

Act. The A.L.R.C. report proposes that such a review should be conducted. In the case of non-business bankrupts, however, the report contains the suggestion that these should be automatically discharged from bankruptcy six months after the commencement of bankruptcy, unless objection is made in the final month by a creditor or by the Official Receiver. In that event the Court should have to consider whether it would be "unconscionable" to discharge the bankrupt, or whether he could make a substantial contribution from income towards the payment of his debts.

Put briefly the aim of the report is to channel debtors who are insolvent but in receipt of regular income into debt counselling and a scheme for repayment of debts, looked at as a whole. Where there is no regular income and no real hope of discharging debts, an improved system of bankruptcy is proposed, with consequent inhibitions on future credit raising in the modern credit society.

The A.L.R.C. report also suggests specialised investigations into:

- The great disparity in consumer credit interest rates between Australia and the United States of America. On an average price motor vehicle (say \$5,000) the additional cost of credit to an Australian consumer over what a comparable consumer would pay in the United States, might exceed \$1,000.
- Cost differentials within Australia between credit available to affluent and average citizens.

The A.L.R.C. has already had a meeting with consultants from all over Australia in relation to its general review of debt recovery procedures. Speaking at the Conference of the Australian Institute of Credit Management on 21 October 1977, A.L.R.C. Chairman, Mr. Justice Kirby, outlined a number of proposals for reform.

- Pre-action notices to include reference to debt counselling.
- Abolition of debtors' affidavits on defences to liquidated claims.
- Public examination of the debtor by a court or official to be the central debt recovery procedure.
- Imprisonment (except after criminal trial) to be abolished as part of general debt recovery machinery.

- Instalment orders to be the prime method of enforcing judgments.
- Realistic garnishment procedures and costing to be introduced.
- Consideration of a statutory right to interest in all proved debts.

The A.L.R.C. is working closely with the N.S.W.L.R.C. and State officers in South Australia on this project. A discussion paper will be produced early in 1978.

Some Interesting Annual Reports

"Whatsoever things are true, whatsoever things are honest, whatsoever things are just . . . whatsoever things are of good report . . . think on these things."

The Epistle of Paul to the Philippians, 4:8.

Three Annual Reports have been delivered in the last quarter that deserve to be noted. They show where law reform is going in Australia.

• **Administrative Review Council, First Annual Report 1977:** This report covers a year of great change in administrative law at a Commonwealth level in Australia. The developments have the potential for a revolution in judicial and other review of bureaucratic actions. In an age of big government and expanding bureaucracy, they represent Parliament's attempt to preserve humane and civilised control over the power of the Public Service.

- The Administrative Appeals Tribunal commenced operations on 1 July 1976.
- The Administrative Review Council first met in December 1976.
- The Federal Court of Australia commenced exercising jurisdiction in February 1977.
- The *Administrative Decisions (Judicial Review) Act* 1977 was assented to on 16 June 1977. It provides for expanded judicial review of administrative decisions by the Federal Court of Australia.
- The Commonwealth Ombudsman commenced duties on 1 July 1977 and has already had thousands of complaints to investigate.

The history, purposes and review of these developments are set out in the A.R.C. *Annual Report*. In his foreword, Mr. Justice Brennan, President of the Administrative Appeals Tribunal, conceded that:

“the innovations were not accompanied by much publicity or popular debate and perhaps they remain ill understood. Yet the structures of administrative review will inevitably produce changes in the citizen’s relationship with government and in the workings of the machinery of government. . . . It is hard to overstate the importance of the issues which are encompassed . . . They concern the balance between the interests of the citizen and the government, a balance which is critical to a free society.”

The A.R.C. *Annual Report* contains a history of the steps towards administrative law reform in Australia. It charts a course through the Kerr Committee, Bland Committee and Elliott Committee to the legislation set out above. The function and work of the A.R.C. are reviewed. The Council includes *ex officio* the President of the Administrative Appeals Tribunal (Brennan J.), the Chairman of the A.L.R.C. (Kirby J.), and the Commonwealth Ombudsman (Professor Jack Richardson).

The recommendations of the A.R.C. on pending legislation are noted. With two exceptions, the legislation introduced by the Government followed the A.R.C. comments. The report also contains statistical material on the workload of the Administrative Appeals Tribunal and a schedule of administrative discretions included in legislation of the Australian Parliament. The schedule indicates those that have and have not been vested in the A.A.T.

The aim of the administrative reforms outlined is for improved procedures to “trickle down” to the counter where the ordinary citizen meets the bureaucracy. The machinery does work and about half of the decisions of the A.A.T. so far have recommended review of the decision under appeal. The address of the Administrative Review Council is: Dr. G. D. S. Taylor, Director of Research, Administrative Review Council, G.P.O. Box 9955, Canberra, A.C.T., 2600.

• **W.A.L.R.C. *Annual Report 1977*:** This report contains a detailed review of the work of the W.A.L.R.C. The Commissioners describe the year under review as “both demanding and rewarding”. Six reports and six working papers were issued.

“The Commission is unique among Australian law reform bodies, both as to the number and diversity of projects which have been given it to study . . . It comprises part-time members only. The time is approaching when consideration should be given to restructuring the Commission in conformity with its developing role.”

The Commissioners state that the W.A.L.R.C. has never confined its attention to “the strictly legal aspects of problems before it”. Reference is made to the difficulty of obtaining statistical and other factual information. The work of the W.A.L.R.C. on bail procedures is given as a case in point. Public responses to preliminary suggestions have been described as “remarkable both in volume and quality”. The responses to the working paper on the Strata Titles Act were especially gratifying.

The W.A.L.R.C. report also refers to co-operation with other law reform bodies in Australia. Reference is made to the paper delivered by the Chairman, Mr. E. Freeman, to the Fourth Australian Law Reform Agencies Conference held in Sydney on 1 July 1977. In it Mr. Freeman concluded that “while joint projects were time-consuming and not without difficulty, they nevertheless should be persevered with”.

The W.A.L.R.C. and the A.L.R.C. are working closely together on their respective references on defamation and privacy. On 13 December 1977, Mr. Justice Kirby had a conference in Perth with the W.A.L.R.C. Commissioners concerning the draft uniform defamation Bill. The W.A.L.R.C. has made detailed suggestions for the improvement of the Bill. The Commissions also exchanged information on their privacy projects.

• **A.L.R.C. *Annual Report 1977 (A.L.R.C.8)*:**

This report was tabled in the last hours of the 30th Australian Parliament. It sets out a review of the completed and current projects of the A.L.R.C. Following previous reports, it is divided into:

- a review of law reform in Australia
- a report on the Australian Law Reform Commission
- a statement of the work of the A.L.R.C.

The report refers to the aim of the A.L.R.C. to “make law reform useful” in Australia. It outlines the submissions made to the Senate Standing Committee on Constitutional and

Legal Affairs. These include:

- establishment of Parliamentary and Party Committees for the regular review of law reform reports
- establishment of a national office, either within the A.L.R.C. or elsewhere for the collection and indexing of proposals for law reform made by Parliamentarians, Judges, academics and citizens. It suggests that this “could demonstrate a concern for the participation of all in legal renewal. It could be a unique Australian legal innovation of much potential utility to the Parliaments of this country”
- the need for appropriate staff and funds to complete the “Law Reform Digest”.

The report reviews the active effort of the A.L.R.C. to secure public discussion and debate of all of the references made to it by the government. It asserts a role for the A.L.R.C. “to enliven the public debate about the purposes of law and the improvement of our system”. The current state of each of the references before the A.L.R.C. is carefully summarised. Reference is also made to the special projects of the Commission including:

- The differential design of sanctions and remedies in law reform
- The general design and expression of statutes and other laws
- The study of the operation of reformed laws in practice i.e. whether they actually work once enacted
- The establishment of machinery to provide a systematic programme of law reform for the A.L.R.C., including long-run references concerned with fundamental reforms.

The report has received good editorial comment. The editorial of the N.S.W. *Law Society Journal* proclaims:

“Whatever disappointments and frustrations one may have experienced during [1977] lawyers must surely acknowledge satisfaction with one thing and that is the performance of the Australian Law Reform Commission.”

The same editorial described the “husbandry of finances” as “remarkably good”, and the abilities of present Commissioners as “outstanding”. But it calls attention to the need for a salary scale for Commissioners which would not amount to a positive disincentive to people wishing to join the Commission.

Overseas Law Reform

“Everything foreign is respected, partly because it comes from afar, partly because it is ready made and perfect.”

Baltasar Gracian,
The Art of Worldly Wisdom, 1647.

Australian law reformers continue to develop their contacts with legal systems beyond Australia, indeed beyond the common law. The A.L.R.C. report *Human Tissue Transplants* contains an epitome of statutory developments in countries as far apart (in every way) as Hungary and South Africa or Brazil and Czechoslovakia. The A.L.R.C. draft legislation draws heavily upon overseas development, including in its definition of “death” for legal purposes. Likewise the A.L.R.C. Discussion Paper No. 3 *Defamation and Publication Privacy* contains important innovations which draw heavily on the German and French right of reply. In its Annual Report, the A.L.R.C. pays tribute to the assistance it has had from Australian missions overseas. All law reform agencies throughout Australia keep close contact with sister agencies, particularly those in the English-speaking world.

The A.L.R.C. Chairman has now received word about law reform in **Sri Lanka**. Mr. Parinda Ranasinghe, Secretary of the Ministry of Justice, has reported two developments in his country of interest to law reformers in Australasia.

- A Law Reform Committee is presently engaged in the task of revising the criminal and civil procedures of Sri Lanka. The Committee is working on draft legislation. Sri Lanka has already pioneered compulsory conciliation techniques which have lessons for all common law jurisdictions.
- The government of Sri Lanka has decided to re-establish the Sri Lanka Law Commission and to entrust the general task of law reform to this body and to ensure its independence from government. The former Administration in Sri Lanka abolished the Law Commission in 1970.

Law reform is also in the news in **Fiji**. A revised edition of the Laws of Fiji is presently being prepared by the Commissioner for Law Revision. It is intended that printing will