quiring that warnings given on products be considered when assessing the safety of goods and that user conduct should be a ground for reducing compensation when that conduct has contributed to injury, or for denying compensation altogether when the conduct has effectively been the sole cause of injury.

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13th australasian law reform agencies conference

> Clapping with the right hand only
> will not produce a noise.
>
> Malay proverb

The 13th Australasian law reform agencies conference was held in Canberra on 3 September1988. It was hosted by the Australian Law Reform Commission.

Delegates attended from the Administrative Review Council; Research School of Social Sciences, Australian National University; New Zealand Law Commission; Northern Territory Law Review Committee and the Law Reform Commissions of Queensland, Papua New Guinea, New South Wales, Victoria, Western Australia and the Australian Law Reform Commission. The newly appointed Tasmanian Law Reform Commissioner, Mr Justice Cosgrove and his assistant, Terese Henning, also attended.

ministerial address. Senator MC Tate, the federal Minister for Justice, gave an address entitled 'The Process of Effective Criminal Law Reform: Some Considerations'. Senator Tate drew attention to the consolidation and revision of criminal laws in the Commonwealth and to the diversity of approaches in respect of offences and penalties. He argued that LRCs might be most effective in their operations if they were more closely linked to the parliamentary process. He reviewed the powers contained in the National Crime Authority Act, and commented on recent New South Wales anti-corruption legislation and the possible prejudice that could arise from pre-trial publicity and self-incrimination as a result of public hearings. Senator Tate also commented on sentencing, proceeds of crime legislation, and mutual assistance to international law enforcement agencies and courts.

Means by which representatives could meet with parliamentary committees when their reports were tabled were discussed.

the role of the attorney-general's department in law reform. The Secretary of the Commonwealth Attorney-General's Department, Mr Pat Brazil, had prepared a paper on the role of the Commonwealth Attorney-General's Department in the law reform process. The paper focused on the interface between his Department and the process of implementing law reform in Australia.

departmental initiatives in law reform. The paper outlined some of the major law reform initiatives currently being undertaken within the Attorney-General's Department. They include the Gibbs review of Commonwealth Criminal Law; the reform of statutory interpretation; the Australian Securities Commission proposals with respect to the Co-operative Companies and Securities scheme; and a departmental submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs in relation to its inquiry into mergers, takeovers and monopolies.

implementation of ALRC reports. In his paper, Mr Brazil pointed out that there are currently five ALRC reports currently being considered by the Attorney-General's Department. They are *Sentencing; Service and Execution of Process*; *Evidence*; *Contempt*; and *Matrimonial Property.* Recommendations with respect to the last mentioned report are with the Attorney-General.

In his paper Mr Brazil used the example of the Evidence report to show how the Department goes about its consideration of a report once it has been tabled.

The Evidence report is currently being analysed by the Justice Division of the Attorney-General's Department. The Department is seeking the views of interested persons and organisations including State governments. Both the Standing Committee of Attorneys-General and the Special Committee of Solicitors-General are taking a keen interest in the report.

The Department will make a submission to the Attorney-General about the report probably in March 1989. If the Attorney approves the recommendations a Cabinet submission will be prepared seeking the approval of Cabinet for the necessary action to implement the report. Following Cabinet endorsement, the necessary legislation is drafted taking into consideration the draft legislation contained in the report.

Mr Brazil specifically noted that implementation of all LRC reports is a regular agenda item on the agenda of the Standing Committee of Attorneys-General (SCAG).

legal consequences of closer economic relations. The Rt Hon Sir Owen Woodhouse, President, Law Commission of New Zealand, delivered an address entitled 'Legal Consequences of Closer Economic Relations between Australia and New Zealand'. Sir Owen pointed to the important contribution to be made by law reform agencies in the light of the recent Closer Economic Relations (CER) agreement signed by Australia and New Zealand. Harmonisation of laws would relate to a whole series of matters, including company securities, security industry regulation, takeover law, insolvency etc. The agreement also covered consumer protection, sale of goods and services, copyright, intellectual property, and reciprocal enforcement of court decisions in each country.

The Hon Justice Elizabeth Evatt, President of the ALRC said that the ALRC would be willing to act as a clearing-house for any work or thoughts that may arise in relation to the CER agrement. There needed to be a framework of laws affected and of work undertaken everywhere on those laws.

interstate co-operation/uniform development of law. The Conference considered a paper by Mr D St L Kelly, Chairperson, VLRC, and Ms Helen Gamble, Chairman, NSWLRC on 'Interstate Agency Co-operation, in conjunction with a paper by Professor Paul Finn, Australian National University.

Over the years a number of initiatives had come from the ALRAC aimed at improved uniformity of laws. Indeed, ALRAC had already proposed to SCAG ways in which LRC's could play a more significant and useful role in improving uniformity throughout Australia. In the last two years papers had been presented proposing different methods of achieving uniform law reform. However, SCAG had made clear that each LRC should go to the Attorney in its own jurisdiction and that that Attorney should raise the matter, if he or she thought fit, with SCAG. The Kelly/Gamble paper suggested that such approaches had been attempted, but had not been effective in promoting law reform uniformity throughout Australia. One option that was suggested to the Conference concerned a greater role for SCAG.

The agenda of each meeting of SCAG is determined by a meeting of officials held two weeks before the SCAG meeting. It was suggested that LRCs could engage in closer consultation with officials as well as their ministers. If officials were involved more at the early stages of references, there would be a role for the officials group to consider which of the proposals put forward by LRCs might be appropriate for uniform law proposals. It was also suggested that the question of uniformity of laws between New Zealand and Australia would be appropriate for consideration by SCAG. In regard to State concerns, it was suggested that SCAG should be asked to include a standing item of law reform commission references involving proposals for uniformity. A precedent existed in SCAG in relation to reports from the Australian Institute of Judicial Administration.

Professor Finn (Australian National University), in commenting on the papers before the Conference, instanced trust laws, where variations between States were very marked. A committee drawn from members from all States had produced a trusts model code, copies of which were distributed to representatives at the Conference. He discussed the feasibility of setting up in Australia a body similar to the American Law Institute, which takes as its province the common law, not legislation. It wished to see the common law developed through the initiative of the profession, the judiciary and the universities, accepting that the legal profession had a significant role to play. For example, the law of contract is in a state of complete evolution. He suggested the setting up of a body whose object was not to produce re-statements of the law; rather to attempt to produce prospective statements of the law. Judges were calling for guidance as to future directions in the law. Courts were taking a much more active role in the evolution of the common law, and anything that assisted in an ordered evolution would be helpful. Professor Finn suggested that if common law could be developed systematically, the pressure on LRCs to give *ad hoc* responses to perceived problems in common law would disappear.

Ms Gamble said that the VLRC and the NSWLRC have standing references from their attorneys to monitor and keep an eye out for projects being undertaken by other law reform agencies in which they might share. They had responsibilities to inform their Attorneys of such projects. In practice, it involved telephone calls and liaison between commissions to discuss whether co-operation was likely or possible on new references.

Although co-operation between New South Wales and Victoria had run into every conceivable problem, Ms Gamble felt that in some ways it had been a success. It would be likely that on some projects agreement would not be achieved. However, she was optimistic and the two States were working well together in this regard. The four projects on which the two States and ALRC were continuing to work together were: informed consent to medical treatment; product liability; state guarantees of land titles; and alternative dispute resolutions.

Ms Gamble concluded that contact with other commissions was very valuable at all levels in terms of being aware of the work of to the commissions, co-operating in the consultative process, and at the personal level.

law reform advisory council. Ms Skene (VLRC) adverted to the proposal for a law reform advisory council which had been proposed by Senator Gareth Evans in 1983, to comprise 17 members, 8 from the existing agencies, 8 appointed by the Commonwealth and States and the Northern Territory and one representative from the Law Council of Australia. The proposed council envisaged by Senator Evans would develop a priority program for uniform law reform. It would recommend the assignment of particular projects with the relevant Attorney-General's consent to one or more agencies. The council would consider agency reports as to whether they would be appropriate vehicles for uniform law and would review reports which resulted from uniform law. Presumably, the council would be funded jointly by the Commonwealth and States and would make an annual report to each jurisdiction's minister, who would then table it in parliament. It would be provided with a small secretariat in conjunction with SCAG.

an australasian commission? A further option outlined by Ms Skene was an Australia-wide law commission – perhaps an Australasian commission. Such an option would be compatible with the suggestion by Sir Owen Dixon in 1957. Such a body would not be exclusively federal, but would contain representatives of law reform commissions of States and Territories. SCAG would appoint members and decide what matters to refer to it. Its reports would be tabled in relevant parliaments. An analogy with such a body would be the Criminology Research Council.

The proposed Australasian law commission would replace all existing State and Territory commissions. It would be able to suggest a program of law reform to SCAG, and might also be given power to deal with the community in law reform matters without receiving a special reference. The organisation and location of such a commission might give rise to difficulty. There would seem to be a case for the Commonwealth having a greater voice on the commission than any other single jurisdiction. One possibility would be three members to represent the Commonwealth and one member for each of the States and Territories. The commission might be located in Canberra but that could be a matter for further discussion.

After discussion, and with the Queensland representatives dissenting, the Conference agreed to the following resolutions:

- ALRAC should have a standing agenda item called 'Uniform Law' to discuss and promote co-ordination of references on specific topics.
- All Commissions should where appropriate seek standing references to review and report on matters which have been the subject of references to other Commissions.
- A liaison committee be established to consider ways in which law reform agencies in Australia and New Zealand can assist with the process of harmonising business law in terms of the Memorandum of Understanding of the two Governments signed at Darwin on 1 July 1988.

distribution of references, new items and programs. It was suggested that information on current references before law reform bodies be provided quarterly, synthesised on a subject by subject basis in order to show who was working on what related subjects at any one time. *Reform* already contains this information but it is organised in a way which makes analysis on a subject by subject basis rather difficult. *Reform* was suggested as the appropriate vehicle for the dissemination of this information and the ALRC undertook to revise this section of *Reform.*

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matrimonial property agreements

> I read about divorce, and I can't see why two people can't get along together in harmony, and I see two people and I can't see how either of them can live with the other.
>
> Franklin P Adams,
> *Nods and Becks*, 1944

rent a judge. Australia's first private rent-a-judge service has started in central Victoria. Similar agencies are big business in the United States. The service is run by Mrs Peg Lusink, who retired from the Family Court Bench last year. Now she is approached by solicitors who believe she can help reach a settlement out of court between people who have not reached agreement on the division of matrimonial property but wish to avoid a possibly bitter protracted and costly battle in court.

informality. Conferences with Mrs Lusink usually last less than a day. They are free of the formality of a court hearing and the parties share the cost. Mrs Lusink listens to the problems, suggests a solution and then drafts a statement setting out the result. Both parties sign the statement, which the solicitors then take to court as a consent agreement. She has dealt with about 30 cases privately, of which only one – her first – failed to result in a court order formalising the outcome. By drawing on the experiences of hundreds of cases heard on the Bench, Mrs Lusink has come up with solutions that eluded the solicitors. But she acknowledges that she has done some learning on the job. After her first case, she said, the wife went home and changed her mind and the agreement broke down. Since then, Mrs Lusink has got both parties to sign the resultant agreement on the spot and all the agreements have held, although there is no legal force behind her proposals.

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