

515

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LAW REFORM - BE IN IT!

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Chairman of the Australian Law Reform Commission

A GROWTH INDUSTRY

Law reform in Australia has been described as a 'growth industry'. Certainly, there are a lot of law reform bodies. They exist at the Federal and State levels. They exist in the Attorney-Generals' Departments as well as in the independent LRCs. In the past, police have tended to adopt a passive role in relation to law reform:

- . Some did so out of an old-fashioned view that it was not for the police to question or influence the law but simply to enforce whatever the judges or parliament declared to be the law.
- . Some police officers felt that law reform had a high policy component, would normally be decided upon by Ministers according to government policy and so they should not get into the position of conflicting with their Minister who, after all, was elected by and accountable to the people.
- . A third group of police considered that in law reform the cards were stacked. It tended to be done by judges and lawyers. They were not always sympathetic to or knowledgeable about the police point of view. They might not listen, or listen favourably, to the police perspective. So participation would be pointless. It could even be counterproductive as appearing to add credence to the procedures of reform.
- . Finally, many police, brought up in the traditions of a disciplined service and the somewhat hierarchical and closed bureaucracy of Australia, including in the police, tended to just keep their mouths shut. In silence, there was safety. In any case, they might not be able to compete with the noisy civil libertarians and highly paid lawyers on their own ground.

Nowadays all this is changing. An articulate police point of view is being heard in the land, as it should be. Only if a police point of view is heard will there be a chance that practical police perspectives about the issues of reform will come to the notice of law reformers. Unless the law reformers hear and give weight to the police perspective, the risk may be that efforts later to amend the reform proposals will fall on deaf ears or be too late to influence the development of new laws.

REASONS FOR PARTICIPATION

In the Australian Law Reform Commission we have sought out a police perspective in all of the tasks of the Commission relevant to policing. In most cases police are appointed as honorary consultants to assist the Commission. Often they are Federal police because of the Federal Charter of the Australian Law Reform Commission. But sometimes distinguished State police officers take part as consultants. Thus, for example, Mr JB Giles AO, GM; BEM, QPM, later Commissioner of South Australia Police, was a consultant in the Commission's work on criminal investigation law. The consultants are not responsible for the recommendations that are made. These remain the responsibility of the Law Reform Commissioners. But the consultants sit down in numerous meetings that are held between Commissioners and consultants to help thrash out the refinement of the reform proposals that are ultimately put to the government.

In addition to the honorary consultants, there are numerous other ways in which the Australian Law Reform Commission seeks out police perspectives on its tasks:

- . by the assignment of police officers, Federal and State, to act as 'contact persons' in the reform projects;
- . by consultation with the regular meetings of Police Commissioners of Australia and the Region;
- . by eliciting detailed written comments by Police Commissioners on the consultative papers distributed by the Commission, setting out tentative proposals for reform;
- . by inviting police spokesmen to attend public hearings to comment on tentative suggestions; and
- . by attending and addressing police colleges and academies.

This process has many benefits for the law reformer. Police tend to express their views directly and bluntly where they think the law reformer is going wrong. It is not always possible to secure agreement. The perspectives may be different. But the contribution is always listened to with care, as are public comments made by Police Commissioners, Police Associations and individual police officers concerning law reform proposals.

SPE. NG OUT

I am aware of the guidelines which have recently been issued by the Victorian Government laying down procedures to be followed where police comment upon matters of policy, some of which will relate to issues of law reform. I was glad to see that the guidelines acknowledged the special position held by the Chief Police Commissioner of Victoria (Mr SI Miller MVO, OSTJ, QPM). Mr Miller will remain free to speak publicly 'after consulting with his Minister where appropriate and practical' on matters of concern. Recently I listened with great interest to his forceful remarks about violence in public demonstrations which went beyond the acceptable levels tolerated in a free society. In Mr Miller, the Victoria Police have a most eloquent, authoritative and impressive public champion. It is vital, as it seems to me, that police should have identifiable representatives who can speak out at short notice upon matters of public concern. Otherwise the risk is run that only one side of the debate will be heard, and that sometimes inimicable to police and the fine work they do.

In a democracy, subject to the law, the government of the day must be given due deference by Crown officers, whether they be judges or Police Commissioners. The government draws its legitimacy, ultimately, from the people who put it into office. The government should normally have the first opportunity to develop policy, consistent with law, relevant to policing, the administration of justice and so on. Furthermore, at least in the first instance, there is good sense in exhausting internal remedies for improvement and for the removal of defects. This is as true within police administration as it is within the judiciary or any other branch of the Crown's service. We are all of us, in differing ways, members of a disciplined team. Discipline sometimes means the loss of privileges enjoyed by other citizens. Judges, for example, are much more constrained in their public utterances than other citizens. They are totally constrained in relation to party political involvement. These are sacrifices they must be willing to make when they accept their commissions. The position of individual police officers bears some analogy, although the constraints are not so severe.

The new guidelines make it plain that police have a right to express their personal views on government policy as private citizens. It is my hope that they will facilitate a more persuasive police voice to be heard on matters of public concern.

LAW REFORM ISSUES FOR POLICE

One area where that police voice needs to be heard relates to the modern issues of law reform. For example, take the following questions which are currently being examined by the Australian Law Reform Commission. All of them are questions upon which police have a legitimate point of view:

- . Should we abolish dock statements (ie unsworn statements by the accused in a criminal trial)?
- . Should we recognise Aboriginal tribal laws and turn the punishment of at least some Aborigines over to tribal elders?
- . Should we lay down rules requiring sound recording or video recording of confessions to police?
- . How should we handle complaints against police independently and fairly?
- . Should police be allowed and/or encouraged to use hypnotism to clear up crime?
- . Should imprisonment be a last resort punishment for offenders and are our punishments adequate?
- . Should there be an obligation to report suspected cases of child abuse?
- . Should criminal defamation survive or is it a legal anachronism?
- . Should we simplify the interstate service of process in Australia?
- . Should we allow evidence to be given in court even when illegally or unfairly obtained?

Unless police, officially and as private citizens, express their views, the risk exists that law reforms may not adequately reflect the vital perspective which police have of the administration of justice in Australia. We need more articulate police like Mr Miller, in every jurisdiction of Australia, as the focal point of an informed and thoughtful police commentary to meet the incessant demands of the news media. But there must be other officials in the police service who can support the Chief Commissioner. They will do better if they can present a persuasive, informed and non-dogmatic viewpoint, reflecting the pluralist and multicultural society of Australia today. Finally, there is a need for police as citizens to contribute vigorously to the process of law reform.

The Australian Law Reform Commission has been greatly aided by the Victoria Police in many of its tasks. We have not always agreed. In the end it is for the elected government to resolve differences. But the law reformer today must be alert to the police viewpoint. The police officer today must be vigorous, both through official channels and as private citizens, in contributing to the law reform debate. The laws that result govern us all. They influence the shape of our society. That is why for police the motto should be 'Law Reform : Be in it! '.