

Interim Report of the Commissioner into N.S.W. Government Administration (Professor P.S. Wilenski), *Directions for Change*, referred to in [1978] *Reform* 30. It was foreshadowed in the N.S.W. L.R.C. Report, *Appeals in Administration*, 1973.

Implementing L.R.C. Reports

“And enterprises of great pith and moment
With this regard their currents turn awry,
And lose the name of action.”

Shakespeare, *Hamlet* III, i, 56.

At the turn of the 17th Century, Lord Herbert declared that “the shortest answer is doing”. Between the recommendation for law reform made by an L.R.C. after painstaking effort and consultation, and the achievement of actual reform of the law, lie many pitfalls. The worst of these, declared the N.S.W. L.R.C. in its 1976 *Annual Report*, was not positive opposition by government, but simply the slow and uncertain haphazard way in which law reform proposals tend to get a low priority from hard-pressed administrators and politicians. Professor G. R. Blakey of Cornell Law School, recently reminded a U.S. Congressional Committee of Oliver Cromwell’s declaration to the Second Protectorate Parliament:

“The truth of it is, there are wicked and abominable Laws which it will be in your power to alter . . . to hang for a trifle, and acquit murder—is in the ministration of law, through the ill-framing of it . . . And I wish it may not lie upon this Nation a day longer than you have an opportunity to give a remedy.”

There is evidence that a new urgency is beginning to attend the implementation of L.R.C. recommendations. The A.L.R.C. *Annual Report* again returns to the theme of making law reform useful and “translating proposals into law”. The Commissioners draw attention to the fact that the Senate Standing Committee on Constitutional and Legal Affairs is currently examining a number of matters relating to the processing of law reform proposals in Australia, including those made by the A.L.R.C. itself.

The Federal Attorney-General, Senator Durack, has repeated the statements made by his predecessor, Mr. Ellicott. The latter

stressed many times the need for government to give active and prompt attention to law reform reports and to implement them wherever possible, consistent with government policy.

But law reform sometimes moves in mysterious ways. There appears to be a growing willingness on the part of the governments of the States to adopt proposals made by the Federal Law Reform Commission. A few illustrations will show an increasing utilisation of the work of L.R.C.’s and greater rationalisation of law reform effort in Australia.

Police Complaints: The most recent A.L.R.C. Report, *Complaints Against Police: Supplementary Report* (A.L.R.C.9) has now been implemented, in substance, by the N.S.W. Parliament. Just before the State Elections, the Parliament passed the *Police Regulation (Allegations of Misconduct) Act* 1978. The object of the Act is to provide for the independent investigation and determination of complaints of misconduct made against members of the police force. The Act bears the imprint of the A.L.R.C. three-point solution for a just disposition of public complaints against policemen,

- a Police Tribunal is established, headed by judges;
- the N.S.W. Ombudsman is given a role in the receipt, conciliation and investigation of public complaints against the police;
- a special Internal Affairs Branch of the Police Force will have particular responsibilities to provide vigorous and impartial investigation.

It is understood that in connection with the proposal to establish a Federal Police Force in Australia (as recommended by Sir Robert Mark) the A.L.R.C. proposals are now also under consideration in Canberra for application to the new Federal Police. Implementation of the proposals in the N.S.W. Force, the biggest Police Force in Australia, is an important step forward in law reform action.

Transplant Laws: The A.C.T. *Transplantation and Anatomy Ordinance*, 1978 came into effect in December 1978. The Ordinance is based on the draft Ordinance proposed by the

A.L.R.C. in its report *Human Tissue Transplants*. The A.C.T. Ordinance includes acceptance of the central suggestion of a new definition of death framed in terms of the irreversible loss of brain function. This is the first time that "brain death" has been accepted into law by an Australian legislature. Meanwhile, the Minister of Health of Queensland, the new Deputy Premier of that State, Dr. Llew Edwards, M.P., has announced the intention of the Queensland Government to accept most of the recommendations of the A.L.R.C. Report. It is understood that the report is also under consideration by the N.S.W. Government and in Darwin. A Committee in South Australia has also been asked to look at the A.L.R.C. Report.

Debt Recovery: The South Australian Parliament, in advance of action at a federal level, has enacted a *Debts Repayment Act 1978*. With some modifications, this Act followed several of the basic recommendations contained in A.L.R.C.6, *Insolvency: The Regular Payment of Debts*. A major variation is the modification of the A.L.R.C. proposal that creditors should have the right to veto regular repayment plans for insolvent debtors. Instead, the S.A. Bill suggests that this power should be reposed in the South Australian Credit Tribunal. Suggestions contained in the Commission's Report are now under consideration in Canberra in the Department of Business and Consumer Affairs. It is expected that reforms of the *Bankruptcy Act* will be introduced into Federal Parliament soon. These may contain certain of the Commission's proposals for reform of that Act.

Lands Acquisition: Even before the A.L.R.C. has reported on its Compulsory Acquisition Reference, action has been taken based on its Discussion Paper #5, *Lands Acquisition Law: Reform Proposals*. A *Lands Acquisition Bill* was passed by the Northern Territory Legislative Assembly on 30 November 1978. It draws on several of the ideas contained in the Discussion Paper, including a pre-acquisition hearing for compulsory taking of property and a new compensation formula.

Evidence Laws: The first report of the N.S.W. L.R.C. on Evidence dealt with the admissibility of business records, including com-

puter records. This report was adopted by the N.S.W. Parliament in 1976. In 1978, the Federal Parliament also adopted the N.S.W. L.R.C. proposals, a case of the Commonwealth using a State L.R.C. report.

Although Australia continues to lag behind the United States and Canada in achieving uniform laws, the increasing willingness of legislators to adopt and utilise L.R.C. reports prepared for other governments is a healthy sign. Further action is now promised. Attorney-General Durack has indicated his hope to reintroduce the *Criminal Investigation Bill* (based on the Second Report of the A.L.R.C.) into Federal Parliament during the first session in 1979. That Bill contains major and controversial proposals for reform in an area in which, as Prime Minister Fraser put it:

"There has been much dissatisfaction, considerable writing, many proposals for reform, but not much legislative action."

The willingness of Australian Parliaments to face up to difficult and controversial issues such as complaints against police, brain death, criminal investigation and the like, suggests that there is a growing realisation of the importance of translating good law reform work into the law of the land.

Lord Scarman once said that it was the genius of English-speaking people that they found low-key, routine ways of resolving difficult problems. During the past decade parliaments everywhere have created permanent law reform bodies to assist them in the review and modernisation of the law. The next step is to find the appropriate machinery to ensure regular routine attention to the proposals of these commissions.

Criminal investigation, in particular, is a graveyard of reports largely unattended to. The *Murray and Beach Reports* in Victoria, the *S.A.L.R.C. Report* in South Australia, the *Lucas Report* in Queensland, the *11th Report of the Criminal Law Revision Committee* in England, the *Thomson Report* in Scotland and the Home Office Report on *Tape Recording of Confessional Evidence*: all of these remain largely ignored. The statement by Attorney-General Durack of his intention to reintroduce the *Criminal Investigation Bill* early in 1979 may be further evidence that at the Federal level in Australia, the tide has turned.