

# reform

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

ISSUE NO. 8 : OCTOBER 1977

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## Law Reformer as Governor General

"Great men may be compared to torches shining at  
long intervals to guide the advance ... they  
light up their time ..."

*Claude Bernard, 1865*

Emeritus Professor Sir Zelman Cowen has been chosen to succeed as Governor-General of Australia in December 1977. He brings to the office a lifetime of scholarship. No recluse, he has developed the art of communicating his own thoughts and those of other great intellects to the Australian public over nearly three decades. Since the early 1950s he has been a frequent commentator on radio and later television : never retreating from the obligation of the modern scholar to use the new techniques of communication to share wisdom and knowledge.

Sir Zelman was appointed a Commissioner of the A.L.R.C. on 1 July 1976 for a period of three years. He was one of seven part-time Commissioners, carrying this responsibility with other heavy burdens. These included those of Vice-Chancellor of the University of Queensland, Chairman of the Australian Vice-Chancellors' Committee and Director of the Australian Opera. He is a man of many parts with an endless stream of anecdotes and good humour, some based on the famous legal and other luminaries he has known.

Whilst a member of the A.L.R.C. he took an active part during the whole course of the reference on *Human Tissue Transplants* (see p59). He also took an active part in the Commission's work on its important *Privacy* Reference. In 1969 he delivered the A.B.C. Boyer Lectures on the theme "The Private Man" alerting Australian society to the importance of preserving privacy in the modern age :

"A man's privacy is his safety valve, he has in it his permissible area of deviation, his opportunity to give vent to what he would not express or do publicly; within these private limits he may share confidences and intimacies with those he trusts and he may set boundaries to those confidences".

Sir Zelman was also associated with the Commission's early work on its reference concerning standing to sue in federal courts and class actions. His catholic knowledge of and experience in the law will be sorely missed. As one Commissioner put it during his last meeting of the A.L.R.C. on 29 August :

"He has, during an all too brief period on the Commission made a powerful contribution to its work and to the depth of thought which it gives collectively to its references. He enhanced the stature of the Commission by his coming as he does by his going in the happy circumstances of his appointment".

## Changeover in Australia's Attorney General

"Politics is almost as exciting as war, and quite as dangerous. In war you can only be killed once.

*Sir Winston Churchill, 1920*

Following the resignation of Federal Attorney-General R.J. Ellicott, the Australian Law Reform Commission now has its fifth Attorney-General, Senator the Honourable Peter Durack. He has been a Senator for Western Australia since 1971 and was previously a member of the Legislative Assembly of Western Australia. Educated at the University of Western Australia, he went as a Rhodes Scholar to Oxford where he took the degree of B.C.L. He was called to the Bar in England in 1953 (Grays Inn) and returned to Perth in 1954, when he commenced practice there. He has always taken a keen interest in law reform. He was a member of the Senate Standing Committee on Constitutional and Legal Affairs and played an active part in the consideration of the *Family Law Act* 1975. His first portfolio was as Minister for Veterans' Affairs. In that capacity he spoke in the Senate on 20 October 1976 on an urgency debate on civil liberties in Australia. (*C.P.D. (The Senate)* p.1314).

"One of the earliest and most important initiatives that was taken by this Government was to refer [the right to privacy] to the Law Reform Commission. ... The Attorney-General has referred to the Law Reform Commission a number of other matters which are of great interest in relation to the question of civil liberties. ... A number of reports have been received from the Law Reform Commission on a number of matters affecting civil liberties. The reports deal with complaints against the police, criminal investigation, alcohol, and drinking and driving ... At the moment all these reports are under active and alert consideration by the Attorney-General ... The Government certainly is giving proper consideration to them".

Senator Durack was referring to his predecessor, Mr. R.J. Ellicott, Q.C., who has now resigned. It was from Mr. Ellicott that the A.L.R.C. received a run of challenging and controversial references. The latest, on 7 July 1977, deals with reform of the *Lands Acquisition Act* (see p.65). During his term, Mr. Ellicott took a keen and active interest in the work of the Commission. Many times he condemned the use of law reform bodies as mere "window-dressing" :

"There is no point in law reform bodies producing reports and spending large amounts of public money in the process if the reports are to lie unread by gathering dust on Ministerial and departmental shelves. There is little point in me, as Attorney-General, referring matters to my Commission, if I ignore the results".

Ignore the results, he did not. The complex and vitally important *Criminal Investigation Bill* 1977 was brought into Parliament by him. As the Prime Minister of Australia pointed out, opening the Australian Legal Convention and speaking of the Bill :

"This is an area in which there has been much dissatisfaction, considerable writing, many proposals for reform, but not much legislative action ..."

Mr. Ellicott resigned as a result of circumstances arising out of a private criminal prosecution. One of the issues which is before the A.L.R.C. in its reference on standing to sue, is whether private criminal prosecutions should, in principle, be retained. They do not exist in the United States or Europe. A Canada L.R.C. W.P.15 *Criminal Procedure : Control of the Process* has suggested abolition in Canada. The Melbourne *Age* correspondent commented on the "irony" involved in the A.L.R.C.'s receipt of a reference on this very issue from Mr. Ellicott.

## Uniform Law on Transplants Urged

"He hangs between; in doubt to act or rest;  
In doubt to deem himself a god, or beast;  
In doubt his mind or body to prefer;  
Born but to die, and reas'ning but to err.

*Alexander Pope, an Essay on Man, II,7*

The A.L.R.C. report, *Human Tissue Transplants* (A.L.R.C.7) was tabled in Parliament on 21 September. It urges a number of important reforms.