

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.

- * A new definition of "death", to include "irreversible cessation of all function of the brain of the person".
- * Simple machinery for donation by competent adults over 18 years.
- * Forbidding donation of non-regenerative tissue by minors except where there is a danger of death, consent by parents and child, approval by a committee presided over by a judge, based on a criterion of benefit to the donor.
- * Simplified procedure for securing immediate relatives' "non-objection" (not consent) for transplantation from dead persons.
- * Use of certain tissue for therapeutic purposes, where removed during autopsy.
- * New rules for anatomy schools.

The report is full of controversial recommendations. Some subjects are reserved for specific, separate, urgent attention in the future :

- * Test tube babies.
- * Transplantation of human ova.
- * Use of fetal tissue in transplants.
- * Euthanasia.
- * Genetic engineering generally.

The report was delivered in less than a year on 30 June 1977. The Commissioner in charge of the reference, Mr. Russell Scott, said that the most important single recommendation was for the adoption of a new definition of "death".

"The law must give clear guidance to the medical profession here. It should remove doubts which presently exist about doctors using kidneys, liver and other organs from a patient who has been sustained by artificial respirators but whose brain has irretrievably ceased to function".

The report urges uniform laws to promote greater availability of scarce organs and tissues. The use of driving licences, as in North America, is mentioned. Uniform laws on this subject have been achieved in fifty States of the United States. There is some hope that they may be achieved in Australia. The A.L.R.C. had much assistance from State Health Departments as well as from its own team of twenty top medical and other consultants. Copies of the A.L.R.C. report are available from the Australian Government Publishing Service (Price \$4.30).

Drug Trafficking Inquiry in N.S.W.

"I wonder what pleasure men can take in making beasts of themselves!"
"I wonder, madam, that you have not penetration enough to see the strong inducement to this excess; for he who makes a beast of himself, gets rid of the pain of being a man".

Dr. Samuel Johnson, c. 1780

Hot on the tail of the recently announced Royal Commission in South Australia on drugs (Professor Ronald Sackville, Royal Commissioner), the New South Wales Government has now launched its Royal Commission "with respect to certain matters relating to drugs". The Commissioner is the Honourable Mr. Justice P.M. Woodward, a judge of the Supreme Court of New South Wales.

The Royal Commissioner is to inquire into and report upon :

- * The cultivation, distribution, possession and use of drugs other than tobacco and alcohol.
- * The identity of persons involved in the same.
- * Whether in the light of findings changes are desirable in the laws relating to drugs of addiction or prohibited drugs or the administration of those laws.

The Royal Commission has taken up premises in 99 Elizabeth Street, Sydney, and has