have had discussions with the Australian Federal Police with a view to ensuring a continuous and active involvement of experienced police in the work of the ALRC on Federal law reform.

There is no doubt that there is a great need for fresh thinking about police and the law governing police in Australia as it approaches the 21st century:

- * There are new antisocial activities, such as computer crime, international fraud, threats to the vulnerable society and so on.
- * There are new investigative techniques, such as are now being used by the Costigan Commission.
- * There has been a haemorrhage of policing functions to non-police organisations whether departmental officers or private companies offering security police-type services.
- * And most recently there has been a call for a National Crimes Commission which, at least as I see it, would take over important activities which I would prefer to leave with a better equipped and more generously resourced police service.

The next two decades will present tremendous challenges to the police role, police methods and police organisation in Australia. The Victoria Police will continue to need people of the highest calibre, both in terms of personal integrity, intellectual ability and good old-fashioned nous.

Reforming the law has a part to play in redefining police functions for the future and clarifying the rules within which they will operate, particularly with the new technology. It is therefore vital that there should be an ample dialogue between police and law reformers. We must break down the barriers. Law reformers are not the enemy of police. They can help the police refashion their functions and methods to be relevant to the challenges and to the society of the 21st century.

For the sake of that society, I hope police will respond.

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The Australian Law Reform Commission publishes a quarterly bulletin, Reform, which has a wide readership, including amongst police. Police wishing to know what law reformers are doing are invited to subscribe. The cost is \$7 a calendar year (4 copies). Send cheque payable to Australian Law Reform Commission, GPO Box 3708, Sydney, NSW, 2001.