reform

A regular bulletin of law reform news, views and information
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Reform : First Issue sells out

The first issue of "Reform" was printed in January 1976. By February 1976, the entire run of 1,000 was exhausted. Copies were sent to law reform bodies in Australia and overseas, Judges, Members of Parliament and academics. The comments were enthusiastic. At least, those who did not like it, have not said so. In deference to Professor Henry Mayer, who urges us not to adopt a proper, glossy format, no photographs of persons prominent in law reform are included. The cover last time was, of course, a Daumier. This time it's a Hogarth. No resemblance to persons living or dead for a century or two is intended.

The current issue of "Reform" has been produced in greater numbers. It is hoped to interest more government lawyers in our work. A couple of new sections have been added, designed to keep the reader up to date on news about law reform and what the academics are saying about it.

Major Reference on Privacy

Privacy is in the news. The N.S.W. Privacy Committee has been doing very valuable work in that State, since its establishment in 1975. New privacy legislation has been introduced in Queensland and South Australia to cope with credit bureaux. Two reports were tabled at the end of 1975 in the Westminster Parliament to follow up the Younger Committee report. The New Zealand Parliament has passed a number of Acts to deal with threats to privacy. Canada and the United States have also grappled with this problem. Now there is to be a national Australian investigation conducted by the A.L.R.C. The Governor-General, in announcing the Government's legislative programme on 17 February 1976, said that the subject of privacy would be referred to the Law Reform Commission. "The terms of reference will be settled after consultation with State Attorneys-General. After consideration of the Commission's report, the Government will introduce appropriate legislation".

The threats to individual privacy have been referred to by Mr. Justice Kirby, A.L.R.C. Chairman, in two addresses recently. The first, to a Seminar at Armidale on 8 February 1976,drew attention to the intrusive capacities developed by modern technology, especially computers and surveillance devices. On 14 March 1976, Mr. Justice Kirby, speaking in the A.B.C.'s "Guest of Honour" drew attention to the associated problem of the individual's relationship with big government and big business. He referred to the secretive tradition of bureaucracy in Australia.

The A.L.R.C. Chairman's comment secured favourable leaders in a number of national newspapers in Australia. The "Age" (17 March 1976) warned of the "risk of bondage to a super State ... peril to the individual and a psychological sense of loss and betrayal". "For privacy", suggests the "Age" read 'freedom". Similar sentiments were voiced by the "Sydney Morning Herald" and the "Australian" (16 March 1976), each of which welcomed the foreshadowed A.L.R.C. project as "timely".

The terms of reference in this important exercise should be settled within the next few weeks. They will be mentioned in the next issue of "Reform".

On freedom of governmental information, the Prime Minister, Mr. Fraser, in an answer in Parliament on 16 March 1976, asserted that "this is an important matter". He announced that his Department is to prepare a submission which will go to The Cabinet "because I believe that information ought to be accessible to the public to the greatest possible extent". The Australian Prime Minister referred to the Committee set up by the Labor Government to look into this matter. That Committee's report has recently come under severe criticism. L. Maher "Institutionalising Government Secrecy" (1975) 1 L.S.B. 304. Australia is a long way behind the United States, Canada and European countries in permitting citizens access to Government files kept about them. The Prime Minister's announcement and the proposed reference to the A.L.R.C. are timely indications that the problem is perceived in the right quarters.

Law Reform in the News

During the last quarter, a number of projects involving legal renewal have attracted press publicity and public comment. Although views may differ concerning the best method of securing public participation in law reform, it is universally recognised that the rationale of achieving reform through a Commission, rather than through Departments of State, is to permit just such public input. It is therefore neither surprising nor undesirable that law reform proposals should attract public debate. Some of them, in the last quarter, have done just that.

The V.L.R.C., Mr. Smith Q.C.'s proposal relating to rape law reform got a very good press in Sydney. The "Sun" (12 February 1976) called the report "An enlightened but long overdue recommendation". The "Age" agreed that it was time "the law did something to make the rape prosecutions less painful for the victim". It regretted that Mr. Smith's terms of reference extended only to procedure and rules of evidence and urged that "the whole question of consent in rape cases"should be reconsidered. The N.S.W. Government's intention to amend these procedures was commended in the "Mirror" (13 February 1976).

Under the somewhat colourful headline "Law Would Force Wives to Betray Husbands" the "Australian" on 23 February 1976 detailed some of the provisions of the major Q.L.R.C. report on the reform of the laws of evidence. "The most controversial recommendation", said the newspaper, "are those involving married couples ... it would mean that spouses would become potential witnesses against one another in criminal cases". Major changes in N.S.W. involving the abolition of the legal disability of illegitimacy were announced on 10 March 1976. These proposals were called by the "Australian" an "overdue reform". Several proposals for penal law reform came in for a rougher ride. However, a N.S.W. plan to handle juvenile offenders in a more informal way was commended in the "Australian" leader of 15 March 1976.

The current A.L.R.C. exercise on reform of breathalyzer laws for the Capital Territory secured widespread press coverage. The working paper which came out tentatively against random testing earned the wrath of some commentators. However, other recommendations for the simplification of the law in this area were commended in the "Australian" leader of 24 February 1976. The pitfalls for law reformers in the working paper procedure are shown by the editorial comment in the "Canberra Times" of 23 February 1976. "It is curious ... that the commission should appear to pre-empt contributions to its work by publishing its tentative conclusions on aspects of the blood-alcohol problem before all evidence and views are placed before it". The object of working papers is to focus attention on the areas for dispute. Law reform commissions and committees will have to work hard in Australia to educate the media (and others) to the mechanics of law reform. The mechanics are somewhat different to those used by Royal Commissions, so much in vogue in Australia in the past. It is to be hoped that the press, politicians and the public will come to see the advantages of the working paper procedure for securing useful (as distinct from diffuse) expert commentary on law reform proposals. No doubt, like everything else, this will take time.