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THE AUSTRALIAN ENCYCLOPAEDIA

FOURTH EDITION

LAW REFORM

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

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Rationale of law reform. The establishment of Federal and State law reform bodies in all Australian jurisdictions by the late 1970s reflects growing pressure for legal change in contemporary Australia and recognition of the need for new institutions to help law makers meet that pressure. Among the chief forces requiring constant law reform are (1) developments of science and technology; (2) changing views concerning morality, particularly relevant in criminal and family law; (3) changing social attitudes. For example, the ethnic diversity of modern Australia leads to questioning some of the substantive rules, procedures and institutions inherited from the common law of England; (4) the growing role of government and the need to provide external, independent, critical, and effective scrutiny of administrative decisions; and (5) changing business practices, many of which render laws developed for earlier times irrelevant or inappropriate for a society of mass production of consumer goods.

Constant changes in society require constant law reform. Judicial reform of the law, in the course of leading cases, became more circumspect with the development of the modern popularly elected parliament. But parliaments and the Executive Government are frequently unable to cope expeditiously with large, controversial or highly technical problems of law reform. Hence the creation of law reform bodies.

Establishment of law reform agencies. Although part-time committees of busy judges, lawyers and officials preceded the establishment of permanent, statutory law reform institutions, their output was necessarily small, their work slow and their research and consultation capacity often negligible. The first full-time permanent statutory law reform commission created in Australia was the Law Reform Commission of New South Wales (1966). Equivalent legislation was passed in Queensland (1968), the Australian Capital Territory (1971), Western Australia (1972), Victoria (1973), Tasmania (1973) and the Commonwealth (1973). The Commonwealth's Commission, the Australian Law Reform Commission (ALRC), was established with the appointment of its first members in 1975,

and thereafter absorbed the Law Reform Commission of the Australian Capital Territory. An official but part-time committee was established in South Australia by proclamation in 1967. In 1971 a Criminal Law Reform Committee was also established by proclamation in that State. In 1977 a non statutory committee was formed, with official participation, in the Northern Territory.

Typically, the law reform agencies are given statutory functions requiring them to review the laws of their respective jurisdictions with a view to modernisation, elimination of defects, simplification and consolidation of laws, repeal of obsolete laws and the adoption of new or more effective methods for the dispensation of justice. Typically, they have a small full-time membership and research staff, with some part-time members. In some cases (as in the case of the ALRC) they are limited to projects specifically assigned to them by the Attorney-General. Reports range from technical issues (e.g. lands acquisition and compensation, insurance agents and brokers) to highly controversial questions (e.g. complaints against police, criminal investigation, human tissue transplants).

Methodology of law reform. The common technique of law reform bodies in developing their proposals is consultation. When tentative proposals have been formulated, working papers or discussion papers are widely distributed for comment and criticism, before a final report is prepared. Public hearings, seminars, the appointment of expert consultants, use of surveys and public opinion polls, and open discussion of issues in the media represent methods adopted to secure expert and community opinion before reformed laws are presented to Parliament. Most law reform reports attach draft legislation. This encourages precision. But it also seeks to overcome the delays which otherwise attend parliamentary consideration of generalised proposals for new laws. Many of the reports of the law reform agencies have been followed by legislation both at a federal and State level.

To expedite parliamentary consideration of law reform reports the Standing Committee on Constitutional and Legal Affairs of the Australian Senate, in a 1979 report titled Reforming the Law, proposed automatic reference of reports of the ALRC to the appropriate parliamentary committee. This proposal was not accepted by the government. Translating proposals into reformed laws remains a major issue for the effectiveness of Australia's new law reform machinery.

The law reform bodies of Australia meet biennially in the Australian Law Reform Agencies Conference. Proposals in 1975 for co-operation towards uniform laws were not agreed to by the Ministers in the Standing Committee of Commonwealth and State Attorneys-General. However, in specific projects there has been some research and other co-operation between particular agencies. A quarterly bulletin, Reform, published by the ALRC, reviews law reform developments in Australia and overseas.

That Commission also publishes a Digest and Index of law reform reports to help prevent duplication of research work.

Other sources of reform. Other sources of law reform in Australia include (1) parliamentary committees, (2) departmental research, (3) Royal Commissions and Committees of Inquiry, (4) recommendations of specialist advisory bodies e.g. Family Law Council, Administrative Review Council, Women's Affairs Advisory Council, Consumer Affairs Advisory Council and equivalent State bodies, and (5) judicial lawmaking.

FURTHER READING

The Law Reform Commission (Aust), Annual Report 1975 (ALRC 3), AGPS, Canberra, 1975, contains a convenient history of law reform in Australia.

Report of the Senate Standing Committee on Constitutional and Legal Affairs, Reforming the Law, AGPS, Canberra, 1979.

Kirby, M.D., 'The Politics of Law Reform', in Politics, XV(1), May 1980, 29.

Mason, A.F., 'Law Reform in Australia' (1971) 4 Federal Law Review 197.

Reid, G.S., 'The Parliamentary Contribution to Lawmaking', in 'Politics' XV(1), May 1980, 40.