In England, the "least advertised of the Law Commission's good deeds", its important work in statute law revision and consolidation came in for a bit of well-deserved praise from "The Economist" of 14 February 1976. The English Statute book was described as "wildly overgrown". The "thinning out" of statutes and the complete removal of others is described in a lengthy article which pays handsome tribute to the Commission's somewhat anonymous work in this area. Some of the more bizarre examples are cited including the Act of 1765 which enshrines the contract between the Duke of Atholl and the Crown by which the Isle of Man was sold to the Crown for £70,000. It is worth noting in this context that on 9 March 1976, the N.S.W. Attorney-General introduced into the N.S.W. Parliament a Statute Law Revision Bill to give effect to the first report of the N.S.W. L.R.C. on statute law revision. The N.S.W. L.R.C. report (No. 10) had been presented in 1970. Although as the N.S.W. Attorney-General said "it is not a measure one would expect to have popular appeal, it nonetheless is an important piece of legislation in the process of bringing up to date N.S.W. statute law."

Public Hearings for Law Reform

"So when are WE going to have public law reform hearings?" This is what the commentator in the "New Law Journal" (1976) 126 N.L.J. 79 asks at the end of his review of the A.L.R.C. Annual Report. He refers to the public sessions conducted by the A.L.R.C. in its first exercise "On 13 days all over Australia". He suggests that "we might be well advised in ... to learn from its example".

There is something of a controversy about this. Norman Marsh Q.C., one of the Law Commissioners (U.K.) says that "... although [the Commissions] welcome informal oral consultations [they] do not hold anything in the nature of formal hearings." (1971) 13 Wm. and M.L.R. 263 at p.279. Sir Leslie Scarman has emphasised many times the importance of consulting the public to give it an opportunity of dealing with law reform proposals. How should this be done? Most law reform bodies follow the English technique. Working papers are distributed to the interested and available to all. Many law reformers express disappointment in public response. A certain disillusionment can be read out of the successive Annual Reports of the Canada L.R.C. One Member of that Commission has suggested that the only time you can be sure to get a positive reaction is when you fail to ask for submissions.

The A.L.R.C. experiment in public sittings is not unique. The A.C.T. L.R.C. has held public sittings as, no doubt, have others. The Chairman of the Canada Commission, Mr. Justice Hartt, has pointed out that "law is the business of everyone". His colleague Commissioner M.L. Friedland, says that the process of consultation is perhaps the most important contribution that law reform commissions can make to effective law reform. The breakdown in secrecy in the drawing and preparation of statutes is commended by most writers nowadays as necessary to improve the style and content of legislative drafting. But the basic rationale for public input into the work of law reform commissions especially is stated by Professor Lyon, himself a past Member of the British Columbia L.R.C. "The truth is that there are no experts when it comes to reform. There are various complimentary skills and experience that are necessary to the reform process, and the important question is how and where you should fuse them in order to get the best return in actual results". J.N. Lyon "Law Reform Needs Reform" (1974) 12 Osg.H.L.J. 421 at p.426.

So far, the public hearings of the A.L.R.C. have been very well attended. Not only have specialists and experts turned up, individual members of the public have come forward. Generally, they can be persuaded to put their point in a matter of minutes. Sometimes their point is provocative and useful. Care must be taken, as Professor Lyon points out, to seek the substance of public consultation and to avoid the mere form or, worse still, grandstanding. (ibid 427). In the current project A.L.R.C.4 "Alcohol, Drugs & Driving", much local discussion of the essentials of the debate was stirred up by the interest shown by the local media in the exercise. A public opinion poll was conducted with more than 1,000 participants. The returns on this poll, in turn, secured numerous suggestions, some of which are proving quite useful.

No doubt, public hearings strike a specially responsive chord in Australia because of the tendency to use Royal Commissions to secure law reform in the past. No doubt some reform exercises (does the pure "lawyers' law" exist any more?) will not inspire much interest in a public sittings. One could not imagine the public flocking to a debate on the Rule against Perpetuities or the abolition of the Statute of Mortmain. Nevertheless, it is worth noting that this indigenous experiment by the A.L.R.C. has,so far,worked. It is also heartening that it has attracted favourable comment at home and overseas. The A.L.J. pointed out that lawyers, judges and law reformers have long been exposed to the charge "by certain sociologists that, in making changes in the law, little or no attention is given to the interests of society and to the needs for social change". The A.L.J. editor comments on the A.LL.R.C.'s first two reports that these "make nonsense of this charge for, in its far-reaching hearings and enquiries, the Commission was at pains to discern and determine the needs and interests of the community and of community minorities". (1976) 50 A.L.J. 1 at p.5.

Experience so far justifies persisting with this Australian experiment. Hopefully, it will make law reform reports more balanced, practical and acceptable to the Parliament. The wrath of the occasional editorial and the intrusion of the media may be just what law reform in this country needs.

Stinging Attack on Law Reform Commissions

Talking of what law reform needs, it is worth reading the savage, thought-provoking article by Professor Lyon mentioned above. He puts it in a word. "Law Reform Needs Reform". It is an article which everyone concerned about the orderly renewal of our legal system in Australia should read. Professor Lyon holds a Chair at McGill University in Canada and he speaks after a year as a full-time Member of the British Columbia L.R.C. His thesis is that the Canadians (as the Australians) have simply copied the British 1965 model for law reform commissions. This in turn is nothing more than a copy of 19th century law commission models. He believes the model has failed. He does not pull his punches. "Law reform has largely become an industry in which academics are contracted to man the assembly line from which emerges the stereotyped report which justifies the agency's existence. The explanation of why this has happened is very simple : nobody sat down to think through the process of law reform and to design a model for the purpose. In Canada we simply copied the English model".

Professor Lyon's attack is basically upon two things. The "stereotyped report" and the "myth of the expert". He hits out at the unquestioning belief that systematic law reform can be done only through written reports. "Lawyers are fascinated by words and are long conditioned to believe that the world began with an Act of Parliament... The written report has its uses and at times is indispensable but to try to reform the legal order entirely through written reports ... is folly".

Professor Lyon is angry. He asserts that "it would be hard to imagine a less responsive measure than the currently fashionable lists of published reports". He attacks L.R.C.s for their failure or inability to follow up their reports. "A model of law reform which neglects systematic treatment of implementation and declines accountability in terms of actual results felt by people in the real world is a model which requires serious rethinking. It may just be that lawyers lack the intellectual tools needed for designing process models so that others with different skills and experience may have to be called in to assist in this task".

Professor Lyon asserts that the programmes of law reform commissions have been unbalanced. They have not sought to alleviate the real injustices caused by the law to underprivileged members of the community. He asserts that the fashionable areas into which law reform has been channelled are already pretty well served by "seventy to eighty percent of legal resources available in Canada".