

reform

A regular bulletin of law reform news, views and information
Australian Law Reform Commission, Box 3708, G.P.O., Sydney, 2001

ISSUE NO. 4 : OCTOBER, 1976

Editor : Mr. Justice Kirby

Law Reform in the Podes : An Antipodean view

"I will go on the slightest errand now to the Antypodes"
Much Ado About Nothing II, 1, 273

A.L.R.C. Chairman, Mr. Justice Kirby, has just returned from an "errand" to the Podes. He has reported to the A.L.R.C. on the work and methods of law reformers "up there". Whilst in England he held discussions with the Chairman and Commissioners of the Law Commission. He also saw senior officers of the Home Office and the Lord Chancellor's Office to discuss the Privacy Reference and other Commission business. The Police Act 1976 introduces an external tribunal for determining certain complaints against the police in Britain. The Act is now in force. Some of its provisions will not commence until 1977. The rationale behind the Act is identical to that set out in the A.L.R.C. first Report *Complaints Against Police*. This is the introduction of an independent element in the receipt, investigation and determination of complaints made against the police, whilst upholding police discipline and morale.

The Law Commissioners were especially interested in the problems of law reform in a federation. Some of these problems are collected in the A.L.R.C. *Annual Report 1975* (A.L.R.C.3). English lawyers are bracing themselves for the possibility of a quasi federal system in the United Kingdom. Plans are already well developed to devolve certain powers to a Scottish Parliament. The development of the legal machinery of the Economic Communities has already begun to acquaint English lawyers with the legalism inherent in resolving border conflicts. It also emerges from discussions with the Law Commissioners that the English judiciary play an active part in the work of the Law Commission. Many have attended seminars to discuss working papers. This pool of highly trained and exquisitely talented lawyers now feels fewer inhibitions in privately commenting on proposals for law reform. Law Commissions in Australia must wear Antipodean judges to the same maturity.

In London, the A.L.R.C. Chairman also called on the Commonwealth Secretariat, the Institute of Advanced Legal Studies and the British Institute of International and Comparative Law. The Commonwealth Secretary-General, Sir Shridath Ramphal, stressed the value of inter-Commonwealth links in law reform. These were reflected by the May Law Reform Conference in Canberra. Tentative plans are now being explored to secure a meeting of law reform agencies to coincide with the Fifth Commonwealth Law Conference in Edinburgh, 24-29 July 1977. A major topic of the Conference is law reform in the Commonwealth of Nations. The Chairman of the organising committee, Lord Thomson, has stated that assistance would be given to encourage a meeting of law reform agencies from the Commonwealth.

In Canada, Mr. Justice Kirby had discussions with the Chairman and Commissioners of the Canada L.R.C. He also saw officers of the Ministry of Justice who are preparing privacy and freedom of information legislation. Several references before the A.L.R.C. overlap with work being done in Ottawa. Lamer J., Chairman of the Canadian national Commission, laid stress upon the possible role of law commissions to fill the void left by retreating judicial activism. The Canadians see their role as leading debate on reform. Mere "cut and paste" patching of the law is not good enough to earn the name "reform".

The new Australian interest in international and comparative law reform developments is reflected in the A.L.R.C.'s latest Report "*Alcohol, Drugs and Driving*" (A.L.R.C.4) tabled in the Federal Parliament on 23 September. A full chapter is devoted to international experience and ideas in breathalyzer legislation. A number of useful reform suggestions emerge from this study. The Sri Lanka Secretary of Justice, Mr. Jayawickrama, told the Canberra Conference earlier this year that Sri Lanka was in the process of implementing certain proposals of the Canada L.R.C. on Evidence and the A.L.R.C. on Criminal Investigation. The sixth Annual Report of the British Columbia L.R.C. notes the use made of their Report on Landlord and Tenant by the U.A.L.R.C. The N.S.W.L.R.C. has completed research on court procedures overseas, including in Eastern Europe and Japan : an imaginative search for new models. Gradually, the old blinkers and bridles are being abandoned. Law reform is alive in the Podes.

Defamation Reform : A Uniform Act?

"Slander-mongers and those who listen to slander,
if I had my way, would all be strung up, the
talkers by the tongue, the listeners by the ears".
Plautus, circa 189 B.C.

Federal Attorney-General Ellicott has given the A.L.P.C. a wide-ranging Reference to reform defamation laws. The Reference was signed immediately following a meeting of the Standing Committee of Commonwealth and State Attorneys-General at which Mr. Ellicott raised the possibility of a Uniform Defamation Act.

Explaining the Reference, Mr. Ellicott told the Women Lawyers' Association of New South Wales:

"The development of the media and of other means of communication on a national basis has made urgent the task of tackling the reform of defamation law on a basis that will produce uniformity throughout Australia. Newspapers are published for circulation on a national basis or at least for circulation in several States. Television and radio programmes are broadcast simultaneously in all or a number of States. Yet there are great differences in the laws of defamation. These differences are so great as to produce the result that in adjoining States, plaintiffs may succeed in an action for defamation in one State and fail in an adjoining State in respect of the publication of the same material".

Speaking in Melbourne on 5 August 1976, the A.L.R.C. Chairman, Mr. Justice Kirby, suggested that the major problem for defamation law reform lay in the procedural area. "The technicalities and delay which presently beset this area of the law often require of litigants patience of almost Biblical proportions and speculation of costs which sometimes borders on the foolhardy". His Honour said that although the purpose of defamation law was supposed to be protection of the reputation of the plaintiff, often the plaintiff's reputation was not restored even by success. On this basis, the law was failing to promote its ostensible object: