

reform

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

Editor: Mr Justice Kirby

april 1983 no. 30

in this issue

new regime	46	admin reform again	75
reform machinery	50	prosecuting crime	78
bioethics 83	54	odds and ends	82
fire, floods and dams	57	new reports	86
what does it mean?	62	new references	87
reform in the west	65	what's going on in the LRC's	87
courts' reform	68	personalia	89
teach law	72		

new regime

The worst thing in this world, next to anarchy, is
government

H W Beecher, *Proverbs from Plymouth Pulpit*, 1887

ballots and bullets. Abraham Lincoln declared that 'ballots are the rightful and peaceful successors to bullets'. In the last quarter, Australia changed two governments : the Federal Government and the Government of the State of Western Australia. In both cases the Opposition led by the Australian Labor Party triumphed in the ballots. A change, peaceful but profound, has come upon the political

scene. Although outgoing Federal Attorney-General Durack was re-elected to the Senate, Mr Neil Brown QC, former Acting Attorney-General, whose career was noted in the last issue of *Reform* (see p.42) lost his seat in Parliament. The Hawke Labor Government has a majority in the House of Representatives of 25. The incoming Federal Attorney-General, Senator Gareth Evans, is no stranger to law reform. He was one of the Foundation Commissioners of the ALRC. Details of his earlier career are noted in [1976] *Reform* 13 and [1978] *Reform* 20.

During the election campaign, the incoming Prime Minister, Mr Hawke, announced a comprehensive program of law reform for the new Australian Government:

- additional and more cost-effective legal aid funding;
- a national Bill of Rights and major improvements in the law of discrimination and criminal investigation;
- upgrading the role and effectiveness of the Human Rights Commission;
- rewriting the Freedom of Information Act, fully to implement the principles of open government;
- progressive establishment, in co-operation with the States, of a national no-fault accident compensation scheme;
- updating of the Family Law Act;
- creating of a national Law Reform Advisory Council, with representatives from law reform agencies and both sides of politics in every Parliament to co-ordinate uniform law reform developments.

extraordinarily impressed. On 24 February 1983, in the midst of the election campaign, the incoming Attorney-General, Senator Evans, launched the full details of the law and justice policy of the Australian Labor Party. He was flanked by the Attorneys-General for NSW, Victoria and South Australia. The Victorian Attorney-General and State Premier, Mr Cain, is, like Senator Evans, an alumnus of the ALRC. Senator Evans committed the incoming government to close attention to ALRC reports. He criticised the outgoing government's 'lethargic attitude' in allowing eight important references of the Commission to lie idle 'despite their widespread support inside and outside the legal profession'. He promised early attention would be given to the 'neglected reports' of the ALRC on Criminal Investigation (ALRC 2), Sentencing (ALRC 15) and Child Welfare (ALRC 18). He said that the work of the

Commission had 'extraordinarily impressed the Labor Party because of its quality and quantity'.

Earliest action by Attorney-General Evans can be expected on two measures which, on the dissolution of the Parliament, were already before it:

- Insurance (Agents & Brokers) Bill 1981. This Bill, based on ALRC 16, was introduced into Parliament by Senator Evans as a Private Member's Bill following the rejection of the ALRC report by the outgoing government. The Bill passed the Senate and had the support of many members of the outgoing government. It also had the support of much of the insurance industry and consumer groups. Early reintroduction of the Bill seems likely.
- Criminal Investigation Bill 1981. The commitment to the introduction of criminal investigation legislation is not remarkable. Senator Evans was the principal author of the ALRC report on which the Criminal Investigation Bill was based. The Bill has gone on through three drafts since first settled by Senator Evans in the ALRC in 1975. Much interest will focus on the modifications Senator Evans accepts. Informed observers count ALRC 2 as one of the best ALRC reports for its economy of language and penetrating analysis of criminal investigation law.

human rights. Also not surprising for those who know Senator Evans' career is his emphasis on human rights machinery. With typically colourful language, he condemned the outgoing government's record in civil liberties as 'an abominable mixture of authoritarianism and lethargy'. He cited the 'sacking' of Mr Al Grassby as Community Relations Commissioner, the failure to ratify international human rights treaties, the

attempt to prevent access to information in the defence papers case, the resurgence of film censorship and what he described as 'alarming provisions' in legislation relating to atomic energy, narcotics control, national security and the new Crimes Commission. Among 'key elements' in the new Government's human rights policy are:

- ratification of all applicable international human rights conventions and treaties;
- enactment of a national Bill of Rights;
- enactment at both Federal and State levels of detailed legislation for the protection of human rights in 'areas of particular complexity' including privacy and police powers;
- creation of a 'more effective' national Human Rights Commission with power not only to educate people but 'to effectively enforce' human rights.

In an interview given to the *National Times* (26 February 1983) Senator Evans commented on the 1973 Human Rights Bill in which he was closely involved under Attorney-General Murphy. He said that that Bill had produced 'a crazy, irrational reaction; some groups felt they were being threatened by the centralist, socialist hordes'. Accordingly, Senator Evans indicated that he would have the law enacted to 'give judges time to learn to interpret it correctly' before trying to incorporate it in the Constitution. In this respect, the course he plans is similar to recent developments in Canada. See [1982] *Reform* 79.

detailed program. Even critics of the incoming Attorney-General have conceded his 'sheer dedication and ability'. These qualities can be found in the extremely detailed and comprehensive program listed in the law and justice policy of the new government. In addition to the matters mentioned by the Prime Minister and by Senator Evans above, there are numerous

detailed proposals for Federal law reform legislation. They are wide-ranging and include:

- establishment, in co-operation with the States, of a single uniform system of courts throughout Australia;
- final abolition of appeals from State courts to the Privy Council;
- widening the range of aids to statutory interpretation;
- review of the structure, functions and powers of the Crimes Commission;
- appointment of a Federal Director of Public Prosecutions;
- institution of the inquiry into the law of matrimonial property recommended in 1981 by the Ruddock Parliamentary Committee; and
- review of the law on *de facto* relationships.

On 24 February 1983, Senator Evans also announced with the then Shadow Minister for Business & Consumer Affairs, Mr John Brown, the business regulation policy of the ALP. The policy included:

- attention to the funding of the National Companies & Securities Commission and the Trade Practices Commission;
- adoption of the principle that further business regulations will only be undertaken 'in order to deal with clearly defined needs';
- introduction of the insurance broker legislation as proposed by the ALRC;
- establishment of a prices surveillance authority as part of the new government's prices and incomes policy; and
- new emphasis on uniformity of legislation, through co-ordination with the States and drafting model laws.

constitutional reform. At a luncheon given by the Victorian Society of Labor Lawyers on 28 February 1983, Senator Evans

announced initiatives on constitutional law reform. His interest in constitutional law reform is one of long standing. As a law teacher at Melbourne Law School before entering Parliament, he taught Constitutional Law and he has written widely on the subject. Before the election he was completing as co-author a publication for the constitutional review project of the Law Foundation of New South Wales. See [1982] *Reform* 81. Now, as Federal Attorney-General, he will have the opportunity to push some of his proposals in the Federal Executive Government. Amongst items in the program announced on 28 February were:

- the holding of a referendum on four-year, fixed term Parliaments;
- limitation of double dissolutions of the Senate and House of Representatives of the Australian Parliament to 'genuinely unresolvable deadlock situations';
- an attempt to engage Australia-wide discussion of constitutional reform as a matter of 'cross-party' and 'cross-country consensus'.

Commenting on the proposals for constitutional reform, Senator Evans said:

A Labor Government would adopt a hasten-slowly consensus-building approach ... The real need is to get people at large involved and interested in the constitutional reform process: politicians will respond quickly enough when they hear the wheels squeaking. I believe we can do this by setting the 1988 Bicentenary Year as a target date for a major renovation effort, and opening up the present parliamentarians' constitutional convention at least partially to direct popular election'.

beta minus. The new leader of the Federal Opposition, Mr Andrew Peacock is a Melbourne lawyer with a keen interest in law reform. His Deputy, Mr John Howard, the former Treasurer is a Sydney lawyer. The outgoing Federal Attorney-General, Senator Peter Durack, Q.C. was returned as

a Senator for Western Australia and is Deputy Leader of the Opposition in the Senate. Among promises made by the Liberal Party during the election campaign, relevant to law reform, were a number of items common to the policy statements of the new Federal Government:

- proposals for an integrated courts system;
- introduction of family law reform;
- provision of legislation to prohibit discrimination on the grounds of sex and marital status; and
- reintroduction of the Criminal Investigation Bill.

Before the election was called, the ALRC Chairman, Mr Justice Kirby addressed the National Convention of the Young Liberal Movement in Adelaide on 15 January 1983.

In the course of his address, he said that 'hard times' could be made times of achievement for law reform because such reform often involved 'little marginal cost' in giving attention to 'injustices long neglected or new problems put to one side as too difficult'. He said that though there had been important achievements in Federal law reform under the Coalition Government Australia was not 'at the top of the class' when compared with other Western democracies:

'Taking into account all the problems that stand in the way of achieving law reform in a Federal country, one must still say that the Australian record is only fair: about a B-minus. We are not at the bottom of the class. We have many achievements, including recent achievements in the Federal sphere. But we are not at the top of the class either. The chief enemies of reform action remain not frank, political opposition, but institutional resistance, slow public service processing of reports, the tendency to re-examine every word of a report, to throw proposals publicly canvassed to the closed door meetings of interdepartmental committees where they brood for months and even years on thoroughly researched law reform proposals, insufficiently stimulated into prompt action by Government or Parliament'.