I do not propose to discuss law reform activity from theoretical principles because, in recent years in all common law countries, a great deal has been written about the need for, and the functions of, permanent law reform agencies. I will state purely my personal views on the present Queensland situation and the brevity of this article is the sole apology I make for propositions stated in rather bare form which reflect a judgment based on a relatively short experience as a worker in the field of legal reform. The Law Reform Commission was constituted as from March 1, 1969 by the *Law Reform Commission Act* 1968[1] and, although s. 3(2) provides that it shall consist of not less than three and not more than five members, is in fact constituted by four part-time members, viz. myself as chairman, two practising members of the junior bar and a solicitor who is a partner in a Brisbane legal firm. All members were appointed for a term of three years, each non-judicial member has the right to retain his private practice as a barrister or solicitor and the chairman is required to carry out his judicial duties. The salary of the non-judicial members corresponded to that payable to a District Court Judge as at the date of their appointments, but was not increased with the rise in judicial salaries in the early part of 1971. The secretary is a solicitor employed on a full-time basis. The Commission prepared and had approved by the Minister a programme of law reform in specific areas and in accordance with a priority scheme, including a review of Imperial, N.S.W., and Qld. Statutes which cannot be shown to continue to perform a useful or necessary function. A number of recommendations have been made to the Minister for implementation by legislation. The Act (s. 15(3)) requires the Commission to report to the Minister on the recommendations for reform formulated by it and requires such recommendations, when approved by the Governor-in-Council, to be laid before Parliament (s. 10(3)).

We have generally followed the practice, adopted by the U.K. and N.S.W. law reform Commissions, of circulating working papers among interested bodies and individuals in the hope of receiving valuable comments before making our final recommendations. By reason of s. 15(3) it was thought desirable to obtain the approval of the Minister to this procedure, and such approval has been granted on the basis that the material is to be treated as confidential. Because of the need to obtain informed criticisms of our proposals it is my opinion that neither the working papers nor the reports should be treated as secret or confidential, although confidence should be respected should the Executive Government consult with members of the Commission, after the making of the report, in relation to the preparation of the Bill for presentation to the Legislature. I consider it most important that a Law Reform Commission consult as openly and as widely as possible with all interested groups in the community so that persons who have special knowledge in a particular field or who may be affected by the suggested alterations in the law be afforded ample opportunity to have their views considered. I believe that working papers should be made available to all members of Parliament and that the reports, including the Annual Report of our proceedings over the preceding twelve months (s. 15(1)), be tabled in the House—as is the case in the U.K., N.S.W. and Canada. All members of the Legislature should be given ample opportunity of informing themselves of any

1. No. 37 of 1968.

proposals to change the law—not merely the usual opportunity afforded them after a bill is introduced in the House.

I do not wish to draw a sharp distinction between "lawyer's law" and other types of law, which has been the subject of criticism,[2] but it must be remembered that scant attention has been given in this state for many years to the task of keeping technical (and I do not mean merely procedural) provisions of the law in harmony with the changing needs of our complex society. No one would disagree with the statement "that the law in this state is in serious need of revision with practically every branch of the law requiring overhaul and modernisation."[3] A major reason for this state of affairs may be that Queensland has lacked a legally qualified Attorney-General for the past forty years—today there is not one lawyer on the Government benches. Considerable benefits will be ours if we but bring the law of property, the law of trusts and the law of contracts into line with legislation which has been enacted in the U.K. and in other States of the Commonwealth.

The ideal situation may be to have a law reform body composed of members who serve on a full-time basis, as in the U.K. and N.S.W., but there are considerable difficulties in achieving this objective in Queensland at the present time. We have a population of less than 2 million people, a practising bar of about one hundred and only one law school. Sir Leslie Scarman and Mr. Norman S. Marsh Q.C. (a member of the English Law Commission) have recently said ". . . . there are many smaller jurisdictions, for example, those of the provinces of Canada, where the population is such that a full-time agency would appear to be an extravagant use of resources".[4] One appointed to serve as a full-time law reformer should not only be motivated by a nagging awareness of the defects in the existing legal framework but should possess an analytical mind and an ability for careful and patient research. I have been persuaded that there is a shortage in Queensland of the highly specialised and dedicated people needed, and I think it would be difficult to obtain the services of five such lawyers for the Law Reform Commission. In saying this I have regard to, among other matters, the financial benefits of private practice in a growing commercial and industrial community. It is simply not practicable, at this point of time, to put into operation in Queensland a body corresponding to the English Law Commission which has a large full-time group of commissioners and research staff.

I look forward to the appointment of one commission member as a full-time executive member, or director of research, as has been done in Ontario and British Columbia whose Commissions have produced work of a uniformly high quality. Such a person might well be recruited from the ranks of academic lawyers, although a practitioner could fill such position adequately if he has shown that he has the quality and ability for legal research. Naturally, a practitioner must be prepared to relinquish private practice for an adequate period.

Should a full-time excutive member be appointed to the Commission the other members could be appointed on a part-time basis with appropriate part-time remuneration for their services. I envisage that the duties and functions of these part-time members would be analagous to those of a board of management or a board of advice. They will not ordinarily themselves carry out the actual detailed research work (this will be done by the executive member and by the

2. Law Reform: The New Pattern: Scarman J. (1968) pp. 26–29.
3. The Pattern of Law Reform in Australia: K.C.T. Sutton (1969) U. of Q. Press, at p. 11.
4. Law Reform in the Commonwealth: A paper by Scarman J. and Marsh Q.C. read at the Commonwealth Law Conference held in Delhi (Jan. 1971).

outside consultants to whom I will shortly refer) but they will bring to the papers produced by the research workers their own expertise, critical reflection and judgment, and will direct their minds also to the selection of consultants, the topics to be researched, the allocation of work between the consultants and the full-time staff and the general administration of the Commission's affairs.

A Commission constituted in the way suggested should "consult out" or "brief out" to selected experts research work in a particular field, e.g. university law school teachers with special interests, as well as practising (including those in governmental or corporate positions) lawyers with specialised knowledge and expertise. The experience of North American law reform agencies shows that this sort of basic and valuable research can be obtained at a reasonable cost and one well below that which a practitioner would charge were he to spend an equivalent time on behalf of a private client. The Queensland body has been referred to as a group of part-time law reformers, but it is important that a distinction be drawn between a part-time law reform agency and one which, although its board members are part-time, has a permanent structure and operates with full-time qualified staff and facilities for conducting continuous research. It is in quite a different category from that occupied by voluntary law reform committees. It is interesting to note that the legislation[5] for the establishment of the Law Reform Commission of Canada provides that it consist of four full-time and two part-time members, and the Scottish Law Commission has two full-time and three part-time members. In New South Wales the Commission members and the full-time personnel carry out the research work and outside consultants are not retained because, in the words of R.D. Conacher, the deputy chairman: "apart from the inescapable need to spend some time on administration, we and our staff are able to give our undivided attention to the matters which we have under review".[6]

There is no real need for the Chairman to be a member of the judiciary. The Commissions in England, Scotland, N.S.W., the A.C.T., the new federal Commission in Canada, and the Law Reform Committee in S.A., have, as chairmen, Judges of Supreme Court status. On the other hand the bodies in the U.S.A. and in the Canadian provinces are chaired, and staffed, by practitioners and academics. From my own experience, I can say that any judge who is a member of a law reform body must be relieved, to a large extent, of his judicial duties.

The Act (s. 9) enables the Governor-in-Council to appoint any person, by reason of his knowledge or experience in a particular branch of the law, to assist the Commission. This section will enable consultants to be engaged and also young and able practitioners and senior law students to be employed on short-service contracts. Junior practitioners and students (even if the latter are employed only in vacation periods) could carry out research under the supervision of the secretary, the executive member and finally the Commission itself at its regular meetings. In some of the North American organisations students are employed over vacation and produce a deal of valuable work. I believe that the participation of such people in the work of law reform must help in maintaining interest and enthusiasm in this field among the ranks of the practising profession.

The Commission can derive considerable assistance from the work done by other law reform bodies in the United Kingdom, Australia, North America and Canada. This is another reason why I think we will not be prejudiced by the

5. 18–19 Eliz. 11, C 64, s. 3 (Can).
6. 43 A.L.J. at p. 514.

lack of a number of full-time commissioners. I would like to see regular meetings of chairmen, or executive members, of all the Australian Commissions because, in a federal system, it is important for the States to keep in close contact with each other. It is far better that there be an independent Commission than that the work of law reform should be handled by a Government department. In Ireland law reform is handled by a special division of the Department of Justice set up to deal solely with law reform. This appears to work fairly well but I think it is much better to have a process of open consultation where those giving advice to the Executive and the Legislature do so independently and disinterestedly, and knowing that their reports need not have, in the first place, to pass the scrutiny of civil servants. A danger inherent in the present Queensland situation, where the reports are made to the Minister and may never be tabled in Parliament, is that the Commission may be looked upon merely as a division of the Department of Justice.

I had expected that, when this article was published, a number of our recommendations would have received legislative approval, viz. a Commercial Arbitration Act, a Perpetuities and Accumulations Act, a Trusts Act and a new Statute of Frauds. Unfortunately, our hopes have not been realised. These are fields in which we have endeavoured to make reasonably broad surveys of the law whereas, in certain other areas, we have followed what some would describe as a "patch-work" approach, e.g. by recommending minor amendments to the Criminal Code, the Fatal Accidents Act, the law of landlord and tenant, etc. In my opinion, this latter method is desirable for the reason that, in this state, there are certain lacunae and anomalies in the law which the Legislature may rectify with expedition in order to avoid injustice, e.g. the provision which, consequent upon the Commission's recommendation, enables illegitimate children to benefit under the *Fatal Accidents Act*.[7] Although a law reform agency should concern itself primarily with problems which require study in depth there is, in Queensland, a dearth of organisations which have displayed initiative and "know-how" in persuading the Government to give attention to minor reforms. In a state which has no lawyers in its Ministry is there not a need for a specialised agency which is prepared to assume the task of liaison between the profession and the Government?

I refer, at this point, to s. 10(2)(a) of the Act which requires us to receive and consider any proposal for the reform of the law which may be made to the Commission. This provision encourages outside groups and members of the public to approach a statutory law reform agency, and I think it better it remain even at the risk of fragmentation of the work of the Commission. We have given consideration to a number of matters referred to us from outside, particularly from individual members of the profession, and these suggestions will assist in the formulation of new programmes to be submitted for Ministerial approval.

We must have the support of the legal profession and of the University law school. Law reform is essentially a scientific revision of legal rules in the light of existing economic and social conditions and demands consultation with professional bodies and other interested voluntary groups. Above all, the aim of the law reformer in this age of legislative out-pouring should be to make the statutes more accessible, easier to consult and more systematised. We have been working in close co-operation with Parliamentary draftsmen but, because we are a small community and yet one faced with all the difficult problems of a technological society, it is highly desirable we have on our staff a man skilled in drafting tech-

7. Common Law Practice Act Amendment Act, 1970, (No. 44 of 1970), s. 2.

niques. This does not mean that the Commission should usurp the functions of the Parliamentary Draftsman but I consider that a draft bill embodying our recommendations will commend them to the Government more than if they are expressed in a general way. Both practical experience and academic scholarship are necessary bed-fellows for the birth of a balanced offspring. I hope it will not be long before the Law Reform Commission is accepted as a permanent part of the legal structure of this state and that the profession will consider it a duty to scrutinize with care the working papers which emanate from it.

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