knowledge of Australian law reform work, particularly in developing countries of the Commonwealth of Nations.

There was some discussion of the ways in which Australian LRCs could contribute to law reform in developing countries. A number of agencies indicated their willingness to accept secondment of appropriate officers from overseas law reform bodies, providing travel and funding could be arranged. Some of the overseas participants expressed the view that such secondment could provide a useful background in law reform methodology and techniques.

The closing session of the conference was devoted to an examination of evidence law reform in the ALRC and in a number of the State LRCs. The inconvenience and inefficiency of the development of significantly different evidence laws was pointed out. It was agreed that better co-operation would be established at a research level between a number of the agencies which had current projects on evidence law reform.

The conference resolved to accept a new procedure for the notification to participating agencies of new references and of initial research programmes. This new procedure will ensure that duplication of research effort is kept to a minimum, whilst leaving agencies entirely free to develop their own thinking on policy issues. It was also agreed to commend to participating agencies a recommendation to their respective Ministers that there should be improved consultation at the level of officers of the Standing Committee of Attorneys-General so that priorities in law reform projects may be better co-ordinated as between the several jurisdictions of Australia.

The next meeting of the conference will be held in Adelaide in 1982, hosted by the SALRC (Mr. Justice Zelling, Chairman). It was further agreed that the eighth Conference in 1983 will be held in Brisbane, hosted by the QLRC (Mr. Justice Andrews, Chairman). The 1983 conference will coincide with the 22nd Australian Legal Convention in Brisbane.

The sixth Conference concluded with a parliamentary luncheon given by the Tasmanian Attorney-General and address by Professor H.W.R. Wade QC. Professor Wade urged that the motto of law reform agencies could, at least sometimes, be 'leave well alone'. He instanced a number of problems which, he said, had arisen out of earlier reports of the Law Commission of England and Wales. The luncheon concluded a friendly and businesslike meeting in which the good professional and personal relationships between the Australian LRCs were reinforced.

reform action

Words are also actions, and actions are a kind of words.
R.W. Emerson, *Essays, 'The Poet'.*

a sense of concern. The opening of the 21st Australian Legal Convention in Hobart on 4 July 1981 was accompanied by a splendid fanfare, a warm welcome by the Law Council President Peter Cranswick, a tour of Federal initiatives by Attorney-General Durack and a sparkling address by Lord Chief Justice Lane of England. Typical of his urbane wit was his tribute to Lord Denning:

> [T]hat legendary figure whose name is synonymous with reform. We shall indeed need luck to replace him, should that ever become necessary.
>
> Lord Lane, *'Change and Chance in England'*, (1981) 55 *ALJ* 383, 389.

The intellectual centrepiece of the opening was the address by the Governor-General of Australia, Sir Zelman Cowen, past Dean of Law at Melbourne and one-time Commissioner of the ALRC. The speech contained a number of words of encouragement for law reformers:

> I would pay a tribute to the work undertaken at national and State levels. Leaders in the field of law reform have done and are doing splendid work in generating community awareness of the need for action in many areas; never, I think, have we had a

> greater public awareness of it. Moreover, the range, extent and complexity of the work being undertaken is very great. Law reform bodies are dealing with issues generated by rapid and complex technical change and with issues made more acute because of technological change. They are dealing with issues exposed by rapid and complex social change, and some of these raise questions of immense difficulty.

But Sir Zelman noted a point to which these pages have recurred from time to time:

> I sense, however, a concern on the part of law reform agencies that there is need to make the processes of law reform more effective. It is not the point that recommendations for reform *must* command acceptance; it is that they should command early attention and consideration, and there is a concern that the crowded calendar of government does not always make this possible and practicable.
>
> (1981) 55 *ALJ* 369, 372.

The Governor-General spoke of the special satisfaction he had felt in taking part in the Executive Council in signing into law an ordinance for the Australian Capital Territory relating to human tissue transplants, which had given effect to a report of the ALRC:

> That was a rather unusual experience: I had been a member of the Commission which worked on that matter and in my present capacity I was directly involved in the procedures by which it was translated into law.

Since adoption in the ACT, the ALRC report on *Human Tissue Transplants* (ALRC 7) has been passed into law in other jurisdictions of Australia and stands as an indication of what can be done to face up to difficult medico-legal problems. More on this below (see p. 128).

reports implemented. Successive Annual Reports of the ALRC detail the record of action on proposals for reform. Since the last issue of *Reform* a number of announcements have been made, indicating responses to ALRC reports:

- ***Police Complaints.*** Immediately following the Governor-General's speech to the Legal Convention, Attorney-General Durack reported the implementation of the ALRC first and ninth reports dealing with complaints against police. The Complaints (Australian Federal Police) Act 1981 awaits commencement but has been passed by Parliament and signed into law. According to the Attorney-General, it 'will provide an effective system to ensure that complaints by members of the public against the AFP are expeditiously and effectively investigated and dealt with'. (1981) 6 *Commonwealth Record* 914.
- ***Consumer Indebtedness.*** In July 1981, the Minister for Business and Consumer Affairs (Mr. J. Moore) released a list of detailed proposals for amendments to the Bankruptcy Act. One proposal is that, where an estate has divisible assets of less than $1,000 and no objection has been lodged, the bankrupt should be discharged after six months from the date of his bankruptcy. This proposal arises out of a review of Federal bankruptcy functions, designed to cut down on unproductive bureaucracy and regulation. A Joint Management Review queried whether any useful purpose was served, in the case of bankrupts with virtually no assets, by the requirement that they must remain bankrupt for at least three years unless they approach a court for early discharge. The material cited in support of the proposal quotes in full from the ALRC sixth report, *Insolvency: The Regular Payment of Debts.* In that report, the Commission recommended automatic discharge of non-business debtors after six months. Already legislation to reduce the period from five years to three years has been introduced. The path towards the ALRC full proposal seems to lie ahead.
- ***Sentencing Federal Offenders.*** On 7 September 1981, Senator Durack announced that legislation would be introduced in Federal Parliament in the current session concerning the

sentencing of Federal offenders. In part, the legislation would implement the proposals in the ALRC report *Sentencing of Federal Offenders* (ALRC 15). Among proposals deriving from the report, apparently to be adopted by legislation, are:

- statutory guidance to courts that a prison sentence is not to be imposed unless there is 'no other appropriate penalty';
- permission for the imposition on Federal offenders of community service orders or weekend detention in those States where such alternatives to imprisonment are already available for State offenders;
- requirement that a court will have to give its reasons in writing why no other sentence is appropriate, if a prison term is imposed on a convicted Federal offender.

Senator Durack said that the use of alternatives to imprisonment, including community service orders, have been successful in the States where they have been used. The system was cheaper than imprisonment. It prevented substantial disruption to the offender's family and work environment. The announcement by the Federal Attorney-General was welcomed by the Chief Magistrate of the Capital Territory, Mr. C.L. Hermes. Comment in the media was also generally favourable. The Melbourne *Age* (8 September 1981) declared:

> The logic of the changes is excellent. Jails are certainly a punishment for those sent to them, but a punishment exacted only at heavy cost to the community. By destroying the self-esteem of prisoners, isolating them from their families and allowing them only other criminals as friends, the prison system makes rehabilitation the exception rather than the rule.

The *Age* editorial noted that much reform remained ahead in the area of 'crime and punishment':

> It was a pity that Senator Durack did not simultaneously pick up other aspects of the Law Reform Commission's report on Sentencing, from which this move derives. The Commission also proposed that guidelines be formulated for judges and magistrates to ensure consistency in punishments for similar crimes. Whether the initiative comes from the Commonwealth or the States, some such reform is needed to improve the certainty of justice as well as its humanity.

The editor of the *Canberra Times* (10 September 1981) wrote to similar effect, with some cautionary observations about law reform thrown in:

> Law reform in Australia is reminiscent more often than not of St. Augustine's most often remembered thought: 'God grant me chastity, but not yet'. And that brings to mind Empiricus' quotation: 'Though the mills of God grind slowly ...' But, regrettably, government announcements of law reform do not harken always to the spirit of the remainder of that quotation, '... Yet they grind exceeding small'.
>
> And so it is with proposed legislation announced by the Attorney-General, Senator Durack, last weekend, respecting the sentencing of criminals for ACT and Federal offences. Senator Durack's proposals, stemming from a Law Reform Commission report, are entirely commendable — but they have been a long time in coming and, as enunciated so far, they are remarkably lacking in detail.

The editorialist commended Senator Durack as having 'brought about some notable reforms both in legislation and in the courts'. Obviously, however, it contemplated further action in the area of sentencing:

> [A]nother, more important form of equality proposed by the Law Reform Commission report, guidelines for magistrates and judges to ensure consistency in punishments for similar crimes, did not rate a mention in Senator Durack's announcement. In fact, Senator Durack said a year ago that the Commonwealth 'would wish to avoid taking any initiatives for uniformity in this area which would have the effect of creating apparent anomalies in State Courts or apparent discrepancies in the treatment of detainees in State prisons. Regrettably thc anomalies and discrepancies are all too apparent from figures showing the number of prisoners per hundred thousand population in each State and Territory. ... It is not possible to believe that levels of crime vary so widely. ...

reports about progress on other a l r c reports

- The report on defamation law reform was before the last meeting of the Standing Committee of Attorneys-General and it seems that progress towards uniform legislation is being made;
- The report on *Lands Acquisition and Compensation* (ALRC 14) is about to surface following intensive interdepartmental consideration (in Canberra) of the reform proposals;
- The Criminal Investigation Bill based on the ALRC's second report, is said to be nearing reintroduction into the Parliament.

proposals rejected. One report of the ALRC has not fared so well, at least at a Federal level. The report, *Insurance Agents and Brokers* (ALRC 16), suggested certain changes to the law governing insurance intermediaries and Federal legislation for the regulation of insurance brokers. See [1981] *Reform* 53. In a statement to Parliament on 10 June 1981, the Federal Treasurer, Mr. Howard, as Minister responsible for insurance matters, announced that the government had decided against the ALRC proposals for regulation. It was the government's view that there should be intervention in commercial relationships only if 'a clear need' was demonstrated for regulatory legislation. The government did not believe that such a need had been established by the ALRC or by other insurance industry advocates of legislative regulation of brokers. Also rejected were the recommendations for financial compliance requirements, compulsory indemnity, fidelity guarantee insurance and prohibitions on certain relationships between brokers and insurers. The Treasurer said that the proved losses from broker insolvency represented less than 0.1% of premiums handled by brokers and most losses had been suffered by businesses rather than individual consumers. The Opposition spokesman on insurance matters, Mr. Ralph Jacobi, criticised the decision contending that protective legislation was needed. He noted that all but two of the States had announced their intention to establish their own protective legislation which, he said, would result in a 'plethora of miss-matched, inefficient State laws'. The Life Insurance Federation of Australia also criticised the decision against legislation. The Executive Director, Mr. N. Renton, who had been a consultant to the ALRC project, declared that State laws would run a 'poor second' to national legislation for control and regulation of the insurance industry.

Speaking to the Tasmanian Institute of Directors and Chamber of Commerce in Hobart in July 1981, the ALRC Chairman indicated that the Commission had taken into account the economic consideration involved in regulatory control:

> Between 1970 and 1979, 27 insurance brokers in Australia collapsed. Their known losses amounted to some $7.25 million. Their actual losses probably exceeded $10 million. The sum of known losses has doubled to $15 million in the 18 months since the Law Reform Commission's report was delivered. A large proportion of these losses was ultimately borne by the insuring public. ... The Commission examined various alternatives by which the law, and law reform, could cope with this problem. ... In the end, the Commission opted for a modest form of regulation by way of registration of insurance brokers. ... Anti-competitive limitations were avoided. The administrative costs involved were to be borne by brokers themselves. It was estimated that two government employees only would be required to run the new system.
>
> M.D. Kirby, 'The Law, Business and Milton Friedman', Address to the Institute of Directors (Tasmania) and Chamber of Commerce, Hobart, 7 July 1981, *mimeo*., 4-5.

Legislation for licensing insurance brokers has already been enacted in Western Australia and has been promised in other States. Meanwhile, in the Australian Senate, following the resumption of Parliament, the Shadow Attorney-General, Senator Evans, has introduced an Insurance (Agents and Brokers) Bill 1981, based on the ALRC report. Speaking in opposition to the Bill, Senator Dame Margaret Guilfoyle, for the government, acknowledged the problem of disuniform State laws:

> It is well recognised that a number of States either have legislated or are foreshadowing legislation in this area. To the extent that the interested parties feel that it is important to achieve consistency between State legislation ... the government stands ready to assist in that process.
>
> CPD (Senate) 19 August 1981, 92.

vast and timeless abyss. Complaints about law reform inaction are endemic and not confined to Australia. The *Times* of Papua New Guinea, 20 August 1981, contains an analysis of the 1980 Annual Report of the PNGLRC. After listing the reports upon which the PNG Parliament had done nothing, the writer, in the 'Law' column, diagnoses the problem as the opposition of powerful lobby interests, including the police in respect of criminal justice reform and big business in respect of limited consumer protection reform.

> Looks like the prospects for real law reform in Papua New Guinea are grim. ... Do we get value for money? The Commission has done a lot of useful research. But if Parliament doesn't take action? Then it is mostly window dressing.

Let the last word on this topic be had by the doyen of currently serving LRC Chairmen in Australia, Mr. Justice Zelling, Chairman of the South Australian LRC. In a book review published in (1981) 9 *Sydney Law Review* 503, Mr. Justice Zelling reviews the present situation of law reform in Australia today:

> It is an impressive record of achievement. And yet the slowness and selectiveness of enacted law reform troubles me deeply. As long as we only recommend procedural and cosmetic reforms, Parliament takes legislative action within a more or less reasonable time. As soon as we venture to deal with larger themes for a newer Australia, the report falls into a vast and timeless abyss. Of the 60-odd reports of my own Committee to date, five really broke some new ground, Aids to Interpretation of Statutes, Newer Forms of Paternity Identification, Privacy, A Legal Regime for Solar Energy and Class Actions. Not one of these five has become law. Only one, Privacy, failed after the Attorney of the day took action, only to be defeated in Parliament. The others are in limbo. Every law reform agency has its own catalogue. Everyone who has studied the history of the Reformation knows that far reaching and feasible schemes of canon law reform preceded it — drawn up by men at least as devoted, and as godly, as the root and branch reformers. And yet the gradualist reformers ... went down to defeat. Is it to be once again the old story that those who will not read history are doomed to repeat it and that gradual law reform will be implemented too late?

bureaucratic law

> Bureaucracy is a giant mechanism operated by pygmies
>
> Honoré de Balzac (1799-1850).

out of the jungle? No area of Federal law reform in Australia has seen such radical and pervasive changes as the administrative law reforms enacted by successive Federal Governments in the past six years. The key enactments have:

- established a comprehensive Administrative Appeals Tribunal (AAT);
- created a general Administrative Review Council;
- set up a Federal Ombudsman;
- reformed and simplified judicial review of Federal administrative acts;
- provided for greater freedom of access to government information.

The breadth of the reform has elicited gasps from some overseas observers. This is even more remarkable because administrative law reform is now decidedly in fashion. One of the Ministers appointed by President Mitterand upon the change of government in France, M. Anicet Le Pors, is specifically designated Minister for Administrative Law Reform. He is a communist, one of the three in the new French administration. He tackles an administrative law system which is sophisticated and long-established. The Australian experiment is the most comprehensive in a common law country.

At the Australian Legal Convention in Hobart in July 1981, papers by Professor H.W.R. Wade and Lord Lane dealt with administrative law developments in England and Australia. Lord Lane was full of praise for the