THE VICTORIAN CHIEF JUSTICE'S LAW REFORM COMMITTEE

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The process of law reform in Victoria remains to most students and, one suspects, many practitioners a rather vague and mysterious facet of the legal system. One understands that it does take place but it is sometimes hard to see how and, equally important, where. In this article, Mr O'Brien examines the work of the Chief Justice's Law Reform Committee, looking at its history and structure and the way it is organized to best carry out its task. A substantial Appendix has been added, which should be invaluable to the student of law reform in this State.

I INTRODUCTION

This article will be concerned with one of the oldest established law reform agencies in Australia, the Chief Justice's Law Reform Committee of Victoria. The activities of the Committee from its inception until the end of 1971 will be outlined in detail with particular emphasis on its organization and achievements. The major sources used in the preparation of this article were the *Minutes of Meetings of the Chief Justice's Law Reform Committee*[1] and files relating to the activities of the Committee kept at the Law School of the University of Melbourne and at the Supreme Court Library.

II FOUNDATION AND DEVELOPMENT

In late August 1944 Sir Edmund Herring, who had been created Chief Justice only seven months before, organized a meeting[2] in the Judges' Conference Room in the Supreme Court 'to consider the necessity of forming some permanent body within the legal profession to formulate schemes for reform of the law on non-political lines' (p. I). From this meeting there emerged the Chief Justice's Law Reform Committee.

Herring C.J. had recognised that the economic basis of Australian life had been altered by the second world war and that there was a role for lawyers in bringing about the necessary changes in the infrastructure of

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[1] As citations to the *Minutes* are frequent they have been incorporated in the text where possible and will be found in round brackets; those references in Roman numerals refer to the handwritten minute book of the 1944-55 period and those in Arabic numerals refer to the more recent *Minutes*.

[2] Present at the meeting were Herring C.J. (in the Chair), O'Bryan J., Mr C. F. Knight (Secretary to the Law Department), Professor G. Paton, Mr A. Dean, K.C. (Bar Council) and Mr E. L. Piesse (Law Institute). The meeting was held on 31 August 1944.

our society. Legislative deadwood had to be swept away and new laws had to be fashioned to meet the demands of the post war years. The Chief Justice was greatly impressed by the law reform work that had been carried out in England prior to the war and it is clear that his Committee was roughly modelled on the Lord Chancellor's Committee which was established in 1934.[3]

From 1944 to 1971 (inclusive) the Committee met on 96 occasions[4] and 175 matters were considered at these meetings. The work of the Committee has not been spread uniformly over this twenty-six year period.[5] In three years 1949, 1952 and 1953, the Committee did not meet and in a number of others there were only one or two meetings.[6] Apart from 1960[7] and 1961 there have been four or more meetings every year since 1957.

With the exception of one meeting in 1946, when the chair was taken by Fullagar J. in the absence of the Chief Justice on circuit, and of three meetings in 1951-52, when Lowe A-C.J. stood in for Herring C.J. who was overseas, the chair was occupied by the founder of the Committee at all meetings from August 1944 to March 1957. It was in 1957 that Herring C.J. was forced permanently to relinquish the chairmanship of the Committee. The burden of the public and private duties of the Chief Justice, including those inherent in the office of Lieutenant-Governor, compelled Sir Edmund Herring to delegate to O'Bryan J. the running of the Committee (p. 12), though this does not mean that Herring C.J. lost all interest in the work of the Committee after 1957.[8] Like his predecessor, Winneke C.J. has been prevented by other duties from taking an active role in the work of the Committee although an interest in the Committee is shown by regular attendance at meetings, from 1954 until his elevation to the Bench in 1964, as Solicitor-General, and by the personal appointment of Sir George Paton to the Committee in 1968. When O'Bryan J. was forced by poor health to resign from the Committee in November 1961,[9] his Honour was succeded as Chairman by Smith J. who has retained this position ever since.

[3] Notes prepared by Herring C.J. for the meeting of 31 August 1944 and Coghill, 'Law Reform in Victoria' (1946) 3 *Res Judicatae* 69, 70.

[4] These include two meetings in 1959, one in 1963 and two in 1964 which are technically adjournments of earlier meetings. They have been recorded separately because the same people did not attend the original and adjourned meetings.

[5] For details of the work of the Committee see part V *infra*.

[6] There was one meeting in 1961. In 1947, 1950, 1954 and 1956 there were two meetings.

[7] Three meetings were held in 1960.

[8] In 1959 Herring C.J. requested the Secretary to continue sending him the Minutes of each meeting (letter, 13 May 1959) and on a number of other occasions referred matters to the Committee for consideration. In late 1963 His Honour chaired a subcommittee set up to consider the need to amend the Evidence Act 1958.

[9] The infrequency of meetings in 1960 and 1961 (see *supra* nn. 6-7) can probably be accounted for by the Chairman's health.

It is suggested that the transfer in 1957 of the chairmanship to a puisne judge with more time available to devote to the Committee's needs was one reason for the greater activity of the Committee since that date. Another cause of the increased efficiency of the Committee may well have been the transfer of the general administrative and secretarial work of the Committee to the Law School of the University of Melbourne in September 1956. Professor Z. Cowen, Dean of the Faculty of Law, 'indicated that the Law School would [also] be prepared to . . . report on amendments and new legislation passed in the various common law jurisdictions which might be relevant to Victoria' (p. 2). The reason for this organizational change had two elements. First, the Supreme Court Librarian, Mr E. H. Coghill, who had acted as Secretary to the Committee since 1944, was made a Master of the Supreme Court in 1956 and so was forced to resign from the Committee. Secondly, it seems that the Law School desired to participate in law reform work and the appointment of a new Secretary offered an ideal opportunity for entry into this field.

In most other respects the organization of the Committee has not changed radically since 1944.[10] In retrospect the two watersheds in the development of the Committee seem to have been 1956-57, and 1961-62 The former coincides with the first change in chairmen and the change in administrative machinery, and the latter with Smith J. taking over as Chairman.

III THE ROLE OF THE CHIEF JUSTICE'S LAW REFORM COMMITTEE

A Variety of Views

The role envisaged for the Chief Justice's Law Reform Committee by its founder was to consider

> reforms which required the action of Parliament, but which were not of a contentious nature, and which it could be hoped that Parliament would accept if recommended to it by some qualified non-partisan body (p. I).

Herring C.J. classified the reforms in question as

(i) the abolition of obsolete and useless rules, and
(ii) amendments to improve existing laws.

The views that have been expressed by members of the Committee over the years indicate differing interpretations of the ways open to the Committee for reviewing the law. Most tantalizing is the noting in 1957 of a discussion of the function of the Committee as an originating committee on matters of law reform (p. 13). The *Minutes,* alas, give no details of the arguments put to the meeting. There have been a number of positive statements made at infrequent intervals both on what the Committee should consider and on what it should avoid. They demonstrate

[10] For full details of the organization of the Committee see *infra* part IV.

the vagueness, perhaps the deliberate vagueness, that surrounds the definition of the Committee's function.

It has been said that 'the Committee should deal only with significant matters of principle and not with details of drafting'.[11] Its function is to consider matters involving 'the interpretation or practical administration of the law' (p. 9, 1957). 'Matters of technical law' are of the kind that should be referred to the Committee for its advice.[12] More recently the present Chairman, Smith J., has indicated that the Committee's approach has been flexible and the success of the Committee has stemmed from this flexibility and from 'the fact that it [has] dealt in the main with broad measures rather than measures of small detail' (p. 119, 1964).

But what is a significant matter of principle? What is a matter of technical law? Of what meaning is the distinction between broad measures and measures of small detail when recommendations for reform put forward by the Committee since 1944 have ranged from amendments to a single section of a statute to draft Bills of great length and complexity? To some extent these questions are rhetorical. There is no objective answer to them as may be seen from the conflicting attitudes of Committee members towards 'technical' laws and the drafting of reforms.

Contrast Professor Cowen's statement that the Committee might give useful advice on matters of technical law[13] with the resolution of the Committee concerning a request from the Attorney-General to consider the jurisdiction of the Courts of Mines. It was decided *inter alia* that as the question of jurisdiction was

> largely a technical matter, the position in relation thereto should be investigated by a competent authority with a view to framing suitable legislation thereon (p. 13, 1957).

A reconciliation can be contrived if the phrase 'technical law' is interpreted as simply meaning a question of law in contrast with a question of policy and 'technical matter' is interpreted as meaning a question involving specialised factual knowledge. It would be proper for the Committee to enquire into the former while it would not be feasible to enquire into the latter.

There is, however, no possible rationalisation of the various attitudes expressed on the propriety of the Committee, or subcommittees, drafting legislative reforms. Some statements are irreconcilable. Dean J. is quoted

[11] Dean J., *Minutes* 86, 25 October 1962.

[12] Professor Z. Cowen with whom Dean J. agreed, *ibid.* 87, 25 October 1962. The 'matter of technical law' there being discussed was a Bill dealing with the enforcement in Victoria of judgments given in other countries according reciprocal treatment to Victorian judgments. The Bill had been considered by a meeting of the judges but had not been referred to the Committee; a decision which Professor Cowen and Dean J. regretted.

[13] *Supra* n. 12 and accompanying text.

above[14] as stating in 1962 that the Committee should not deal with details of drafting. By 1965 His Honour's feelings had changed. Dean J. is recorded as saying he favoured asking the subcommittee on easements of light and air to draft amendments which would make clear the action which had been recommended (p. 125, 1965). Apparently Dean J. found the broad conclusions of the subcommittee ambiguous. Professor Cowen questioned whether it was the practice of the Committee to draft proposed legislative amendments and suggested that the report be forwarded unchanged.[15]

The later view of Dean J. is to be preferred. There can be no doubt as to the substance of recommendations if they are reduced to draft Bill form. There is no room for misinterpretation by the government of the intentions of the Committee if they are expressed in precise words. It is true that loopholes will probably exist in the initial draft but the Parliamentary Counsel's Office is capable of plugging them. The government may not choose to accept the recommendation at all or it may choose to alter the form or content radically; that is the prerogative of governments. But if it does make changes these can be recognised as such and will not be attributed to the advisory body. Pressure of time however, must bear heavily on all part-time committees and the most desirable result, a report embodying draft amendments, may not be always a realistic possibility.

Herring C.J.[16] certainly envisaged that his Committee would prepare draft Bills for presentation to the government as well as consider Bills referred to it by the Attorney-General and under His Honour's chairmanship most recommendations were in Bill form. In more recent times a decision recommending change in the law, made by the full Committee at the meeting at which the matter was referred to it, has not been in the form of draft legislation unless the original proposal was a draft enactment. In such cases the Committee has been able simply to approve the proposal with or without amendment.

The practice of subcommittees, appointed to advise the full Committee, has not been uniform; some[17] prefer to set out an amendment in detail, others[18] do not. No clear pattern exists but a proposition can be tentatively

[14] *Supra* n. 11 and accompanying text.

[15] *Ibid.*

[16] *E.g. Minutes* II, 26 September 1944: the Chief Justice reported that he had interviewed the Attorney-General who had suggested that proposed Bills be sent to him; *ibid.* IV, 21 November 1944: the Chief Justice reported he had forwarded a number of Bills approved by the Committee to the Attorney-General who had promised to introduce them in Parliament.

[17] *E.g.* the subcommittee on *Wrongs Act 1958, s. 24* (1969-70) drafted detailed amendments.

[18] *E.g. Property Law Act 1958, ss 195 and 196 (Easements of Light and Air)* (1964-71). The subcommittee's report contained no express recommendations, it simply reached conclusions of principle. Also see *Wills Act 1958, ss 13 and 16 (No. 2)* (1968-70). The subcommittee's report was so worded that the content of the desired amendments to these sections was set out with great clarity. The actual drafting was left to the Law Department.

put. The more substantial an investigation the more likely it will be that the subcommittee's report will contain drafted proposals. This is more a personal impression than an evidentially backed hypothesis, for the estimation of the difficulty of an enquiry cannot always be gauged from an examination of the terms of reference or from the report itself and certainly not from the length of the report.

The failure of some subcommittees to draft Bills in detail should not be looked on as criticism. A Parliamentary Counsel's skills are acquired over many years and one cannot expect the same results from the untrained as one would expect from the professional draftsman. The Chief Justice's Committee has been fortunate on a number of occasions to have had the services of a draftsman. Sometimes he has been co-opted by a subcommittee before the presentation of its report and at other times he has helped the subcommittee to formulate proposals in detail after the full Committee has approved an initial report setting out broad recommendations.

There has also been of late a reluctance to conduct enquiries of a factual nature[19] which would involve a subcommittee in detailed research or the hearing of evidence. This attitude stems from limitations inherent in the nature of the Committee. Not only is it entirely a part-time body manned by busy judges, practitioners and academics, but it has no funds with which to finance the gathering of data even if the members were willing to analyse it.

These limitations were apparently not fully recognised until the mid-fifties. In 1950 the Committee backed an ambitious project of Barry J. to draft a Criminal Code by authorising His Honour to co-opt a subcommittee to assist him if necessary.[20] In 1954 Professor F. P. Donovan conducted enquiries into the attitude of the business world towards a proposal to repeal the Statute of Frauds (p. XXV). The final recommendations of the Committee seem to reflect his work as the Attorney-General was advised to invite Parliament 'to consult trade organisations' (p. XXVII) when considering the matter. These incidents are unique. Since the change of chairmen in 1957 the Committee has consistently declined to undertake investigations of that sort.

Questions of Policy

The view has always been taken that some matters, broadly labelled 'policy' are not within the Committee's scope. The first meeting was called by Herring C.J. to consider the need of forming some permanent body

[19] A recent example is the Committee's refusal to enquire into bail practice in Victoria on the grounds that the enquiry would be of a factual nature. The Committee did indicate it was prepared to consider any specific proposal put forward by the Statute Law Revision Committee, *Minutes* 172, 5 June 1969.

[20] *Ibid.* XIX, 9 August 1950. No further entry on the subject is recorded.

to prepare law reforms 'on non-political lines . . . which were not of a contentious nature' (p. I, 1944). No attempt has ever been made to state what are the elements of a subject which brings it within the 'policy' or 'political' heading; these are treated as being self-evident, and in some cases they are.[21] In short, the Committee has taken the view that it can recognise a policy issue when it sees one.

While such an *ad hoc* approach is realistic it is also confusing. Some enquiries actually pursued by the Committee have involved issues very similar to issues of social policy which have on other occasions been relied on by the Committee to avoid enquiries. Furthermore, the Committee has sometimes agreed to reconsider a matter earlier abandoned on policy grounds.

POLITICAL QUESTIONS—A SEPARATE CATEGORY?

A partial rationalisation of the seemingly contradictory decisions of the Committee on the threshold question of whether it would be proper to conduct an enquiry is possible if one is prepared to regard 'political issues' as being distinct from 'issues of social policy'. Such a distinction has clearly been made by the Committee over the years.

The argument that the consistent refusal of the Committee to investigate issues of a political nature has been wise is not without force. The judiciary, which has always been deeply involved in the work of the Chief Justice's Committee, cannot allow itself to become embroiled in political controversy. That the Committee as a consequence must decline to consider some injustices brought about by archaic laws may be unfortunate, but the loss by the Bench of its reputation for impartiality which could follow a political fracas involving the Committee would be even more unfortunate.

A similar argument could be constructed to justify the Committee's refusal to concern itself with other matters of legislative policy. A clash with the government might tarnish the judiciary's image and would certainly jeopardise the success of future reform proposals,[22] including those

[21] *E.g. Abortion* (1968) and *Scientology* (1969). The former involved a request from the Attorney-General to consider the desirability of defining the present law with more certainty. While the Committee was not asked to comment on the need for a relaxation of the present law it took the view that the nature of the problem 'was such as to make it impracticable to produce a solution without entering into questions of policy' and *in addition* 'the political nature of the problem made it undesirable' that the Committee should carry out an enquiry; *Minutes* 163, 6 June 1968. The latter concerned a request from the President of the Church of Scientology of California in Victoria to consider the amendment of the Psychological Practices Act 1965. The Committee declined to take action because of political factors involved; *ibid.* 184, 20 November 1969.

[22] Mr A. G. Rylah, the Attorney-General, in a letter to Herring C.J., 14 September 1955 put it this way: 'It would indeed be disastrous if a body comprising members of the judiciary was put in danger of becoming involved in matters of disputed legislative policy.'

of a most innocuous nature. A government might even react to the Committee's entry into the political arena by declining to consider any proposals emanating from it.

Clearly there are no restrictions on what can become political issues. A government and even a dedicated pressure group can turn any matter into a political one if there is a reservoir of latent public interest ready to be tapped. One need only consider the recent inclusion of anti-pollution planks in all parties' platforms to accept this proposition. Indeed, it is the element of publicity which separates political questions from other policy issues. While relations between the Committee and government would deteriorate in the event of any action involving legislative policy, only some matters could be classed a being of interest to the public. Because of this interest, in any conflict they can be regarded as comprising a separate category and may be described as 'political'. The Committee's approach to these matters will now be considered.

Mere interest in a proposal by a political organization does not appear to taint it. In 1957 the Committee was prepared to consider a suggestion of the State Council of the Liberal and Country Party that the power of the court to dispense with the consent of the natural parents in adoption cases be widened.[23] The request to the Committee came from the Law Department and not the Party, but this intermediary's action can have no significance. The Government, through the Attorney-General or the Secretary to the Law Department, cannot grant dispensation to the Committee from complying with its self-imposed undertaking not to consider political matters. While some sections of the community might not be disturbed by the Committee reporting on a particular issue others might. More significantly the Opposition might object and in the event of a change of government the Committee could be embarrassed by its past actions. The conclusion must therefore be that the Committee did not consider that the issue was a political one simply because it originated from a political organization.

Just as politics can intrude into a seemingly innocent issue, a matter may cease to have political connotations because of changed public interests. Such changes in community attitudes may be the reason for the Committee's decision on a few occasions to consider matters it had earlier avoided on policy grounds.

The most notable of these concerned the reduction in the age of infancy. In 1964 the Committee declined to consider proposals forwarded by the Secretary to the Law Department for the amendment of the Supreme Court Act 1958, Part VII, Division 3.[24] This Division concerns the

[23] *Minutes* 9, 29 March 1957.

[24] *Ibid.* 110, 4 June 1964. Dean J. moved 'that as the proposal raised questions of general social policy, rather than legal questions, it was inappropriate for the Committee to express a view on it'.

capacity of an infant to contract. In 1966 the same question was referred to the Committee by the Statute Law Revision Committee together with a request to consider the possibility of a person of 18 years or over giving a valid discharge to trustees and again the Chief Justice's Law Reform Committee refused to consider the proposals.[25] On both occasions the main reason offered by the Committee for its refusal was that policy matters were concerned, although in 1966 some members were prepared to argue that the Committee was able to consider 'any specifically legal questions'.[26]

Why then did the Committee refer the *Report of the New South Wales Law Reform Commission on Infancy in Relation to Contracts and Property* (1969) to a subcommittee in 1970 without any discussion of the policy issues involved (p. 191)? It is true that the subcommittee was established to report on the work of another law reform body, but in substance it was to consider matters remarkably similar to those rejected in 1964 and 1966 as unsuitable for the Committee. The answer may have been the knowledge that there was a growing acceptance in the community that youths aged 18 to 20 should be given legal responsibilities commensurate with their maturity. When the report of the subcommittee was presented to the full Committee Gillard J. raised the policy question.[27] His Honour

> said that he was somewhat uphappy about the political overtones of the proposal. The Committee was being asked to formulate policy which would, in effect, decide the argument about the reduction in the voting age . . . (p. 206).

Nevertheless Gillard J. voted with the rest of the Committee to adopt the report. The subcommittee Chairman, Crockett J., indicated that the unanimous recommendation that the age of majority for the purposes of the law of contract and property should be reduced to 18 was based partly on 'a recognition of the inevitability of the age of majority being reduced to 18' (pp. 203-4). The subcommittee felt that the 'movement for reform in this direction in other States' (p. 204) was evidence of the inevitability. It is suggested that the acceptance by the Committee of such a view reflected accurately the views of the community. What had been a controversial issue in 1964 was no longer one in 1970.

While the Committee may have studiously avoided hot political issues, at least until they cooled, it has been quite ready to take into account practical political considerations when drafting its final report. By that it is not meant that the Committee has slanted its proposals along the lines

[25] *Ibid.* 142, 30 August 1966. The *Minutes* indicate that a discussion considerably longer than that of 1964 took place in 1966.
[26] *Ibid.* 143, Mr X. Connor Q.C., Mr W. O. Harris Q.C., and *semble* Mr A. Heymanson.
[27] *Ibid.* 203-6, 3 December 1970. Gillard J.'s remarks appear on p. 206.

it suspected a particular government would prefer. The Committee has taken a realistic view of the extent of reform the governments would allow and has tactically limited its recommendations so as not to endanger them all by the inclusion of a single one that would antagonise. Barry J. made such a point when explaining his subcommittee's report on proposals to reform the law relating to suicide. His Honour 'stressed that the subcommittee had kept in mind the need to make its recommendations politically viable' (p. 130, 1965). The question that there caused the most trouble related to whether the onus of proof should be on the survivor of a suicide pact. The Committee eventually recommended in the alternative that the onus should be on the Crown but if it was placed on the accused then it should be discharged on the balance of probabilities.[28]

Since the offices of Solicitor-General and Attorney-General were split in 1952 the Solicitor-General has been an active member of the Committee and it seems that his presence has greatly benefited the Committee because he possesses an intimate knowledge of the ways of government. Although his advice has sometimes not been followed, it has been on many occasions.

In 1969[29] and 1970[30] Mr B. L. Murray Q.C., the Solicitor-General, vigorously urged the Committee to reject the report of the subcommittee chaired by Barber J. which had recommended the adoption of a Wrongs Act (Industrial Accidents) Bill. The Bill created a presumption of negligence in certain circumstances. The Solicitor-General's recommendation was made on the ground that the Bill had been described in Parliament as radically changing the law by introducing absolute liability. If the Bill were later amended to have such an effect the Committee through its earlier endorsement could be misconstrued as having entered the political arena by recommending the more radical change. By a majority of one the Committee decided not to adopt the report (p. 188), but the weight given to the Solicitor-General's argument by the Committee is unclear as a number of other arguments of a more substantive character were also put forward by other opponents of the report.

A clearer example of the practical political advice the Solicitor-General has been capable of providing concerned the recommendations of the subcommittee under Smith J. on amendments to the Marriage (Property) Act 1956 (p. 17, 1957). Of five amendments proposed by the subcommittee the Solicitor-General, Sir Henry Winneke Q.C., advised that

[28] *Ibid.* 131. This was a majority decision (12 to 2) and from the preceding discussion recorded in the *Minutes* it seems that one of the dissenters was the Solicitor-General, Mr B. L. Murray Q.C.

[29] *Ibid.* 177, 28 August 1969.

[30] *Ibid.* 187, 5 March 1970. Another instance where the Solicitor-General's opinion seems to have been followed was in relation to a proposed amendment to s. 18 of the Wrongs Act 1928 (s. 19 of the 1958 Act). As Mr H. A. Winneke, Q.C. advised, the Committee declined to follow up an enquiry on policy grounds, *ibid.* 9, 29 March 1957.

three 'might well be adopted by the Government as worthy of legislative action without undue delay but this could not be said of [the other two]' (p. 17). Only the three suggested by the Solicitor-General were forwarded to the government for consideration.

For its part the government has not pressed on the Committee matters of a blatantly political nature with the possible exception of the abortion enquiry in 1968. Even there the Attorney-General's request attempted to confine the proposed investigation to the desirability of defining the existing law and so purported to keep the Committee clear of any policy issues. It was because the Committee felt that any enquiry would involve a consideration of such issues and would be of a political nature that it was not pursued.[31]

OTHER POLICY QUESTIONS

There are few, if any, unifying themes present in the matters not investigated by the Committee because they depended on 'policy'. Even the descriptions of policy matters differ—some are characterised as involving 'general social policy',[32] some as 'public policy',[33] and others simply as 'policy'.[34]

In 1961 the Committee considered the power of Masters of the Supreme Court to exercise federal jurisdiction and a subcommittee was set up to report on the matter (p. 72). Almost three years later the subcommittee submitted its findings which concluded that Masters are not empowered to exercise the judicial power of the Commonwealth (p. 112). Smith J., in a letter read to the meeting by Dean J., suggested that

> the committee might well be advised to take no action in relation to the report, leaving it to some person with an interest to do so to challenge the Masters' jurisdiction (pp. 112-3),

and with this advice Dean J. agreed. Accordingly it was decided simply to 'receive' the report and take no action on it. The Committee had not desired 'to stir up a hornets' nest' which would have been the natural consequence of the adoption of the report. In the event of a successful challenge against a Master, until some remedial legislation was passed,

[31] *Supra* n. 21.

[32] *E.g. Infancy (No. 1)* (1964) *supra* n. 24.

[33] *E.g. Adoption of Children Act 1928* (1956-57). Dean J. queried whether the matter considered by the subcommittee raised 'questions of public policy which concerned matters beyond the scope of this Committee's functions'. It was felt by the meeting that the Committee could properly make recommendations on the matters of parental consent and the meaning of 'children' in the will of an adopter. *Minutes* 16, 30 October 1957.

[34] *E.g. Misleading Advertising* (1964). The Committee on the motion of Dean J. agreed not to express any view on various aspects of misleading advertising 'as the questions raised were policy questions', *Minutes* 110, 4 June 1964.

each case which possibly involved federal jurisdiction would have to be referred to the Practice Court with resulting congestion.[35] The judicial members of the Committee seem to have been well aware of this when discussing the problem.

The rule that policy matters may not be discussed by the Committee seems to have been applied with some discretion. Smith J. suggested on one occasion that 'the Committee had . . . felt justified in looking at the question because of the jungle of legislation which surrounded it' (p. 184, 1969). There Gillard J. had queried whether the Committee had any right to make recommendations on the law disqualifying persons from acting as local councillors when they had interests in certain transactions. In some cases it would therefore seem that policy considerations can be overridden by the need for expert advice on the reform of the law. This interpretation would place Smith J.'s otherwise unique comment close to those of persons who have asserted the right of the Committee to examine the legal aspects of questions even though they may have substantive elements which involve policy issues.[36]

The confusion over the meaning of 'policy' is illustrated by a number of anomalous decisions. In a few instances action has been taken when matters have been considered on a second or third occasion even though action had been earlier barred by the presence of policy elements. On other occasions matters which seem to involve discussion of policy factors have been accepted by the Committee as proper subjects for consideration. Of the former infancy is the most dramatic example.[37] Equally interesting are the decisions taken in 1956 and 1961 as to whether the Committee should

[35] The subcommittee's pessimism was justified. In *Knight v. Knight* (1971) 45 A.L.J.R. 315 the High Court followed its earlier decision in *Kotsis v. Kotsis* (1970) 45 A.L.J.R. 62 and held that a Master of the Supreme Court of South Australia was not capable of exercising federal jurisdiction vested in the Court by the Matrimonial Causes Act because he was not a constituent member of the Court.

[36] See (1) *Report of Subcommittee on the Police Offences Bill 1963* (1963). The subcommittee specifically denied that it was meant 'to indulge in problems of policy. This is for the legislators. Our aim is to attempt to inform them of problems requiring their deliberate decision, particularly where any provision seeks to cut across some fundamental concept of the law.' (2) At the time the Committee decided to establish a subcommittee to consider possible means of making the review of decisions of administrative tribunals by prerogative writs more effective Smith J. indicated that the Committee could act in 'the field of lawyers' law' but could not consider such subjects as the appointment of an ombudsman which presumably would be classed by His Honour as a policy matter, *Minutes* 157, 23 November 1967. (3) A further instance occurred in the debate over the desirability of the Committee considering a reduction in the age of infancy (discussed earlier in the context of political issues, *supra* n. 26 and accompanying text). Perhaps the Committee on the third occasion infancy was discussed inclined to the view of the dissenters on the second occasion that the Committee could examine any legal aspects of the question.

[37] *Supra* nn. 24-7 and accompanying text.

consider the amendment of Part III of the Wrongs Act 1958 so that in the assessment of damages certain receipts should not be taken into consideration by the court. The earlier discussion concerned proposals put to the Attorney-General by the Life Officers' Association and the Law Institute which recommended the adoption of a New South Wales provision which forbade the taking into account of certain pension schemes (p. 7). In 1961 a less ambitious proposal was put before the Committee by O'Bryan J. His Honour suggested that the Committee consider the amendment of section 19 of the Wrongs Act 1958 to provide that in the assessment of damages for wrongful death any Commonwealth widow's pensions would be excluded from consideration (p. 71). While it was decided on the former occasion that

> this was a matter so much involving social and other policy considerations, as distinct from the interpretation or practical administration of the law, that it was not appropriate for a committee of this character to express an opinion on it (p. 9),

on the latter there was set up a subcommittee

> to consider the problem of assessment of damages under Part III of the Wrongs Act with particular reference to the special matter of the widow's pension (p. 71).

Surely widow's pensions paid by the Commonwealth raise policy questions of the same nature as those raised by superannuation fund benefits. The only conceivable explanation is that in 1956 the activities of the Life Officers' Association amounted to pressure of a political nature[38] and it was primarily the existence of a visible pressure group which deterred the Committee from then acting. By 1961 it must be assumed there was no longer an active movement for reform and as a result the Chief Justice's Committee was able to make recommendations without fear of being compromised.

There are other examples of almost inexplicable *volte face* by the Committee but it would serve little purpose to describe them in full.[39] Also to be considered are those matters with which the Committee has dealt even

[38] The interlocking of the terms 'policy' and 'political' is again illustrated. On at least one other occasion a Committee decision phrased in terms of 'policy' can be read as meaning 'political'. The Committee declined to consider an apparent anomaly in the law relating to the control of invitations to the public to invest in vending machine companies. The reason given was that policy matters were involved, *ibid.* 61, 4 May 1960.

[39] *E.g.* compare the attitudes of the Committee in 1955, 1960 and 1970 to questions concerning the disposal of uncollected goods. In 1955 and 1970 the Committee refused to consider the matter, yet in 1959-60 the Committee helped draft the Act of 1961. See *Minutes* XXVIII, 4 November 1955; 57-8, 4 May 1960; 190, 5 March 1970. Also compare the negative attitude of the Committee towards consideration of the amendment of s. 13 of the Wills Act in 1946, *ibid.* IX, 28 February with the positive approach recently, *ibid.* 201-2, 10 September 1970.

though they could easily be regarded as involving policy issues.[40] Take, for example, the proposals referred to the Committee in 1957 by the Law Institute concerning the testator's family maintenance provisions of the Administration and Probate Act 1928 (p. 10). The Committee felt that amendments which would extend the operation of the Act to intestate estates and to cover the deceased's spouse, children and also grandchildren whose parent died before the testator, and which would include illegitimate children provided parenthood was established during the life time of the deceased, and which would also cover a divorced woman in receipt of maintenance from the testator at the time of his death, involved policy considerations. No doubt they do, but so does a proposal to permit the testator's spouse or child who is a life beneficiary to obtain an increased provision from the testator's estate even though the application is based upon circumstances which the testator could not have reasonably foreseen. This last proposal however was considered by the Committee and referred to a subcommittee which was unable to reach a unanimous decision (p. 12, 1957). The full Committee eventually came down against the proposed amendment because it would

> involve departure from the present principle that the Court exercising powers under this legislation should consider the matter in the light of circumstances reasonably foreseeable to the testator and that it could introduce undesirable features into the administration of estates; assignments to beneficiaries could be impeded and partial distribution of an estate could raise problems as to the incidence on other beneficiaries, and particularly on infant children of the testator, of the burden of increased provision for the life beneficiary (pp. 14-5).

Such reasoning may be unimpeachable but it amounts to the resolution of the question by reference to the yardstick of foreseeability. The Committee favoured one view in preference to the other and in doing so made a decision which can only be described as one of policy, albeit that the policy element involved is quite familiar to all lawyers and to the judiciary in particular. Logically the Committee was no more entitled to consider this last proposal than it was to consider the other three it declined to pursue.

Conclusion

In summary it can be stated that the role of the Chief Justice's Law Reform Committee has always been to prepare reforms of the law which

[40] Only one instance need be fully stated (see text). Others are (1) *Repeal of the Statute of Frauds* (1954). The Committee recommended the repeal of portion of s. 128 of the Instruments Act 1928 (s. 126 of the 1958 Act) and divided on the question of repealing s. 9 of the Goods Act 1928, *Minutes* XXIV, 28 October 1954; XXVII, 1 September 1955. (2) *Chattel Mortgages* (1965-66). The Committee considered the need for the registration of chattel mortgages and adopted a subcommittee's proposal to amend Part VI of the Instruments Act 1958. The Committee endorsed the view that there was a need for a complete overhaul of all legislation governing credit transactions. See *ibid.* 128, 29 June 1965; 142, 30 August 1966. (3) The right of the Court to control damages awarded to adults was considered in 1964-65: *ibid.* 105, 23 April 1964; 122-3, 4 March 1965, and payment of damages by way of periodic instalments rather than in lump sums in the late sixties: *ibid.* 145, 20 October 1966; 1959-60, 14 March 1968. (This list is not intended to be exhaustive.)

do not involve policy matters. The Committee has accepted it has a right to draft amendments although at times individuals have challenged this. It has reserved the right to decide whether a particular matter involves policy considerations of a political or non-political nature. While its classification has not always been consistent, extenuating factors have been relied on to justify the investigation of the latter but not the former.

IV THE ORGANIZATION OF THE COMMITTEE

Introduction

The Chief Justice's Law Reform Committee is in some respects unique. First, it is the only major[41] law reform body with official backing in the Commonwealth which was not established either by Act of Parliament or by executive order. Although it is not a government agency, successive State governments have co-operated with it by referring matters to it for consideration and by enacting many of its recommendations. Recently its reports were included in the newly published directory[42] of law reform work in Australasia, thus confirming their semi-official status. Secondly, it is the only standing committee to have such a high proportion of its members from the Bench. At the present time, for example, of the nineteen members, six including the Chairman are justices of the Supreme Court and two are County Court judges.[43] While all do not attend every meeting and while the proportion of judges to other members has fluctuated from meeting to meeting it has not been uncommon for judges to comprise just under half of those present. Only in the period 1950-51, when judges on all but one occasion[44] made up two-thirds of the attendance, was this proportion consistently exceeded.

Furthermore the Committee is composed entirely of part-time members. While this may not be unique in Australia the Committee may be strikingly contrasted with such bodies as the New South Wales Law Reform Commission which currently has a full-time staff[45]. Inevitably the presence of judicial members on the Committee has limited the scope of enquiries and the part-time status of members has limited the range of subjects which it has been able to tackle. Not only has the Committee been unable to investigate matters which require the preliminary collection and analysis of evidence, because of its limited physical resources, but the lack of time available to members for law reform work has also limited the Committee's

[41] The minor bodies would include the various law reform subcommittees of the legal profession's representative organizations such as the Legislation Committee of the Law Institute of Victoria.

[42] Conference of Australian and New Zealand Law Ministers, *Official Law Reform Work in Australia and New Zealand* (1970).

[43] A list of current members may be found in Table 1 of the Appendix.

[44] 27 November 1951, of 6 present 3 were Supreme Court judges.

[45] See Conacher, 'Law Reform in Action and in Prospect' (1969) 43 *Australian Law Journal* 513.

actions. Generally speaking the only enquiries carried out have involved small areas of the law. On the other hand the part-time nature of the Committee has made available to it the most astute legal brains in Victoria.

Composition

The Committee has always been composed of representatives of the Bench, Bar, Law Institute and universities. The balance between these groups has changed over the years and has reflected changes in the organizations represented on the Committee. The membership grew rapidly from eight, including the Secretary, at the first meeting, to fourteen in 1950[46] and twenty in 1951[47]. Thereafter it declined a little and in 1971 stood at nineteen.

There have been three permanent Chairmen of the Committee, Herring C.J. (1944-57, 27 meetings), O'Bryan J. (1957-61, 15 meetings) and Smith J. (since November 1961, 40 meetings). In the absence of the regular Chairman the chair has been taken by another Supreme Court Justice. The other office-bearer of the Committee, the Secretary, has since 1956 been a member of the Faculty of Law of the University of Melbourne.[48] Prior to then Mr E. H. Coghill, Librarian to the Supreme Court, acted as Secretary.

Each section of the Committee will now be considered separately.

(i) JUDGES

The method of appointing judicial members has changed little since the establishment of the Committee. It appears that at least until the late fifties[49] the Chief Justice personally appointed all judges to the Committee. In recent years the Supreme Court contingent has been formally chosen at an annual meeting of judges. Broadly speaking the nominations are decided by the Chief Justice and are confirmed by the meeting, though if a particular judge felt unable to serve on the Committee his views would be respected.[50]

Apart from Judge Book who was a member of the Committee between 1945 and 1951,[51] no County Court judge was appointed as a full member until 1967. Late in that year Judge Harris and Judge Dunn were invited

[46] Letter from Secretary to Lowe A-C.J., 13 September 1950.

[47] Letter from Lowe A-C.J. to Professor Z. Cowen, 25 July 1951. *Semble* this figure includes 3 parliamentarians who never attended meetings, *infra* n. 63.

[48] The following men were Secretaries: Professor F. P. Donovan (1956-August 1957 and August 1958-60), Mr A. L. Turner (1961-November 1964), Mr M. C. Cullity (December 1964-May 1967), Mr H. Luntz (June 1967-August 1970 and October 1971 on). Dr H. A. J. Ford (August 1957-August 1958) and Mr R. Sackville (September 1970-September 1971) were Acting Secretaries.

[49] See letter from O'Bryan J. to Dr H. A. J. Ford (Acting Secretary), 10 April 1958.

[50] Interview with Smith J., 25 May 1971.

[51] Judge Book was invited to join the Committee by Herring C.J., *Minutes* VI, 26 July 1945.

to join in their capacity as members of the County Court Bench. Their Honours have remained on the Committee ever since.

The total number of Supreme Court judges has steadily increased over the years. In 1944 when the Supreme Court was comprised of six judges, two, Herring C.J. and O'Bryan J., were on the Committee. In 1948 three of the Court of eight were members.[52] When Herring C.J. was overseas in 1950-51 Lowe A-C.J. increased the size of the Committee to twenty. Of the twenty members seven[53] were from the Supreme Court which was then composed of nine judges. It is not clear whether all those who attended were full members of the Committee and it may be that at that stage of its development there was no formal distinction between those who attended as members and those who attended because of special interest in some topic under discussion.[54] It is clear that on the return of Herring C.J. the number of judges present at each meeting dropped and by 1957 when O'Bryan J. took over as Chairman the figure stood at three or four and it has been presumed from the constancy of such attendances that there were only four Supreme Court members up until 1958. From 1958 until 1969 there were definitely four[55] Supreme Court judicial members even though the Court grew from twelve to eighteen. In 1970 and again in 1971 an additional judge was appointed to the Committee and so the original proportion of one third of the Court has been regained.

(ii) BARRISTERS

The Committee has always included representatives of the bar and at least one barrister has been present at almost all meetings.[56] The Bar Council has been invited to select representatives to serve on the Committee for a period of twelve months and traditionally members of the Council have been nominated.

Over the period 1945-50 up to six barristers attended regularly but whether they did so as full members of the Committee or as members of subcommittees is not clear. In the fifties there were only two Bar Council nominees on the Committee but in the sixties the number was raised to three. While it was rare for both barristers to attend meetings in the period 1954-62 all three have frequently been present since then.[57]

[52] Fullagar J. joined Herring C.J. and O'Bryan J. in 1948.

[53] This figure was derived from the attendance records of Committee meetings contained in the *Minutes*. There is no way of determining the exact number of judges appointed to the Committee for those years. The letter mentioned *supra* n. 8 simply states a total of 20.

[54] *E.g.* the number of judges (7) attending the November 1955 meeting at which the Attorney-General's views on law reform were put reflected the interest in the Government's attitude. It is likely that some of the judiciary present were not members of the Committee.

[55] Letter from O'Bryan J. to Acting Secretary, 10 April 1958.

[56] No barrister was present at one meeting held in 1951, 1954, 1957 and 1960, and at two meetings in 1959.

[57] The Solicitor-General, who has been a member of the Committee since 1953, has not been included in these figures. He is counted separately, see *infra*.

(iii) SOLICITORS

From 1944 until his death in May 1947 Mr E. L. Piesse was the only solicitor on the Committee. Not until 1954 do the *Minutes* record the attendance of another member of his branch of the profession, although it should be remembered that in 1949, 1952 and 1953 no meetings were held. From 1954 to 1957 one or two attended most meetings and since then up to three have been present. The solicitors on the Committee have been nominated by the Law Institute of Victoria from among members of the Council of the Institute, one being the Secretary. As with the Bar Council three names are presently submitted each year to the Chief Justice and while it would be possible for them to be rejected, in practice they are always approved.

(iv) ACADEMICS

The number of academic lawyers on the Committee has also steadily grown. From 1944 to 1950 Professor G. Paton was the only member of the Faculty of Law in the University of Melbourne who was a member. When Professor Z. Cowen took over from Professor Paton as Dean in 1951 he was appointed to the Committee. They were joined in 1954 by Professor D. P. Derham and in 1956 by Professor F. P. Donovan, who undertook to act as Secretary to the Committee. It appears that the Secretary has been regarded as a full member of the Committee and he has been included in the lists of annual appointments.[58] When Monash University established its law school in 1964 Professor Derham became its first Dean. He remained on the Committee and another member of that law school was invited to join.

Therefore, the position now is that both Melbourne and Monash Faculties have two representatives on the Committee, with one of Melbourne's being the Secretary. It has been customary for the Dean of the Melbourne Law School to be a member of the Committee. The representatives of Monash University have been a professorial member of the Faculty, though not necessarily the Dean, plus a second representative nominated by the Faculty. Before resigning, a Secretary arranges the selection and appointment of his successor. In addition, Sir George Paton was invited by Winneke C.J. to rejoin the Committee when he retired as Vice-Chancellor of the University of Melbourne in 1968. This invitation was a personal one and so Professor Paton is no longer a representative of Melbourne University.

[58] *E.g.* letter from Acting Secretary (Dr Ford) to Chairman, 7 March 1958 in which Professors Cowen and Derham and Dr Ford were named as the three representatives of the University of Melbourne for 1958. It is also clear that Mr A. L. Turner took part in discussions and voted on motions put to meetings (*e.g. Minutes* 90-1, 6 June 1963) while Secretary.

(v) OTHER

The Committee has also maintained a link with the Government for most of its existence. From 1944 to 1948 the Secretary to the Law Department, Mr C. F. Knight, was a member, and from 1954 on the Solicitor-General for the time being has attended numerous meetings as a representative of the Attorney-General.[59] No Attorney has ever attended a Committee meeting although Herring C.J. did invite the then holder of that office, Mr I. Macfarlan, to the first meeting in 1944. Indeed, until 1953, the Attorney-General was regarded as a nominal member of the Committee and was sent copies of the agenda and other papers circulated by the Secretary.[60] In 1955, after the rejection of a proposal to permit the use of prior convictions in subsequent civil proceedings as proof of the substance of the criminal offence, tension developed between the Committee and Government.[61] The misunderstanding was eventually resolved and the Chief Justice instructed the Secretary to invite the Attorney-General to future meetings. In November Mr G. O. Reid, representing Mr A. G. Rylah, attended a meeting to explain the Government's attitude towards law reform (p. XXVII). On a number of occasions thereafter Mr Rylah was invited but sent apologies for his absence.[62]

In addition to Mr Macfarlan two other politicians, Mr A. MacDonald, M.L.C. (Country Party) and Mr F. Field, M.L.A. (A.L.P.) were invited to join the Committee in 1945 (p. VI). Mr Coghill suggested that

> these gentlemen all accepted [invitations], but apparently they all agreed that they would be embarrassed in their Parliamentary duties by too close an association with the Committee, for none of them . . . ever attended its meetings.[63]

Apart from the Librarian to the Supreme Court, Mr E. H. Coghill, who acted as Secretary until 1956, the only other person not accounted for elsewhere who regularly attended was the Commissioner of Titles, Mr Betts. Between 1945 and 1948 he headed a subcommittee which redrafted the Transfer of Land Act and on the adoption of the draft he resigned from the Committee.[64]

A proposal that the Parliamentary Draftsman should join the Committee was rejected by both the Committee and Draftsman in 1956 (p. 3), but

[59] In a letter to the Secretary dated 16 February 1953 the Attorney-General, Mr W. Slater, requested that the Solicitor-General, Mr H. A. Winneke Q.C., be invited in his place. The Solicitor-General was invited to the next meeting held in 1954.

[60] *Ibid.* Mr Slater requested that these papers be in future forwarded to the Solicitor-General.

[61] See *infra* Part VI.

[62] *Minutes* 14, 25 September 1957; 16, 30 October 1957; 17, 11 December 1957 and 20, 19 February 1958. Note these dates are all post-1955. Perhaps the invitations to Mr Rylah stemmed from an invitation by O'Bryan J. sent after His Honour became Chairman in 1957. This is entirely speculation.

[63] Coghill, *loc. cit.*

[64] Letter from Secretary to Lowe A-C.J., 13 September 1950.

in 1971 Mr J. Finemore Q.C., the current Chief Parliamentary Counsel, agreed to join a subcommittee considering the Evidence Act 1958 (p. 213). Other members of his staff have also aided various subcommittees in drafting legislation.

Status of Members

The question of what is the status of members at Committee meetings was not specifically raised until 1967. Smith J. in the chair, observed

> that the general nature of the Committee was a body of people invited by the Chief Justice. The status of the persons attending had never been laid down. However, it was expected that any dissent from the bodies represented would be made known to the Committee. It had happened that a representative would give his own views on a matter and at the same time state that they did not accord with those of the body he represented (p. 155).

Mr A. Heymanson of the Law Institute maintained that

> previous chairmen had been insistent that the members were there in an individual capacity and not as representatives of the Bar and Law Institute (p. 156).

The question had arisen when members of the Bar, who had been present at a meeting which adopted a subcommittee report on motor manslaughter, had failed to voice objections to the report which were subsequently raised in public by the Bar Council. Mr W. O. Harris Q.C. stated that

> it was the view of the Bar Council that the members of the Committee were not delegates there to express predetermined views of the Bar,[65]

and so they were entitled to present their personal opinions. Indeed only contentious matters were usually referred to the Council, so that in most cases the only views available to the Committee were personal ones. Mr A. Heymanson indicated that the Law Institute had recently changed its position. Henceforward the nominees of the Institute would express that body's views and matters referred to subcommittees would be considered by the Legislation Committee of the Institute (p. 156).

The academics would appear to be in a slightly different position. A matter is never referred to the faculties as a whole, but is discussed with individual faculty members interested in the particular topic.[66] The faculty representatives are thus free to express their personal views on all matters, including the most controversial.

Finance and Administration

The Committee has no source of income. It has been since its inception an entirely voluntary body with no member receiving any form of remuneration or expenses for his work. The most serious defect flowing

[65] *Minutes* 156, 23 November 1967. Also see a similar statement by Mr X. Connor Q.C., *ibid.* 121, 4 March 1965. The matter there arose incidentally to another issue.

[66] *Ibid.* 159, 14 March 1968 *per* Professor H. A. J. Ford.

from the lack of funds has been the inability to purchase multiple copies of the working papers and reports of other law reform agencies for the use of subcommittees.[67] Without a full library of law commission reports there is also the danger that the Committee will unnecessarily duplicate work carried out by other bodies. In recent months the problem has been alleviated by the receipt of complementary copies of reports direct from other Australian, New Zealand and British organizations but reliance on the law library of the University of Melbourne, also chronically in need of finance, continues.

Until 1956 all expenses were borne by the Supreme Court. On 17 September Professor Z. Cowen, then Dean of the Faculty of Law at Melbourne University, suggested that the law school '[take] over the general administrative and secretarial work of the Committee' (p. 2). This offer was accepted and since then the expense of all postage and most[68] of the expense of typing and duplicating has been carried by the Law School without any other outside grants.

The publication of reports was recently approved in principle by the Committee but Professor H. A. J. Ford, the present Dean, indicated that the University of Melbourne Law School would probably be unable to meet the costs involved in printing and distributing the lengthier reports (p. 214, 1971). As a consequence the Committee has decided to seek for Melbourne University an annual subsidy from the Victoria Law Foundation sufficient to cover administration expenses and printing charges (pp. 223, 227). In addition the Committee has applied for funds to aid subcommittees with research and secretarial expenses.

V THE WORK OF THE COMMITTEE

Meetings

Up to the end of 1971 the Chief Justice's Law Reform Committee had met on 96 occasions[69] in the Judges' Conference Room at the Supreme Court in Melbourne. The number of meetings held in each year has been set out in Table 2 of the Appendix.

Meetings have always been attended both by members of the Committee and by members of those subcommittees whose reports are before the Committee for consideration. With the growth of the Committee in the late 1940's the opportunities for extended discussion at meetings diminished. This is not to say that matters put before the Committee have only been

[67] Memorandum from Secretary (Mr H. Luntz) to the writer.

[68] Some subcommittee reports are still mimeographed at the Supreme Court. Generally, the proportion of reports prepared at the Law School has increased in recent years.

[69] This figure includes a number of adjourned meetings. They have been counted separately because the matters discussed and the members present at them have differed markedly from the earlier meetings.

cursorily considered. On the contrary, once there has been a decision to undertake an enquiry, the more involved and complex it is the more detailed will be the discussions and recommendations. The Committee will refer these matters to subcommittees and before drafting their reports they will thrash out the minutiae. The Committee will concern itself with any contentious points raised by the subcommittees and after due consideration will adopt, amend or reject the reports.

The right to participate in discussions and the right to vote at meetings are reserved for full members of the Committee, but when a subcommittee report is under consideration members of the subcommittee who are present may also speak to a motion for its adoption. In theory they are not entitled to be heard on any other business before the Committee but in practice they sometimes do speak.

Source of Enquiries

The Committee has received requests to investigate deficiencies in the law and proposals to remedy them from a wide range of sources. The most prolific enquirer has been the Statute Law Revision Committee which has referred matters to the Committee on 53 occasions up to the end of 1971. Many of these requests were put before the parliamentary committee by the Attorney-General and thus amount to an indirect request from the Government.

Unlike the Statute Law Revision Committee, which first requested the co-operation of the Chief Justice's Law Reform Committee in 1954, the Government has placed matters before it since its foundation, either through the Law Department (in 14 instances) or the Attorney-General (32). In some of these cases the enquiry has been formally addressed to the Chief Justice, who has passed it on to his Committee, while in others it has been addressed to the Chief Justice with the express suggestion that it be referred to the Committee. Other sources include judges (35), members of the profession (11), academics (6) and a miscellaneous category (13).[70]

The only significant inter-relationship between these categories was that prior to 1962 a lower proportion of all matters considered by the Committee were referred to it by the Government than since.[71] This difference must be accentuated by the fact that many of the matters referred to the Committee since 1962 by the Statute Law Revision Committee were referred to it by the Attorney-General under the power

[70] Some of these groups may be further broken down: Judiciary—Chairman 12, Other 23; Profession—Law Institute 6, Bar Council 3, Individuals 2; Miscellaneous—Secretaries 7, Other 6. The source of 11 enquiries, all relating to the 1944-55 period, could not be determined.

[71] For 1944-61: 19 of 89 or 21.3 *per cent; cf.* 1962-71: 29 of 85 or 34.1 *per cent.*

granted to him in that year.[72] This means that since November 1961, when Smith J. was appointed Chairman, the Chief Justice's Committee has devoted more of its time to government-sponsored reforms than ever before.

Scope of Enquiries

At one time or another almost every area of the law within the province of the Victorian Parliament has been considered by the Committee. A chronological list of all matters brought before the Committee may be found in the Appendix, Table 3. This should be read in the light of the accompanying notes and the following comments.

Committee Action

(i) NUMBER OF MATTERS CONSIDERED[73]

The figure of 175 matters considered by the Committee[74] was arrived at basically through listing those matters that were recorded in the *Minutes*. In doing so many arbitrary decisions were taken as to whether an entry represented a new enquiry, a reference to a completed enquiry or even an enquiry at all. While an attempt to classify consistently was made, it is likely that another person sifting through the same material would arrive at a different number. Nevertheless a figure near 175 would be most probable and it is at worst a rough approximation of the volume of the Committee's work.

The main determinant of whether an entry was classed as a matter considered by the Committee was whether the members of the Committee discussed it with a view to investigation. A number of Statute Law Revision Committee reports, for example, have been received and tabled but not discussed.[75] Consequently they were not counted in the total. So long as there was some interest displayed, no matter how transitory, a matter was included in the list. No attempt was made, however, to distinguish between wide and narrow terms of reference, between the simple and the complex, for such an attempt would have involved even more subjective decisions. Therefore, each matter considered by the Committee should not be looked on as representing an equal amount of work.

Nor was any general attempt made to split hybrid enquiries into separate items. Usually a subcommittee considering more than one term

[72] The Constitution Act Amendment (Statute Law Revision Committee) Act 1962 (No. 6960) s. 2 inserted the relevant provision. It is now s. 38 (2) of the Parliamentary Committees Act 1968 (No. 7727).

[73] For an annual breakdown see Table 2 of the Appendix.

[74] *Supra.* p. 441.

[75] *Minutes* 76, 88, 118, 124. See also lists of matters considered by the Law Institute which were notified to the Committee, *ibid.* 26, 27, and some reports of the Lord Chancellor's Committee *ibid.* 22.

of reference[76] had them all referred to it at the one time and again usually reported on all on a single occasion. Because of these factors it was rare for subcommittee terms of reference to be counted individually, even if they concerned different areas of the law.[77]

Few difficulties arose from the repeated consideration of an item by the Committee. If it was clear that the Committee was genuinely reconsidering a matter it had earlier finalised or even pigeonholed then it was counted as if it were a topic before the Committee for the first time. The exact subject matter of the enquiry often differed slightly, but even where it had not changed the membership of the Committee had. Furthermore the conclusion reached by the Committee would sometimes be a complete reversal of an earlier decision on roughly the same subject matter. The only consistent action possible was to count each referral as separate and distinct.

(ii) APPROACH OF COMMITTEE

Apart from a few matters in the fifties all items referred to the Committee have been dealt with by the Committee itself. They were handled in the following ways. First, the Committee has in 32 of the 175 matters brought before it declined to make any recommendation. Second, it has referred 104 matters to subcommittees and third, it has made recommendations without the advice of subcommittees in the remaining 39 instances.

In the earlier years of operation it was not unusual for the Committee to delegate to an individual member the task of drafting and forwarding a report to the Attorney-General. This practice has long since been defunct and almost all recommendations are now prepared or endorsed at Committee meetings. Even a recent exception, the authorisation in 1963 of subcommittees to investigate the Workers' Compensation Act 1958 and a Police Offences Bill and to report direct to the Statute Law Revision Committee, specifically limited the reports to represent the views of the subcommittees and not the full Committee (pp. 96-7). Introductory memoranda have been drafted for the enlightenment of the Committee by individual members, but any decision taken has been that of the Committee.

[76] *E.g. Wills Act 1958, ss 13 and 16* (1968-70), here the terms of reference are related. The subcommittee on *Criminal Law and Procedure* (1959) considered *inter alia* the restitution of property to the victim of a crime, the need for notice of defences of insanity, automatism *etc.* and the giving of sworn evidence by children.

[77] *E.g.* there was established at the first meeting of the Committee a Law Revision subcommittee to consider English law reform proposals. This subcommittee met on over 15 occasions up to the end of 1946. In November 1944 its first report, dealing with English legislation on interest in civil proceedings and contribution between joint tortfeasors, was presented. The second report concerned the Limitation Act 1939 (Eng.). This was first considered in 1945 and was reported on in June 1946. Because of the time element these two reports were regarded as dealing with separate matters.

In deciding whether to make any recommendation at all the Committee has been influenced by the presence of any 'policy' factors,[78] the nature of the enquiry that would be required and the current pressure of work. If, for example, the Committee or a subcommittee would be required to examine all Victorian statutes in the course of an investigation then no enquiry would be undertaken as it would be beyond the Committee's resources.[79] Thus, the more detailed the work required, the less likely is the Committee to embark on an investigation. Closely associated with problems requiring detailed research are those stemming from the existence of a large number of active subcommittees at the time the problem is put before the Committee.[80] The limited manpower of the Committee prevents the launching of an investigation in those circumstances. All such problems would be alleviated if not solved by the expansion of the Committee or by the use of full-time research staff.

Should the Committee decide it is equipped to carry out an enquiry with propriety it must decide whether or not to seek the advice of a subcommittee. Naturally this decision is also influenced by the complexity of the problem. The more extensive the examination is likely to prove the more likely will be the use of a subcommittee. Generally speaking the Committee has only elected to make unaided a recommendation either for or against a change in the law when it is able to do so immediately, or after a minimum delay, to enable the circulation of basic data, such as draft Bills. The use of subcommittees is discussed in detail *infra*.

Once finalised, a recommendation of the Committee which arose from a request by the Statute Law Revision Committee is forwarded to that Committee together with any subcommittee report adopted during discussion. In the event of the Chief Justice's Committee reaching its decision after the parliamentary body has finished taking evidence, the recommendation is forwarded to the Attorney-General. In all other cases, whether the source of the enquiry be the Government, some organization such as the Law Institute or a private individual, the Committee's recommendations are forwarded to the Attorney-General. This rule has been followed with very few exceptions in the past and more recently has been strictly observed.

(iii) SUBCOMMITTEES

The Committee has increasingly relied on the use of subcommittees to advise it before making a recommendation. Of all matters brought before the Committee those referred to subcommittees comprised 42 *per cent*

[78] Discussed *supra* Part III.
[79] *Service of Notices* (1962), *Minutes* 80-1, 7 June 1962.
[80] *E.g.* the Committee was unable to make a submission to the Statute Law Revision Committee on the Disposal of Uncollected Goods Act 1961 because of *inter alia* 'the large number of matters already under consideration by the Committee'. *Ibid.* 190, 5 March 1970.

over the period 1944-56, 59 *per cent* over 1957-61 and 69 *per cent* for the period 1962-71. When matters referred to subcommittees are taken as a percentage of matters positively considered by the Committee then the figures for the same periods are 51, 64 and 91 *per cent.* As these periods coincide with the terms of Herring C.J., O'Bryan and Smith JJ. as Chairman, it is clear that under Smith J. there has been a marked change in the Committee's technique of operation.

From the first year of operation there has been a consistent policy of appointing to subcommittees one representative each of the judiciary, both branches of the profession, and the universities. Until the early sixties it was not uncommon for subcommittees of less than four to be established but since Smith J. became Chairman there has been a more rigid policy. With the reappearance of County Court judges on the Committees in 1969 the possibility of increasing the standard size of subcommittees from four to five, by the inclusion of a member from that bench in addition to the Supreme Court representative, was considered and rejected. It was felt that the inclusion of two judges might give the impression of bearing down on the non-judicial members and would only be justified when the County Court had a special interest in the item under consideration.[81] Nevertheless there has been an increasing reliance on five man subcommittees since 1968. In that year only two of the ten established had five members. In 1969 four of six and in 1970 all five subcommittees were so constituted. The only exception in 1971 was a subcommittee comprising six members. One can only conclude that matters of interest to the County Court will include most subjects referred to subcommittees.

Initially there seems to have been an attempt to form subcommittees substantially, if not exclusively, from members of the full Committee. This policy was abandoned by the early 1950's and most appoinments to subcommittees have since been left in the hands of the organizations the members represent. Thus the Bar Council and Law Institute nominate the barrister and the solicitor respectively to sit on each subcommittee. Since Monash University joined the University of Melbourne in having representatives on the Committee an informal arrangement has been reached for the filling of the single position available to an academic on each subcommittee. The person is chosen for his special interest in the terms of reference irrespective of which Faculty he represents. While it was once common for members to be nominated at the Committee meeting that set up the subcommittee, it has become the practice for nominations to be forwarded to the Secretary. Where an individual judge, practitioner or academic has referred to the Committee the matter thought to require consideration by a subcommittee, it has been usual for that person to be

[81] Letter of Smith J. to Acting Secretary, 29 September 1970.

invited to serve on the subcommittee. On all but five[82] occasions subcommittees have been chaired by judges of the Supreme Court. The Chairman has been invariably nominated at the time the subcommittee has been established although on some occasions the nominee has been unable to accept the invitation.

Subcommittee reports are in almost all cases referred to the full Committee where they are accepted in full, amended or occasionally rejected. Of the 91 reports received to the end of 1971, 45 were accepted without alteration, 39 were amended or added to in some way and 3 were rejected. Only 4 cannot be accounted for under one of these headings. As has already been mentioned, the Committee has permitted a few subcommittees to report directly to the Statute Law Revision Committee to ensure that the members' efforts are not wasted. However, in the sixties the Committee tended to decline to refer a matter to a subcommittee if it was unlikely to complete its report before the parliamentary Committee had concluded its investigation.

The duration of enquiries completed by subcommittees varied greatly. Some 25 of the 91 in question reported within six months of their establishment, 33 more did so over the next six months and a further 15 reported between 12 and 18 months after their creation. Thereafter the number of subcommittees reporting in each six month period declined.[83] There has been a tendency for subcommittees set up since 1961 to last longer that those established in the 1944-61 period. Of the 50 set up between 1962 and 1971, 21 have lasted more than a year and 11 more than 18 months. For the 1944-61 period the corresponding figures are 12 and 7 out of a total of 41.

It would be appropriate to here mention that a suggestion for the establishment of standing subcommittees, to which reference of minor defects in particular fields of law could be made, was rejected by the Committee in 1963.[84]

Co-operation with Other Bodies

Since the foundation of the Committee there has been close co-operation with the Law Institute, the Bar Council and their law reform subcommittees. Since 1954 there have also been close links with the Statute Law

[82] Mr Betts (Commissioner of Titles) *Transfer of Land Act (No. 1)* (1945-48), Judge Book (County Court) *Maintenance Orders* (1948-50), Mr A. D. G. Adam (as he then was) *Transfer of Land Act (No. 2)* (1954). Professor Z. Cowen *Occupiers' Liability (No. 1)* (1956-57) and Professor F. P. Donovan *Artificers' Liens* (1959-60).

[83] 18 but less than 24 months: 8; 24-30: 3; 30-36: 2. In addition 5 subcommittees lasted 36 months or more.

[84] The suggestion was made by the Secretary of the day, Mr A. L. Turner, *Minutes* 87, 25 October 1962 and was rejected at the meeting of 18 July 1963, *ibid.* 94.

Revision Committee. Before that date there is no record of that Committee directly referring a new enquiry to the Chief Justice's Committee but there is some evidence that members made recommendations on matters they had already dealt with.[85] Apart from the odd recommendation[86] to the Law Council of Australia the Committee did not have close contact with any other body engaged in law reform prior to the establishment in other states of permanent law reform organizations.[87] There has been an increasing degree of co-operation and communication with these bodies.

Even before this upsurge in law reform activity there were criticisms made of the lack of co-ordination among the various Victorian organizations. A suggestion that a full-time secretariat be formed to rationalise the work of the Committee, Law Institute and Bar Council on a particular issue, by ensuring only one subcommittee was formed to consider it, was considered in 1964.[88] In addition it was suggested that the secretariat could help in the collation and distribution of legislative reforms passed in the various states. It was felt by the Committee that there was no need to make the machinery of law reform too elaborate and formalised, and

> all that was needed was the establishment of a routine by which each of the various bodies concerned with law reform would know what matters were currently under consideration or about to be considered by the others (p. 119).

After consultation with the Statute Law Revision Committee, it was decided that this object could be achieved by the forwarding of the agenda of each meeting to that Committee, as the Chief Justice's Committee was already informed of any matter considered by the parliamentary body. It was also suggested that the overlapping of enquiries was not in itself something to avoid so long as the existence of previous or simultaneous enquiries was known (p. 121-2).

The presence of members of the profession on the Committee has always helped to reduce unnecessary duplication of research. The third side of the triangle, the link between the profession and the Statute Law Revision Committee, seems to have been strengthened in the last few years by that Committee adopting a practice of inviting each branch of the profession, as well as the Chief Justice's Committee, to make submissions on most occasions.

[85] The Secretary referred to members receiving attendance money from the Statute Law Revision Committee (letter, 30 November 1953 to a Queensland solicitor). O'Bryan J. gave evidence concerning a Bill approved by the Committee, *Minutes* XVIII, 9 August 1950.

[86] *Frustration of Contracts (No. 1)* (1950-51), *(No. 2)* (1956); *Contributory Negligence* (1950); *Statute of Frauds* (1954 55). Note the investigation into contributory negligence was based on a Law Council report.

[87] See Sutton, *The Pattern of Law Reform in Australia* (1970).

[88] Suggestion contained in a letter, from Mr G. Fuller (solicitor) to Secretary, dated 14 October 1964. The proposals were discussed on 3 December 1964, *Minutes* 119 and on 4 March 1965, *ibid.* 121-2.

The listing of enquiries conducted by the Committee in *Official Law Reform Work in Australia and New Zealand*,[89] and of reports in the *List of Official Committees, Commissions and Other Bodies Concerned with the Reform of the Law*[90] and the receipt of these publications by the Committee ensures an interchange of basic information on reforms. However, the distribution of reports can alone supply the details.

Until 1965, although no strict rule of confidentiality had been set out, the question of the distribution of reports to people outside the Victorian law reform system had not arisen. It was then decided that the Institute of Legal Studies in London could receive a copy of each report and subsequently reports were distributed to another two university libraries. In 1967 the Committee decided that while reports could be made available to interested persons, when a matter had been considered at the Attorney-General's request, his permission was to be obtained before the report was released.[91] The regular receipt of New Zealand, British and inter-state reports led to the consideration of more widespread distribution in 1970 (pp. 189-90, 192). No objection was raised to the forwarding of reports to law reform bodies or to universities except:

(1) in cases where the Committee has been asked to undertake inquiries involving confidential matters, in which case permission would be needed for distribution from the appropriate body, and
(2) in cases in which reports have been prepared as submissions to the Statute Law Revision Committee . . . (p. 114, 1971).

The reason for the second limitation is that such reports are submissions to a parliamentary Committee and their publication is barred by Standing Orders of both Houses until the Committee has reported to Parliament and tabled submissions made to it.[92] In other words, the Chief Justice's Committee would be able to publish and distribute its own reports once the Statute Law Revision Committee had presented its report.

VI THE ACHIEVEMENTS OF THE COMMITTEE

Implementation of Reforms

In so far as the achievements of a law reform organization can be measured by statistics, it should be the proportion of its recommendations accepted by the Government and not the number of matters considered by the Committee, or the number of reports presented, which should be looked at.

To the end of 1971 at least 55 statutes,[93] which were to some extent or other the result of work by the Chief Justice's Law Reform Committee,

[89] (1970), compiled by the Conference of Australian and New Zealand Law Ministers.
[90] Prepared by the Institute of Advanced Legal Studies in the University of London.
[91] A Member of Parliament had requested a copy of the report on the *Reform of the Law Relating to Suicide* (1964-65) *Minutes* 147, 2 March 1967.
[92] Letter from Mr A. T. Evans, Chairman Statute Law Revision Committee, to Acting Secretary, 29 September 1970.
[93] Listed in the Appendix, Table 4.

had been enacted by the Victorian Parliament. That is, from the 143 matters positively considered[94] by the Committee some 55 statutes have resulted. The proportion increases when one takes into account that 8 subcommittees have still to report and about a dozen matters reported on over the last few years are still under consideration by Cabinet and Parliament. Some will no doubt result in legislation. Further there were a number of recommendations not to amend the law included in the 143 matters which may have influenced the Government when it decided not to legislate, but it is conceivable that in these cases the decision was not influenced by the Committee's suggestion. It therefore appears that roughly 40 *per cent* of the Committee's recommendations have been accepted in whole or in part.

Whether one is inclined to characterize this performance as good or bad, once one accepts that a law reform committee has no more than an advisory role, one must accept that the government which it advises has the right to reject any of its recommendations. There are practical limits to this proposition and the first of these is that a government which declines too many proposals may find itself without the services of the committee. A part-time organization, like the Chief Justice's Committee, would be likely to disintegrate if an insufficient number of its suggestions were implemented.

There is some evidence to show that the failure to act on certain recommendations of the Committee did strain the relationship with the Government in the 1950's. Four major Bills, on Crown Immunity in Tort, Limitation of Actions, Transfer of Land and Trustees, had been prepared by the Committee between 1944 and 1948 but had not been enacted by the end of 1951. In a letter outlining the experiences of the Committee, the Secretary, Mr Coghill, stated that the failure to pass these four Bills had so discouraged the Committee that it had not met in 1952 or 1953.[95] He also intimated that a partial solution could be found by reducing the size of Bills so as to limit the volume of criticism that would be directed against them and thus speed up the process of obtaining approval for a final draft.

Since 1953 such a policy seems to have been adopted. With only a couple of exceptions[96] the Committee has avoided large Bills of a novel character and has concentrated on preparing limited amendments to existing legislation.

The major clash occurred in 1955 when the Attorney-General, Mr A. G. Rylah, appeared to reject a Committee proposal to permit the admission

[94] Excluded are the 32 matters on which the Committee declined to make a comment; see Appendix, Table 2 for an annual breakdown.

[95] Letter to Mr M. B. Deacon, 30 November 1953.

[96] Perpetuities and Accumulations Act 1968 (No. 7750). The Committee also presented a substantial report on charitable trusts in 1966 but as yet the Government has not reached any decision on it.

into evidence of criminal convictions in subsequent civil proceedings, without considering the arguments advanced by the Committee. It was only after he assured the Chief Justice that he had carefully studied the arguments set out in the Committee report, stressed his appreciation of the work done by the Committee and agreed to attend a Committee meeting to set out his attitude on law reform in general, that the dispute was settled.[97] The intensity of feeling may be gauged from the large attendance at the November meeting which heard Mr G. O. Reid speak on behalf of Mr Rylah. Fifteen other members were present, a figure which was not again matched until 1966.

That meeting seems to have cleared the air for since then there has been no indication of friction over failure to implement Committee recommendations. In part this may be accounted for by the Committee's readiness to take into account political realities when making recommendations. It may also be that the Committee is not upset by the rejection of over half of its total number of recommendations, and considers a success rate of 40 *per cent* as satisfactory.

The second limitation on governments' freedom to reject proposals by a law reform agency stems from the degree of financial support granted by the government. The greater the support the greater is the incentive to accept recommendations and so justify to the taxpayer the expenditure of his money on what would otherwise be a bureaucratic luxury. At present, of course, the Victorian Government is under no such obligation. If the Chief Justice's Committee could obtain direct financial backing from the Government it is suggested that a larger proportion of recommendations would result in legislation.

Similarly public pressure may induce a government to adopt a proposed reform where the reform is of interest to wide sections of the community. As the Committee has continuously avoided contentious issues this limitation on governmental freedom is largely irrelevant.

Should the Government be criticized for not having implemented more of the Committee's recommendations? An adoption rate of four out of ten is far from spectacular especially when it is remembered that the Committee steered clear of all political and most policy matters. However there is no denying that the Committee in recent years has not been dissatisfied with the record and members of the Committee are best qualified to offer criticism. It might be more profitable to concentrate on the Committee's dynamism and the encouragement the Government has offered in this respect.

Originality of Reforms

There is much evidence to support the view that the Chief Justice's Law Reform Committee has relied heavily on inter-state, English and New

[97] See letter to Herring C.J., 14 September 1955 and note of meeting between Herring C.J. and Attorney-General, 3 October 1955, made by Herring C.J.

Zealand reforms in preparing its reports and has been far from adventurous in entering fields fresh for reform. At its first meeting it established a subcommittee to consider English proposals (p. I). In due course reports were presented on interest in civil proceedings, contribution between joint tortfeasors (pp. IV-V) and limitation of actions (p. XIII); they were all based on English legislation.[98] It has since been common for the Committee to be invited to consider the suitability of another jurisdiction's reform for Victoria.[99] On other occasions the subcommittee has drawn upon interstate or overseas precedents in drafting its report although the formal referral of the matter to the subcommittee was not couched in terms of the applicability of the foreign reform to Victoria.[1]

As the *Minutes* and reports in many cases did not establish the degree of reliance placed on reforms operating elsewhere no attempt was made to tabulate the instances in which the Committee was influenced by these reforms. The extent of reliance has varied from outright acceptance to total rejection of a proposal. In addition the Committee has sometimes remoulded the material available to it and although the end product, the Bill, bears a close resemblance to legislation enacted elsewhere there has been a significant amount of thought involved in adapting and improving the original model. In other words, superficial similarities are not necessarily accurate indicators of the degree of reliance.

In any case, while initiative shown by a law reform body in choosing topics for reform may be praiseworthy, the adoption of legislation undertaken elsewhere does not in itself merit criticism. No proposal can be rationally rejected simply because it has been the subject of earlier recommendations by another organization. In the federal context of Australia there may be a ground for adopting *verbatim* a statute passed in other states irrespective of whether it is felt to be a necessary amendment to the law. The desirability of uniformity among state laws may outweigh any inherent disadvantages in an Act for a particular state.[2]

[98] Law Reform (Miscellaneous Provisions) Act 1935 (Eng.); Law Reform (Married Women and Tortfeasors) Act 1935 (Eng.); Limitation Act 1939 (Eng.).

[99] *E.g. Adoption of Children* (1950-51), the Committee referred to the Adoption of Children Act 1949 (U.K.), s. 1; *Statute of Frauds* (1954) Law Reform (Enforcement of Contracts) Act 1954 (U.K.); *Perjury* (1958); Crimes Act 1900 (N.S.W.), s. 331; *Criminal Law and Procedure* (1959), *inter alia* the subcommittee was referred to the Police Offences Act 1935 (Tas.), s. 44A; *Occupiers' Liability (No. 2)* (1960-62), Occupiers' Liability Act 1957 (Eng.); *Charitable Trusts* (1962-66), Charities Act 1960 (U.K.); *Bench Warrants* (1964-65), Crimes Act 1961 (N.Z.), ss 351-2. The above list is not exhaustive.

[1] *E.g.* the subcommittee responsible for the Crimes Act 1949 (No. 5379), in drafting the Bill, drew on English and Australian provisions related to capital punishment (for crimes other than murder), infanticide, child destruction, incest and the receipt of stolen property. It also initiated novel reforms regarding child-stealing and the competence of the wife as a witness against her husband in certain circumstances. Also the subcommittee on *Perpetuities and Accumulations* (1965-67) referred to U.K., W.A., N.Z. and Ontarian legislation while drafting its report which included a Bill.

[2] See Conacher, *op cit.* 518.

Slightly under two-thirds of all matters considered by the Committee arise from government and Statute Law Revision Committee enquiries.[3] So long as the Committee is prepared to accept such a large proportion of its workload from these sources its ability to initiate enquiries will be reduced because of its limited physical and financial resources. Only the provision of a regular source of income to finance full-time research could solve this problem.

VII CONCLUSION

The Chief Justice's Law Reform Committee has operated almost without interruption since its foundation a quarter of a century ago. By ensuring that Victorian lawyers have been able to play an active part in the reform of the law in a period when there was no other outlet for their zeal, it has performed an invaluable service for the State. At 90 odd meetings it has dealt with about 175 matters and it has seen enacted on the basis of its recommendations over 50 statutes covering the whole range of Victorian law. Given that it has always been a part-time, voluntary organization this record deserves considerable praise.

The State government has acknowledged its debt to the Committee in the past,[4] but it has not been prepared to pay for the free advice it has received. Perhaps this parsimony will be remedied in the future. There can be no doubt that the need for law reform will increase rather than diminish in coming years and, if one dares believe that future governments will desire to keep pace with the rest of Australia, they will sponsor the expansion of existing reform bodies or the creation of new ones. It may reveal naive optimism to hope that the need for more extensive law reform machinery will capture the imagination of the community, but one major political party has recently pledged itself to establish a national commission to advise the Commonwealth and states.[5] Others may feel there is an advantage to be gained by matching this offer. Certainly the recent activities of the Standing Committee of Attorneys-General in the field of company law provide some justification for the view that governments are presently prepared to implement radical changes in the law.[6] All that remains is for them to be persuaded to modernize the system.

[3] The source of 164 matters put before the Committee is known. Of these, 99 were attributable to the Law Department, the Attorney-General or the Statute Law Revision Committee.

[4] The Attorney-General, Mr A. G. Rylah, once wrote to Herring C.J. in the following terms: 'I want to make it quite clear that I personally very much appreciate the work that has been done by the Committee . . . Most of the proposals [presently] under consideration [by Parliament and the Statute Law Revision Committee] either originated from the recommendations of your Committee or its members, or is reform which has been indicated as desirable by yourself or your brother Judges . . .' Letter, 4 October 1955.

[5] The A.L.P. adopted this policy at its 1971 Federal Conference, *The Australian,* 25 June 1971, 3.

[6] For an interesting dialogue on the attitude of State governments to reforms of the Standing Committee see the articles in *The National Times* by Professor G. Sawer, 17 May 1971 and Mr K. M. McCaw (N.S.W. Attorney-General) 24 May 1971.

Although the Committee's efficiency has steadily increased with the passage of time it must be doubted whether this improvement can be maintained. The Committee has already reached its optimum size and is unable to expand the total amount of work it has under consideration at any one time. It could continue indefinitely in its present form and no doubt would perpetuate the current flow of recommendations to the government, but it cannot cope with any increased burden without structural changes.

This is not to say that the Committee must be transformed into a full-time organization similar to the English or New South Wales Law Commissions. It might be preferable to retain the Chief Justice's Committee in its present form and to establish a new Victorian Commission. The Committee would thus be able to continue to provide what McInerney J. described in 1971 as a professional assessment of the views of the Bar, the Law Institute, the judiciary and law schools (p. 222) while the more substantial problems requiring detailed and thorough research could be tackled by a smaller, permanent Commission. Of course, some financial support for the Chief Justice's Committee is required and hopefully will be obtained in the near future. In any event, the past experience of the Committee and its harmonious relationships with successive Governments demand that the Committee continue its operations.

APPENDIX

TABLE 1

The Chief Justice's Law Reform Committee
Membership as at 31 December 1971

Smith J. (Chairman)	Supreme Court
Gillard J.	,, ,,
McInerney J.	,, ,,
Newton J.	,, ,,
Nelson J.	,, ,,
Crockett J.	,, ,,
B. L. Murray Q.C.	Solicitor-General
Judge Dunn	County Court
Judge Harris	,, ,,
Sir George Paton	Personal Appointee of Winneke C.J.
Professor P. Brett	University of Melbourne
Professor E. Campbell	Monash University
Mr H. Luntz (Secretary)	University of Melbourne
Mr H. A. Finlay	Monash University
Mr R. E. McGarvie Q.C.	Bar Council
The Hon. H. Storey Q.C., M.L.C.	,, ,,
Mr F. X. Costigan	,, ,,
Mr I. B. Maughan	Law Institute
Mr D. A. T. Jones	,, ,,
Mr L. E. Penttila	,, ,,

TABLE 2

Matters Brought Before the Committee 1944-71

Year	No. of Meetings Held[1]	Number of Matters Raised: Declined to Investigate[2]	Referred to Subcommittee[3]	Otherwise Disposed of[4]	Total
1944	4	—	5	4	9
1945	3	—	2	1	3
1946	5	2	1	1	4
1947	2	—	—	1	1
1948	3	2	1	1	4
1949	—	—	—	—	—
1950	2	1	4	3	8
1951	4	—	1	1	2
1952	—	—	—	—	—
1953	—	—	—	—	—
1954	2	—	5	2	7
1955	3	1	—	2	3
1956	2	2	2	4	8
1957	5	1	3	4	8
1958	5	—	6	4	10
1959	7	—	7	3	10
1960	3	1	2	2	5
1961	1	1	5	—	6
1962	4	3	5	—	8
1963	5	2	6	1	9
1964	6	6	9	2	17
1965	4	2	3	—	5
1966	5	1	7	1	9
1967	4	—	5	—	5
1968	4	1	10	1	12
1969	5	4	6	—	10
1970	4	1	5	—	6
1971	4	1	4	1	6
Total	96	32	104	39	175

EXPLANATORY NOTES

The following refer to the corresponding notation in the table:

[1] Includes adjourned meetings in 1959 (2), 1963 (1), and 1964 (2).

[2] These are decisions to take no action on the matter before the Committee. The most common reason has been that 'policy' considerations would have been associated with any enquiry. Committee decisions *recommending* no reform be undertaken by the government are included elsewhere.

[3] The 104 matters referred to subcommittees resulted in only 91 reports—the balance can be accounted for by those subcommittees which never reported and by those that at the end of 1971 were still considering their terms of reference.

[4] The Committee on some occasions recommended no reform be implemented and on others that the law be changed without the assistance of a subcommittee. Such matters are listed in this column together with a few items that were pigeonholed pending future developments.

TABLE 3

All Matters Brought Before the Committee (1944-71) Chronological List

EXPLANATORY NOTES

1. This list includes all 175 matters which were brought to the notice of the Committee regardless of whether the Committee made recommendations on them.

2. The titles used have been in general those used in the *Minutes*. An explanation has been added where necessary in as succinct a form as possible.

3. The date given after each item refers to the year in which the Committee dealt with it. When a subcommittee was set up and lasted more than one calendar year, the year in which the Committee dealt with the subcommittee report is given as well as the year in which the subcommittee was established.

4. The reader is reminded that arbitrary decisions were made when collating these items. Some matters (*e.g.* some of the *Crimes* proposals in 1944, the three *Evidence* matters in 1958) could have been lumped together. See *supra* Part V.

5. When an item was considered on more than one occasion by the Committee this was indicated by a figure in round brackets, and by comparative dates for cross-referencing.

6. The letter code following each item in the list is intended to show three things:

   (i) The action the Committee initially took when the matter was first brought before it.

   C — indicates the Committee itself made a recommendation,

   S — indicates the Committee referred the matter to a subcommittee,

   D — indicates the Committee declined to investigate the matter, and

   O — indicates the Committee took some other course of action (*e.g.* referred matter to Law Council of Australia).

   (ii) The manner in which the full Committee dealt with a subcommittee report.

   a — indicates the report was accepted in full,

   m — indicates the report was modified by amendment or addition, and

   r — indicates the report was rejected outright.

   (iii) The nature of the recommendation by the Committee or by the subcommittee where the matter was never reported to the full Committee.

   l — indicates immediate legislative action was recommended,

   n — indicates that it was recommended that there be no change in the law or that a proposed amendment to the law was rejected,

   u — indicates the matter is currently under consideration,

   x — indicates some recommendation other than those here listed was made, and

   z — indicates no recommendation was made.

1944

Administration of Estates [*No. 1*] (1944-45)—Duty on notional estates; Wills Act 1928, s. 31. **S m l**

Administration of Estates [*No. 2*] (1944)—Executors commission. **S a l**

Law Revision [*No. 1*] (1944)—Interest in civil proceedings; Contribution between joint tortfeasors. **S a l**
Evidence Bill (1944)—Medical privilege, *cf.* 1963. **C l**
Crimes Bill (1944)—Infanticide; Jurisdiction of Petty Sessions; Crown appeals and other matters. **C l**
Administration of Estates [*No. 3*] (1944-46)—Trustee Bill. **S m l**
Crimes (1944)—Burden of proof in bigamy. **S a l**
Crimes (1944)—Sentences. **C z**
Crimes Bill 1935 (1944)—Justices powers. **C l**

1945
Transfer of Land Act (No. 1) (1945-48) *cf.* 1954. **S a l**
Legal Profession Practice Bill (1945)—Fidelity guarantee fund. **C l**
Law Revision [*No. 2*] (1945-46)—Limitation of actions. **S a l**

1946
Administration of Estates [*No. 4*] (1946)—Settled Land Act 1928 s. 67. **S a l**
Legal Profession Practice Act 1928, ss 14-21 (1946)—Council of Legal Education. **O**
Wills Act 1928, s. 13 (No. 1) (1946)—Gifts to attesting witnesses void, *cf.* 1968. **D**
Rule in Russell v. Russell (No. 1) (1946)—Abolition, *cf.* 1950. **D**

1947
Crown Immunity in Tort (1947) *cf.* 1956. **C l**

1948
Landlord and Tenant Bill (1948)—Notice to quit requirements in periodic tenancies following High Court decision of *Grosglik v. Grant* [*No. 1*] (1947) 74 C.L.R. 327. **D**
Married Women (No. 1) (1948)—Law relating to married women including position as joint tortfeasors, *cf.* 1954, 1957. **C l**
Maintenance Orders (1948-51). **S m l**
Trustee Investments (1948). **D**

1950
Frustration of Contracts (No. 1) (1950-51) *cf.* 1956, 1958. **S x**
Contributory Negligence (1950). **C l**
Rule in Russell v. Russell (No. 2) (1950) *cf.* 1946. **S a l**
Personal Injuries (1950). **C n**
Criminal Code (1950). **O**
Wills Act 1928, s. 16 (No. 1) (1950-51)—Wills revoked by married, *cf.* 1968. **S m z**
Divorce (1950)—Proposed additional ground. **D**
Adoption of Children (1950-51)—Succession to property by and from adopted children. **S a l**

1951
Partnership (1951)—Appointment of income. **C z**
Admissibility of Convictions in Civil Proceedings (1951-55). **S m l**

1954
Transfer of Land Act (No. 2) (1954) *cf.* 1945. **O z**
Statute of Frauds (1954-55). **S a l**
Juries Bill (1954). **C z**
Administration and Probate Act 1928, s. 7 (1954)—Effect of grant of probate. **S m l**
Companies Rules (1954). **S z**
Married Women (No. 2) (1954-55) *cf.* 1948, 1957. **S m l**
Cross examination of Own Witnesses (1954-57). **S a n**

1955

Defamation (1955). **O z**
Wards of Court (1955). **C l**
Disposal of Uncollected Goods (1955) *cf.* 1959, 1970. **D**

1956

Adoption of Children (1956-57)—Meaning of 'children' in will of adopter, and the Court's power to dispense with natural parents' consent. **S m l**
Occupiers' Liability (No. 1) (1956) *cf.* 1960, 1970. **S a n**
Administration and Probate Bill (1956)—Intestacy provisions. **C l**
Frustration of Contracts (No. 2) (1956) *cf.* 1950, 1958. **O**

Police Offences Act 1928, s. 40 (1956)—Possession of property suspected of being stolen. **C l**
Crown Proceedings (1956) *cf.* 1947. **D**
Wrongs Act 1928, s. 18 (1956)—Relevance of pensions *etc.* in assessment of damages for wrongful death, *cf.* 1961, 1966. **D**
Evidence (1956)—Taking of affidavits and statutory declarations. **C l**

1957

Married Women (No. 3) (1957) *cf.* 1948, 1954. **S m l**
Administration and Probate Act 1928, Part V (1957)—Testators family maintenance. **S r**
Bills of Sale (1957). **C l**
Companies Act 1938 (1957)—Powers of company investigators, director's duty to disclose benefits and the issue of employee shares. **D**
Courts of Mines (1957). **C l**
Executors (1957)—Power of solicitors to act as executors. **C n**
Crimes Act 1928 (1957)—Restitution of stolen property. **C n**
Judicial Proceedings (Regulation of Reports) Act 1929 (1957-58). **S m n**

1958

Companies Act (Unsecured Notes) (No. 1) (1958) *cf.* 1960. **S m l**
Perjury (1958). **S a n**
Trustee Act 1953, s. 11 (3) (1958)—Power of trustees to invest in securities in takeover situation. **S a l**
Landlord and Tenant Act 1928, s. 27 (1958)—Hire-purchase agreements and fixtures. **S a n**
Frustration of Contracts (No. 3) (1958) *cf.* 1950, 1956. **S a l**
Property Law Act 1928, s. 172 (1958)—Voluntary conveyances designed to defraud creditors. **S m l**
Maintenance (Consolidation) Act 1957, s. 16 (1958)—Affiliation orders. **C n**
Evidence (1958)—Form of statutory declaration. **C n**
Evidence Act 1928, s. 116 (1958)—Affidavits sworn before notaries public. **C n**
Evidence (1958)—Interpreters. **C n**

1959

Fences Act 1958, ss 7 and 8 (1959)—Statutory notice provisions. **C n**
Unnecessary Multiplicity of Actions (1959)—Possible consolidation of similar actions. **C n**
Interest on Judgments (1959). **S m l**
Criminal Law and Procedure (1959)—(i) Cross examination of accused (Crimes Act 1958, s. 399 (e)), (ii) Restitution of property, (iii) Evidence of children (Evidence Act 1958, s. 23 and Crimes Act 1958, s. 403), (iv) Judicial notice of shorthand writer's signature (Evidence Act 1958, s. 79), (v) Maliciously making a false report of a crime. **S m l**
Limitation of Actions Act 1958, s. 34 (1959)—Notice before commencing an action against a public authority. **C l**
Justices Act 1958 (1959)—Admission to bail by police officers. **S a l**
Artificers' Liens (Disposal of Uncollected Goods (No 2)) (1959-60) *cf.* 1955,

1970. **S m l**
Child Marriages (1959). **S a l**
Variation of Trusts (1959). **S a l**
Formal Validity of Wills (1959-60)—Draft international convention. **S m l**

1960
Release of Exhibits (1960-62). **S a l**
Companies Act 1958, s. 36 (Unsecured notes (No. 2)) (1960) *cf. 1958*. **C l**
Companies (1960)—Control of invitations to public to invest in companies connected with vending machines. **D**
Companies Act 1958 (1960)—Share hawking; unit trusts. **C l**
Occupiers' Liability (No. 2) (1960-62) *cf.* 1956, 1970. **S z**

1961
Recovery of Fines (1961-62). **S a l**
Power of Masters of Supreme Court to Exercise Federal Jurisdiction (1961-64). **S x**
Sale of Land on Terms (1961-62). **S a l**
Wrongs Act 1958, s. 19 (1961-62)—Relevance of pensions in assessment of damages for wrongful death, *cf.* 1956, 1966. **S a l**
Evidence (1961-62)—Use of photographs of documents as evidence. **S m l**
Limitation of Actions Act 1958 (1961)—One year limitation period for recovery of certain moneys paid to the Crown or public authorities. **D**

1962
Service of Notices (1962)—Proposed consolidating Act. **D**
Administration and Probate Act 1958, s. 29 (3) (1962-63)—Limitation of actions against deceased estates. **S m l**
Surrender to the Crown of Certain Lands (1962)—Problems of trustees who hold land for public purposes. **D**
Bonding of Building Contractors (1962). **D**
Personal Liability of Magistrates and Justices (1962-63)—Liability for orders made in good faith but without jurisdiction. **S a n**
Charitable Trusts (1962-66). **S m l**
Establishment of Suitors' Fund (1962). **S m l**
Powers of Notaries Public to Administer Oaths (1962-63). **S a l**

1963
Restrictive Covenants (1963)—Difficulties arising from decision of Full Supreme Court in *Re Arcade Hotel Pty. Ltd.* [1962] V.R. 274, effect of Transfer of Land Act 1958, s. 88 being non-retrospective. **S m l**
Justices Act 1958, s. 121 (1963)—Imprisonment of fraudulent debtors. **C l**
Workers' Compensation Act 1958 (1963)—Application to share farmers, contractors, and secretaries of co-operative societies. **S l**
Actions Between Husband and Wife (1963-64). **S m l**
Police Offences Bill (1963). **S l**
Estate Agents Act 1958 (1963)—Amendments. **D**
Control of the Acts of Public Authorities (1963). **D**
Evidence Act 1958, s. 28 (1963-64)—Waiver of privilege of medical evidence in certain circumstances, *cf.* 1944. **S m z**
Sale of Land Act 1962 (1963-64)—Amendments. **S m l**

1964
Exchange of Proofs of Expert Witnesses (1964). **S r n**
Substitution of Verdict by Full Court (1964)—Where jury has awarded excessive or inadequate damages. **S a n**
Motor Car Act 1958, Part V (1964)—Abolition of £2,000 limit to passenger's claims against third party insurer. **C l**

Wrongs Act 1958, Part III (1964)—Difficulties encountered in *Patterson v. Richards* [1963] V.R. 179; amendment to statement of claim more than three years after death of deceased. **C n**
Court Control of Damages (No. 1) (1964-65) *cf.* 1966. **S a l**
Misleading Advertising (1964). **D**
Local Government Act 1958, s. 655 (1964)—Prohibition on landowners concerning the natural flow of water onto any street or road. **D**
Bench Warrants (1964-65)—Power of Supreme Court judges to compel attendance of witnesses in civil actions. **S a l**
Committal for Trial (1964)—N.S.W. practices; need to read back evidence when recorded pursuant to Evidence Act 1958, ss 130 and 131; problems of undue publicity. **S z**
Police Offences Act 1963 (1964)—Restriction on use of shotguns. **D**
Infancy (No. 1) (1964)—Capacity of infants to contract (Supreme Court Act 1958, Part VI, Division 3), *cf.* 1966, 1970. **D**
Proposed Uniform Sale of Goods and Bills of Sale Acts (1964). **D**
Maintenance Act 1958 (1964)—Problem arising from *McCaughan v. McCaughan* [1964] V.R. 645. **D**
Burden and Standard of Proof of Insanity in Criminal Cases (1964-65). **S m l**
Competence and Compellability of Spouses as Witnesses (1964-65)—Proposed extensions. **S a l**
Reform of the Law Relating to Suicide (1964-65). **S a l**
Property Law Act 1958, ss 195 and 196 (1964-71)—Easements of Light and Air. **S a l**

1965

Transfer of Land (Removal of Caveat) Bill (1965). **D**
Administration and Probate Act 1958, s. 52 (1965-66)—Intestacy provisions. **S m l**
Trustee Act and Settled Land Act—Possible Conflict (1965). **D**
Rule against Perpetuities and Accumulations (1965-67)—Abolition. **S m l**
Chattel Mortgages (1965-66)—Desirability of registration. **S a l**

1966

Crimes Act 1958, s. 399 (1966)—Proposals to permit attack on confessional evidence without risk of accused being cross examined on his prior convictions, and to permit prosecutor to comment on accused's failure to give evidence in any circumstance. **S a l**
Wrongs (Assessment of Damages) Bill (1966)—Assessment of damages for wrongful death, *cf.* 1956, 1961. **C x**
Instruments (Corporate Bodies Contracts) Bill (1966-67). **S l**
Instruments Act 1958, Part I (No. 1) (1966-67)—Procedure relating to entry of summary judgment in actions on bills of exchange, *cf.* 1968. **S r n**
Motor Manslaughter (1966-67)—New driving offence. **S a l**
Infancy (No. 2) (1966)—Capacity of infants to contract, *cf.* 1964; capacity to give valid discharge to trustees. **D**
Local Government Act 1958, s. 53 (1966)—Disqualification of councillors for interest. **S a n**
Court Control of Damages (No. 2) (1966-68)—Damages by way of periodic payments, *cf.* 1964. **S m l**
Misprision of Felony (1966-67)—Information possessed by barristers and solicitors. **S a n**

1967

Computer Records (No. 1) (1967)—Evidential problems, *cf. Evidence* (1968-71). **S z**
Abolition of Ancient Criminal Offences (1967-69). **S a l**
Administrative Tribunals (1967-68)—Review of decisions. **S m l**

Sale of Land on Deferred Terms (1967-70)—Problems concerning sale of land by trustees, and by tenants for life. **S a l**
Limitation of Actions Act 1958, s. 5 (6) (1967-71)—Problems of diseases which become apparent after expiry of tort limitation period. **S m l**

1968
Powers of Arrest (1968). **S m l**
Subordinate Legislation (1968). **O**
Instruments Act 1958, Part I (No. 2) (1968) *cf.* 1966. **S a l**
Misrepresentation (1968-). **S u**
Evidence (1968-71)—Admissibility of computer records (No. 2), *cf.* 1967; hearsay evidence in civil proceedings; admissibility of business records in criminal proceedings. **S a l**
Abortion (1968)—Restate present law. **D**
Wrongs (Industrial Accidents) Bill (1968-69)—Death to be *prima facie* evidence of employer's negligence. **S r n**
Trustee Act 1958 (1968-71)—Statutory powers of investment. **S a l**
Property Law Act 1958, s. 184 (1968 69)—Commorientes. **S m l**
Justices Act 1958, s. 68 (1) (a) (1968)—*Res judicata* and issue estoppel in Magistrates' Courts. **S a l**
Wills Act 1958, ss 13 and 16 (No. 2) (1968-70) *cf.* 1946 (s. 13), 1950 (s. 16). **S m l**
Crimes Act 1958, s. 398 (1968-70)—Caution to unrepresented accused. **S m l**

1969
Administration Bonds (1969-71)—Need in certain circumstances. **S a l**
Juries Act 1967, s. 34 (3) (1969)—Challenge to jurors. **D**
Arrest of Drunken Persons on Private Property (1969)—A new offence—Amendment of s. 26 of the Summary Offences Act 1966. **D**
Bail Practice (1969). **D**
Wrongs Act 1958, s. 24 (1969-70)—Time limit within which one joint tortfeasor may seek contribution from another. **S a l**
Possession in Victoria of Property Stolen outside the State (1969-70). **S a l**
Right of Accused to make Unsworn Statement (1969-70)—Abolition. **S a n**
Law of Theft (1969-71). **S a l**
Distinction between Felonies and Misdemeanours (1969-)—Abolition. **S u**
Scientology (1969)—Amendment of the Psychological Practices Act 1965. **D**

1970
Infancy (No. 3) (1970)—Infancy in relation to contracts and property, *cf.* 1964, 1966. **S a l**
Disposal of Uncollected Goods Act 1961 (1970)—Problems raised by an electrical repairers' association, *cf.* 1955, 1959. **D**
Occupiers' Liability (No. 3) (1970-) *cf.* 1956, 1960. **S u**
Breach of Promise (1970-). **S u**
Exemption Clauses (1970-71). **S a n**
Arbitration (1970-). **S u**

1971
Domicile (1971-)—Review of law of domicile in Australia. **S u**
Sheriffs' Sales of Land (1971-)—Problems arising from the execution of writs affecting land. **S u**
Incorporation of Solicitors' Practices (1971). **D**
Committal Procedures—"Hand-Up" Briefs (No. 2) (1971-)—Proposed introduction *cf.* 1964. **S m l**
Testators' Family Maintenance—Variation of Orders (No. 2) (1971-) *cf.* 1957. **S u**
Actions Against Deceased, Compulsorily Insured Motorists (1971-)—Proposed amendment to Motor Car Act 1958 to obviate appointment of an administrator *ad litem*. **C l**

TABLE 4

Statutes Resulting from Committee Recommendations
Chronological Order of Enactment

NOTES:

[1] These reports refer to those listed *supra* Table 3.

* Indicates the Committee's recommendation was not fully followed or was added to by the Government. Otherwise the Committee was responsible for the whole or part of the legislation listed above.

COMMITTEE REPORT[1]	ACT
Evidence Bill (1944)	Evidence Act 1946 (No. 5183).
Administration of Estates [*No. 1*] (1944)	Wills (Amendment) Act 1947 (No. 5213).
Administration of Estates [*No. 4*] (1945)	Statute Law Revision Act 1947 (No. 5216) (item in schedule re Settled Land Act 1928, s. 67 (3)).
Administration of Estates [*No. 1*] (1944-45); [*No. 2*] (1944)	Administration and Probate (Amendment) Act 1948 (No. 5277), ss 3, 5, 7 and 8.
Crimes Bill (1944)	Crimes Act 1949 (No. 5379).
Married Women (No. 1) (1948)	Wrongs (Tortfeasors) Act 1949 (No. 5382).
Contributory Negligence (1950)	Wrongs (Contributory Negligence) Act 1951 (No. 5594).
Rule in Russell v. Russell (No. 2) (1950)	Evidence Act 1952 (No. 5647).
Adoption of Children (1950-51)	Adoption of Children (Amendment) Act 1953 (No. 5666).
Maintenance Orders (1948-51)	Maintenance (Amendment) Act 1953 (No. 5728).
Administration of Estates [*No. 3*] (1944-46); *Trustee Investments* (1948)	Trustee Act 1953 (No. 5770).
Transfer of Land Act (No. 2) (1954)	Transfer of Land Act 1954 (No. 5842).
Crown Immunity in Tort (1947)	Crown Proceedings Act 1955 (No. 5874).
Law Revision [*No. 2*] (1945-46)	Limitation of Actions Act 1955 (No. 5914).
Wards of Court (1955)	Supreme Court (Wards of Court) Act 1956 (No. 5957).
Married Women (No. 2) (1954-55)	Marriage (Property) Act 1956 (No. 6050).
Administration and Probate Act 1928, s. 7 (1954)	Administration and Probate (Amendment) Act 1957 (No. 6089) s. 2.
Bills of Sale (1957)	Instruments (Bills of Sale) Act 1958 (No. 6438).

Companies Act (Unsecured Notes) (No. 1) (1958)	Companies Act 1958 (No. 6455) ss 36 and 37.
Property Law Act 1928, s. 172 (1958)	Property Law (Amendment) Act 1959 (No. 6491).
Trustee Act 1953, s. 11 (3) (1958)	Trustee (Amendment) Act 1959 (No. 6511).*
Frustration of Contracts (No. 3) (1958)	Frustrated Contracts Act 1959 (No. 6539).
Justices Act 1958 (1959)	Justices (Bail) Act 1960 (No. 6641).
Criminal Law and Procedure (1959)	Police Offences (False Reports to Police) Act 1961 (No. 6757).
Criminal Law and Procedure (1959)	Evidence (Children) Act 1961 (No. 6758).
Artificers' Liens (Disposal of Uncollected Goods (No. 2)) (1959-60)	Disposal of Uncollected Goods Act 1961 (No. 6815).
Companies Act 1958, s. 36 (Unsecured Notes (No. 2)) (1960); *Companies Act 1958* (1960)—Unit trusts	Companies Act 1961 (No. 6839) (relevant provisions).
Interest on Judgments (1959)	Supreme Court (Interest on Judgments) Act 1961 (No. 6874).*
Variation of Trusts (1959)	Trustee (Variation of Trusts) Act 1962 (No. 6915).
Married Women (No. 3) (1957)	Marriage (Property) Act 1962 (No. 6924).
Adoption of Children (1956-57)	Adoption of Children (Property) Act 1962 (No. 6971).
Sale of Land on Terms (1961-64)	Sale of Land Act 1962 (No. 6975).*
Powers of Notaries Public to Administer Oaths (1962-63)	Evidence (Affidavits) Act 1963 (No. 7039).
Justices Act 1958, s. 121 (1963)	Fraudulent Debtors Commitment Act 1963 (No. 7043).
Establishment of Suitors' Fund (1962)	Appeal Costs Fund Act 1964 (No. 7117).
Formal Validity of Wills (1959-60)	Wills (Formal Validity) Act 1964 (No. 7119).
Restrictive Covenants (1963)	Transfer of Land (Restrictive Covenants) Act 1964 (No. 7130).
Sale of Land Act 1962 (1963-64)	Sale of Land Act 1965 (No. 7272).
Administration and Probate Act 1958, s. 29 (3) (1962-63)	Administration and Probate (Surviving Actions) Act 1965 (No. 7296).
Evidence (1961-62)	Evidence (Reproductions) Act 1965 (No. 7324).*
Bench Warrants (1964-65)	Evidence (Amendment) Act 1965 (No. 7366) s. 6.
Police Offences Bill (1963)	Summary Offences Act 1966 (No. 7405).
Limitation of Actions Act 1958, s. 34 (1959)	Limitation of Actions (Notice of Action) Act (1966) (No. 7457).
Wrongs (Assessment of Damages) Bill (1966)	Wrongs (Assessment of Damages) Act 1966 (No. 7496).*
Reform of the Law Relating to Suicide (1964-65); *Competence and Compellability of Spouses as Witnesses* (1964-65)	Crimes Act 1967 (No. 7546) ss 2 and 3 (suicide), ss 8 and 9 (competence *etc.* of spouses).

Instruments (Corporate Bodies Contracts) Bill (1966-67)	Instruments (Corporate Bodies Contracts) Act 1967 (No. 7547).
Motor Manslaughter (1966-67)	Crimes (Driving Offences) Act 1967 (No. 7645).
Motor Car Act 1958, Part V (1964)	Motor Car (Compulsory Third Party Insurance) Act 1967 (No. 7648).
Administration and Probate Act 1958, s. 52 (1965-66)	Administration and Probate (Amendment) Act 1967 (No. 7597).
Actions Between Husband and Wife (1963-64)	Marriage (Liability in Tort) Act 1968 (No. 7668).
Rule against Perpetuities and Accumulations (1965-67)	Perpetuities and Accumulations Act 1968 (No. 7750).
Instruments Act 1958, Part I (No. 2) (1968)	Instruments (Bills of Exchange Amendment) Act 1969 (No. 7852).
Abolition of Ancient Criminal Offences (1967-69)	Abolition of Obsolete Offences Act 1969 (No. 7884).
Justices Act 1958, s. 68 (1) (a) (1968)	Justices (Civil Proceedings) Act 1971 (No. 8224).
Possession in Victoria of Property Stolen outside the State (1969-70)	Summary Offences (Amendment) Act 1971 (No. 8226) s. 3.
Evidence 1968-71)	Evidence (Documents) Act 1971 (No. 8228).