

Melbourne, where it will share facilities with the Victoria Law Foundation and the V.L.R.C. Since the 1976 Conference, the Law Council is invited to attend Australian Law Reform Agencies' Conferences. Anyone involved in law reform realises that without the participation and support of the profession, law reform proposals will often not get off the ground.

Criminal Law under the Microscope

"The *Criminal Investigation Bill* represents the most significant legislative initiative in this field to be taken in the Commonwealth of Nations at least since the last War and probably since the establishment of modern police forces. It comes to grips with a whole variety of difficult issues upon which there has been much writing, widespread dissatisfaction but little legislative action."

R.J.Ellicott, Q.C., M.P., Australian
Parliament, 24 March 1977

Criminal Investigation Bill 1977: Foreshadowed in the last issue of *Reform*, the comprehensive new code for criminal investigation by Commonwealth Police was introduced into the Federal Parliament on 24 March. The Bill is based on the A.L.R.C.'s Second Report *Criminal Investigation*. It is to lie on the Table and the Attorney-General has sought submissions, if possible by 1 May 1977. Copies of the Bill for the purpose of making submissions, are available from the Commonwealth Attorney-General's Department, Canberra, A.C.T. The Attorney-General has invited State Ministers and police forces to make submissions, if they wish to do so. He said that the legislation "could become a model for all criminal investigation in Australia".

In his Second Reading Speech Mr. Ellicott put the Bill in the context of the international and national moves for the protection of human rights. He characterised it as an attempt to translate the necessarily general language of the *International Covenant on Civil and Political Rights* into specific standards, consistent with our common law legal system. He also stressed the importance he attached to proper processing of A.L.R.C. reports. He took the occasion to condemn "window dressing" references to law reform bodies. He saw the Bill as a means of catching up with the developments of science and technology. The Bill introduces taperecording of confessional evidence, photography of identification parades and telephones for judicial superintendence over police bail decisions. The Attorney described the Bill as "a major measure of reform".

Complaints Against Police : Suppl. W.P.: The A.L.R.C. has also published its Working Paper No. 6 on *Complaints Against Police : Supplementary Report*. The decision not to proceed with the amalgamated Australia Police required reconsideration of the Commission's First Report. It was closely tied in to police organisation. The occasion has been taken in the Working Paper to review the whole report. The basic structure proposed remains:

- * The Ombudsman : As an alternative recipient and investigator in exceptional cases.
- * A special investigation branch : As the normal investigator of complaints.
- * A judicial tribunal : To investigate and inquire into serious complaints against police, short of criminal charges consigned to the courts.

The A.L.R.C. has already sat in Hobart, Perth and Darwin to receive submissions on this supplementary reference. It will shortly sit in other capitals and report urgently.

Victimless Crimes Seminar: The N.S.W. Government took an interesting initiative in organising a seminar on "Victimless Crimes" at Sydney, 24-27 February 1977. It was organised in association with the new Criminal Law Review Division of the Attorney-General's Department. Participants included Professor J. Caplan of Stanford University, U.S.A. and Professor S. Cohen of the University of Essex, England. Numerous local sociologists, lawyers and church and community groups took part. Although views polarised on many occasions, there can be no serious doubt of the need to bring the debate into the open in the Australian community. The N.S.W. Attorney-General Mr. Frank Walker explained the open forum in terms of this objective.

Opening the Seminar, the New South Wales Premier, Mr. Wran, criticised laws that attempted to "regulate the private moral conduct of citizens and to coerce them into what was regarded as virtue at the time the law was drawn". Speaking in the context of laws concerning drunkenness, vagrancy, homosexuality, prostitution and drug abuse, the Premier suggested that where the criminal law sought to impose a "private morality" it exceeded its legitimate function. Not everybody agreed with this. However, nude beaches, gambling casinos and liberalised censorship laws all demonstrate the changes in Australian society in the past decade. The process of change has not stopped.

Fifth United Nations Congress on the Prevention of Crime: The report of the Australian delegation led by the former Attorney-General, Mr. Kep Enderby Q.C. in Geneva, in September 1975 was tabled in Federal Parliament on 17 March. It recommends major changes in the criminal law.

Key recommendations in the report are :

- * A commission of inquiry into methods of preventing corporate and white collar crime.
- * Extension of extradition in these areas and for terrorism offences.
- * Revision and simplification of criminal procedure and evidence.
- * Concentration by police on crimes which exact the most serious economic and social costs.
- * New codes of ethics for police and like agencies.
- * New sentencing laws to promote diversion from unimaginative imprisonment.

The Commonwealth Attorney-General, Mr. Ellicott, said that the Sixth United Nations Congress would be held in Sydney in August 1980. The report says :

"The Congress will focus world attention on Australian criminal justice laws and practices and consideration will need to be given to action that might be required to update these laws and practices and to bring Australian programmes and achievements in the field to the attention of Congress participants".

Opening the Doors: Locus Standi Revisited

"The real contribution of the legal process is to ensure that disputes will be handled in a low key way, that their resolution will be a routine business, that controversy will be kept within limits and handled without passion".

Sir Leslie Scarman, *Fourth Goodman Lecture*, May 1976.

The right of people to bring cases to the courts is in the news. The Court of Appeal in England chastised British Attorney-General Sam Silkin for refusing his consent to a relator action for an injunction against a trade union, on the ground that the union was interfering with postal communications and endeavouring to procure criminal offences. The Attorney-General refused the *fiat* but the Court of Appeal, despite the refusal of the Attorney-General, asserted its jurisdiction to grant an interim injunction. *Gouriet v. Union of Post Office Workers* 21 January 1977.

This principle will no doubt be reviewed in the House of Lords. But it will also, now, be considered in Australia. On 1 February 1977 the Federal Attorney-General referred to the A.L.R.C. for review and report :

- * The standing of persons to sue in federal and other courts whilst exercising federal jurisdiction or in courts exercising jurisdiction under any law of any Territory; and
- * Class actions in such courts.

General class actions do not yet exist in Australia, although some special provisions are made, often in consumer legislation. The S.A.L.R.C. is currently examining class actions in South Australia. A report on this subject is expected soon and will be before the A.L.R.C. in its work. A "class action" is one in which, although the plaintiffs cannot prove any special, personal interest in a matter, a group of persons join together to have the law enforced. In the United States class actions have been