

PUBLIC SERVICE ASSOCIATION OF SOUTH AUSTRALIA

CENTENNIAL DINNER, 6 November 1985

"THE CHANGES AHEAD IN EMPLOYMENT, INDUSTRIAL & INFORMATION LA

SUMMARY OF SPEECH BY JUSTICE M.D. KIRBY

EMBARGO: WEDNESDAY, 6 NOVEMBER, 1985, 8.00 P.M.

SUBJECT: MAJOR CHANGES IN UNIONS AND EMPLOYMENT AHEAD - KIRBY
STATES NEED INFORMATION LAWS SAYS KIRBY

ADELAIDE, WEDNESDAY

Major changes in laws governing the public service were predicted tonight by Justice Michael Kirby. The former Chairman of the Australian Law Reform Commission was speaking at a dinner in Adelaide to mark the centenary of the Public Service Association of South Australia. The Association represents public servants in industrial and other concerns in South Australia. The Centenary dinner was also attended by the Premier of South Australia and a representative of the Opposition.

Among changes foreshadowed for the "next hundred years" by Justice Kirby were:

- * marked reductions in standard hours of work.
- * new procedures for settling industrial disputes.
- * increased powers and functions for the Ombudsman.
- * introduction of industrial democracy.
- * extension of freedom of information law.
- * changes in the incidents of Crown service.

STATES NEED FOI LAWS

Justice Kirby said that although important reforms had been achieved in administrative law at the Federal level in Australia, the States were "lagging behind".

"The achievement of comprehensive administrative law reform in the Federal administration has been one of the notable achievements of the Whitlam, Fraser and Hawke

administrations. The creation of the Federal Ombudsman, the establishment of the Administrative Appeals Tribunal, the simplification of judicial review in the Federal Court and the passage and improvement of the Freedom of Information Act represents major achievements. By comparison, except in Victoria, the achievements of the States have been modest. True it is, each State now has an Ombudsman. The principles of access by the public as of right to public information have been endorsed many times in political speeches. But they have not been translated into legislative entitlements. I realise that there is a cost factor. I also realise that these are hard economic times. But there can be few priorities higher than the improvement of the accountability of the public service to the community it serves. Notions of accountability through the Minister have occasional reality. But this mythology has been knocked on the head by the program "Yes Minister", which is uncomfortably close to the reality. More effective, low key, accessible procedures for rendering the Public Service accountable are necessary. They have been achieved in the Federal sphere. The States, for the most part, lag seriously behind. Some modern Sir Humphreys fall out of love with the idea of freedom of information laws. The exposure of information can prove embarrassing. Yet accountable democracy imposes the occasional price of embarrassment. If accountable democracy is to be more than election jingles and triennial ballot papers, the States would do well to move towards the Federal administrative law model.", Justice Kirby said.

CHANGES AND ACHIEVEMENTS OF 100 YEARS

Justice Kirby said that just as it would have been impossible, a hundred years ago, to have predicted the public service of today, so it was difficult to foresee the changes that would come about in the next hundred years. However, he said that some indications were already visible.

"No one in Crown service a hundred years ago would have predicted that by 1985 a quarter of our population would work in the public sector. No one would have foreseen the 35 hour week, the benefits in holidays, long service, study, maternity, paternity and other leave. No one would have dreamt of a large and growing female component in the public service, of equal pay and of anti-discrimination legislation, much of it pioneered in South Australia. The salaries and benefits paid, save for the professional cadre would have been beyond the wildest dreams of 1885. So much has been achieved in the past century. Part of the credit must be taken by the PSA. It has contributed, for the most part responsibly, to the industrial relations and legislative reforms that have accompanied the expansion in size and power of the public service." Justice Kirby said.

MAJOR CHANGES AHEAD

But Justice Kirby said that the changes ahead were likely to be just as dramatic.

"The clue to the future is to be found in technology. Not only will it significantly reduce the hours of work and permit greater decentralisation of work places. It will also reduce the numbers of workers needed for routine work, much of it taken over by machines. Release of employees

from repetitive factory work will create a pool of unemployed people. This will create its own needs, many of them to be supplied by the public sector. It seems unlikely to me that the public sector will shrink in size. But the hours of work are likely to reduce. The need to cater for more leisure time and to provide a wider range of services, particularly for the growing number of older citizens, will be a major challenge of the public service in the years ahead.", Justice Kirby said

INDUSTRIAL DEMOCRACY AND OTHER DEVELOPMENTS

Justice Kirby also predicted a number of changes in the organisation of the public service.

"It seems likely to me that we will see changes in the organisation of the public service:

- ** the recruitment of more departmental heads from outside the service, made easier by improved superannuation portability.
- ** the spread of industrial democracy, including by the appointment of more worker representatives to public authorities.
- ** the improvement in industrial relations tribunals, including provision of better interaction between Federal and State industrial bodies.
- ** the extension of equal opportunity legislation and the removal of discrimination in its application to various classes of public servants.

POWERS OF THE OMBUDSMAN

Justice Kirby said that the recent public discussions of the position of Ombudsman in South Australia should focus attention

on the future of the office of Ombudsman in Australia. He said that this important office, borrowed from Sweden, would become even more familiar to the public service in the years ahead. He said that changes could be expected in the powers and functions of the Ombudsman.

"Consideration needs to be given to enhancing the power of the Ombudsman so that he or she can handle, even more effectively, the growing number of complaints by citizens about public administration. Consideration should be given to increasing the sanctions of the Ombudsman so that, at least sometimes, decisions of the Ombudsman are mandatory and not merely a recommendation. The provision of a Parliamentary committee to receive and investigate reports of the Ombudsman and to aggregate the experience reported by the Ombudsman is also an idea worth considering. It is important that the Ombudsman should reach out to the disadvantaged, especially the poor, non English speaking and Aboriginal groups, unfamiliar with the use of public officials. And there may also be a need for an Ombudsman to superintend the courts, to report on inefficiency in court administration and gross delays, which are presently outside the Ombudsman's jurisdiction. The role of the Ombudsman in investigating the commercial activities of government bodies and scrutinising the police and other law enforcement agencies are matters requiring special attention. It is to be hoped that the recent unhappy events in South Australia, surrounding the resignation of two Ombudsmen, will produce an increased resolve, in all political parties, to defend this vital citizens' institution. It is an institution that

should have the support of public servants and of the PSA. The improvement in the efficiency and sensitivity of public administration is the proper concern of all good public servants" Justice Kirby said.

BILL OF RIGHTS

Justice Kirby said that another concern that would occupy public servants in the years ahead would be the scrutiny of their conduct against standards stated in general legislation including, possibly, a Bill of Rights. He referred to legislation recently introduced in Federal Parliament, but criticised by the Federal Opposition. Justice Kirby said that if a Bill of Rights were enacted, it would be important to consider the role of the judiciary in superintending the compliance of public servants with the standards laid down in the Bill of Rights. Justice Kirby reviewed the arguments for and against a Bill of Rights. He said that, although the traditional British view had been opposed to Bills of Rights, in the United Kingdom, the support now came from the political Right where as in Australia it tended to come from the political Left. Justice Kirby said that it was important that the debate about a Bill of Rights should be considered dispassionately, free from the "superficialities of party politics". He said that originally it had been hoped that a national Bill of Rights could be agreed in time for the Bicentennial. However, he said that this now looked unlikely and that current Federal legislation represented a "much more modest endeavour".

NOTE ON SPEECH

The above speech will be delivered at Pavilion on the Park,
Veale Gardens, South Terrace, Adelaide, South Australia.

For point of contact with the PSA of South Australia telephone
Mr. Ian Fraser, (08) 267 4450. For contact with Justice Kirby's
office telephone (02) 230 8202.