CHAPTER III - LAW REFORM AGENCIES: GROUP ONE

Most common law jurisdictions now have a law reform or law revision agency of some sort. In fact, one would be forgiven for thinking that these agencies are the only institutions concerned with law reform, given the tendency to regard law reform as synonymous with law reform agencies. It has already been submitted that such a narrow view is unwise and unhelpful and that the subject of law reform concerns not only law reform agencies but also judicial lawmaking and law reform by legislation. The description which follows should be read in light of that conclusion.

The discussion of law reform agencies has been divided into two groups. Group One consists of the agencies in the United Kingdom, Ireland, Canada, Australia and New Zealand. These agencies are summarised in this Chapter. Group Two consists of the agencies in the U.S.A., Africa, and Other Jurisdictions. The agencies of Group Two are summarised in Chapter IV. That Chapter also contains a comparison with European Ministries of Justice and some observations on particular topics which arise from the summary of law reform agencies. The combination of the comparative method and law reform agencies will be examined in Chapter V.

It is extremely difficult to obtain up-to-date information about law reform agencies. In 1972, Dr. J.L. Robson, New Zealand Secretary for Justice, conducted a basic survey of ten law reform agencies.¹ That survey was the inspiration for the survey which was conducted for this thesis. A questionnaire was devised which was sent to 64 addresses in November 1987. The addresses had been obtained by writing to the Australian Law Reform Commission and the Connecticut Law Revision Commission. In the end, 29 completed questionnaires were returned and six replies by letter were received.² Those replies have been extremely helpful and the agencies are thanked for

the surprising amount of trouble which they took for the survey.

It is perhaps best to regard this survey as a pilot study which provides lessons for any future surveys of this kind. The questionnaire was devised with a limited knowledge of law reform agencies gained from John H. Farrar's *Law Reform and the Law Commission,* Dr. Robson's survey referred to above, various academic articles and correspondence with the Australian LRC and the Connecticut LRC. From the replies received, it was found that some questions should have been phrased differently, others were asked which need not have been asked and others were not asked which should have been asked.

Originally, it was thought that the results of the survey would be represented in the form of various charts comparing the answers received from the agencies. However, the replies did not lend themselves to this sort of analysis and only two tables have been drawn up. (Appendix 1 compares Budgets; Appendix 2 compares Implementation Rates). This serves to emphasise that statistical comparisons would be wholly misleading and counterproductive. What has emerged from the survey is that the 60 or so law reform agencies are quite different from each other in many respects, but it would be pointless to methodically compare statistical differences which are of little consequence. It is far more helpful and more interesting to collect together information on each agency from the survey and other sources and give a brief summary of its structure, its work and its effectiveness.

At least three respondents recommended William H. Hurlburt's book, *Law Reform Commissions in the United Kingdom, Australia and Canada.* This 500-page study is an invaluable contribution to the literature on law reform, dealing with 18 of the most important agencies in the

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2 The covering letter and questionnaire are reproduced below (Appendix 4), as is a printout of the 29 full replies received (Appendix 5) which includes some further information obtained from other sources (material in square brackets).


4 Jutiliber, Edmonton, Canada, 1986.
world. Mr. Hurlburt wrote the book in the course of a sabbatical year at the Centre for Socio-Economic-Legal Studies at Wolfson College, Oxford. He drew on his seventeen years of experience with the Alberta Institute of Law Research and Reform, on interviews with 150 or so judges, ministers, officials, lawyers and law reformers and on a wealth of articles and lectures to write what must be the definitive work on the topic. However, even in the two years since the book was published, quite a lot has happened in the field. What is more, the book does not deal with the American, African or Asian agencies and contains no information on the Irish LRC or the New Zealand Law Commission.

There are seven other sources of information of note. In 1983, the Commonwealth Secretariat published a 128-page booklet listing the reports of Commonwealth law reform agencies and their legislative implementation up to December 1982. It was originally intended that this booklet would be regularly updated, but this has not happened. The Commonwealth Secretariat also publishes the quarterly Commonwealth Law Bulletin, which contains a section on law reform in each issue. The Australian Law Reform Commission has published two volumes of its Law Reform Digest, which summarises reports of agencies in Australia, Fiji, New Zealand and Papua New Guinea from 1910 to July 1985. The Commission also publishes a quarterly journal, "Reform", which contains reports in journalistic fashion on the activities of Australian agencies,

5 It may also be added that for many of the agencies the most up-to-date information given by Hurlburt is for the year 1983-84, and for some agencies his information is up to the end of 1982 only.


7 In 1987, volume 13, there were approximately 1,500 pages on law reform.


9 Issue 1 appeared in 1976. There are approximately 200 pages per annum. "Reform" is indexed in the Current Australian and New Zealand Legal Literature Index, and an index of issues 1 to 35 appeared in issue 36 (October 1984).
with sporadic information on the activities of other agencies. The activities of the U.K. Law Commissions are summarised in *Law Commission Digest*\(^\text{10}\) and *Law Under Review*.\(^\text{11}\) Finally, the Law Reform Commission of Canada publishes a newsletter, *Law Reform*, 3 or 4 times a year, containing news from the various agencies in Canada.\(^\text{11a}\)

The emphasis in the description which follows is on the present agencies of law reform functioning in each jurisdiction. The list of addresses given in Appendix 3 is a rough guide to the functioning agencies in common law jurisdictions. However, some addresses have been included which perhaps should not have been listed, whilst others have been omitted which perhaps should have been listed. For example, it is doubtful whether many of the African and Asian agencies exist in anything other than name and it is arguable that no United States jurisdiction (even New York or California) has a body which can be classified as a law reform agency. Conversely, perhaps the list should have included the U.K. Law Reform Committee and Criminal Law Revision Committee, the Victorian Legal and Constitutional Reform Committee, etc. However, to include the latter committees would have added unnecessary lumber to the business of understanding the more important law reform agencies. Finally, the existence of some agencies was not known until after the survey had been sent out and those agencies were not sent the questionnaire.


\(^{11}\) The first issue of this quarterly bulletin appeared in March 1987 (See (1987) 137 NewLJ 423). It lists all ongoing law reform projects, not only of the Law Commission, but also of other government Departments and similar bodies. Its aim is to prevent duplication of research into reform of the law in any particular field. It also contains a list of foreign law reform agencies' reports received by the Law Commission.

\(^{11a}\) No.1 was published in March 1985. The newsletter has about 5 pages per issue. It is edited by Judith Rubin. Although it advertises that it seeks material from law reformers all over the world, it appears that so far it has only included information from Canadian agencies.
THE AGENCIES - GROUP ONE

UNITED KINGDOM

The history of law reform in the U.K. up to 1965 has been well documented elsewhere, and need not be repeated here. Our primary concern is the Law Commissions Act 1965 (c.22), which established the Law Commission and the Scottish Law Commission. While the Lord Chancellor's Law Reform Committee and the Criminal Law Revision Committee still exist on a part-time basis, they are of minor importance in comparison with the Law Commissions.

The 1965 Act had its origins in a 1963 book edited by Gerald Gardiner and Professor Andrew Martin, entitled *Law Reform NOW*. In it, the authors stated that in their view it was "axiomatic" that much of the law was out of date, some of it shockingly so. They believed that the problem of law reform was largely one of machinery. They proposed the setting up of a full-time group of Law Commissioners presided over by a junior minister in the Lord Chancellor's office. Harold Wilson appointed Lord Gardiner as Lord Chancellor after the 1964 election, and so the latter had the power to put his ideas into action. A White Paper was produced which explained his views. Meanwhile, Professor Martin visited Denmark, France, the Netherlands, Sweden and West Germany whilst developing the Law Commissions Bill. He was interested in the continental approach to law reform and found that all of those countries had Ministries of Justice and in all of them, with the exception of Sweden, permanent and ad hoc committees have (in contrast with British practice) ceased to be the principal agencies of Law Reform. They have a part to play, but only by assisting ministries of justice with research and advice directed to the details.

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12 Hurlburt, supra n.4, pp.15-50; Farrar, supra n.3, pp.1-17. It should be mentioned that an M.A. written at UCD in 1947 by one John Kenny (later Mr. Justice Kenny) concerned *Law Reform in England Since 1921*.


14 Ibid., p.1

15 *Proposals for English and Scottish Law Commissions* (Cmnd. 2573); reproduced in Railstick (ed.), supra n.10, pp.3-6.
of reform, the need for, and tendency of, which has been pre-determined by a central planning body (such as our proposed Law Commission would be). It has been another basic feature of our thoughts about the Law Commission (a thought which appears in somewhat attenuated form in our draft) that the central planning agency should be responsible for making sure that legislation initiated in other government departments will not run counter to the overall direction in which the legal system is intended to develop.16

Lord Gardiner also had the model of the New York Law Revision Commission in mind.17 The Bill passed through Parliament relatively easily,18 and the result was the Law Commissions Act 1965.19

Two Commissions are established - the Law Commission20 and the Scottish Law Commission. They are established "for the purpose of promoting the reform of the law" (s.1(1), s.2(1)) and their functions are set out in Section 3(1):

It shall be the duty of each of the Commissions to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally the simplification and modernisation of the law ...

The phrase "all the law" was considered crucial and Lord Scarman hailed the Law Commission as a new part of the Constitution.21 However, as Hurlburt has said, "it has not been able to realize that hope".22

17 264 H.L. Deb. 1218-1219; Hurlburt, supra n.4, p.298.
20 The Law Commission will be referred to as the English Law Commission, although it covers the law of Wales as well.
22 Hurlburt, supra n.4, p.85.
The Law Commissions do not have an unfettered discretion as to the areas of law which they can examine. Each Commission must prepare programmes for examination of different branches of the law (and also programmes for consolidation and statute law revision). Their respective law ministers have a power of veto over these programmes. The Commissions may only examine branches of the law pursuant to an approved programme. Their approved programmes, their proposals for reform and their annual reports are laid before Parliament (but tabling in Parliament is a very different matter to actually obtaining a debate on a Bill). It is also envisaged that the Commissions will play a central planning function in that their programmes recommend the agency (whether the Commission or another body) by which examinations of particular branches of the law should be carried out (s.3(1)(b)) and they provide advice and information to government departments etc. concerned at the instance of the Government with law reform (s.3(1)(e)). The Act also empowers the Commissions to undertake comparative law studies (s.3(1)(f)) and to receive and consider proposals for reform which may be made or referred to them (s.3(1)(a)). Finally, s.3(4) states that in the exercise of their functions under the Act the Commissions shall act in consultation with each other.

It is interesting to note the very different replies received from the two Commissions to question 10 of the survey. The question was headed "Initiation of Projects" and was in two parts. Firstly, "does the agency have power of initiation of projects?" and secondly, "who else can initiate projects?" To the first part, the English Commission basically answered "yes", whilst the Scottish Commission answered "no". In fact, both answers are correct. The detailed answer from England (see Appendix 5) shows that the Commission considers that it has an initiative "within the ambit of any agreed law reform programme". (The Commission prepares the programme and the ministerial veto is rarely used). The Scottish answer is also correct -- it simply places more...


24 Hurlburt, supra n.4, p.360, fn.3.
emphasis on the existence of the veto power. The Scottish Commission goes on to say "But the Commission can receive and consider proposals for reform which may be made or referred to them." This is true, and this power can be interpreted as a form of initiative. As regards the second part, the Scottish Law Commission simply answers "Lord Advocate", but the English Commission does not simply answer "Lord Chancellor". It adds that any other Minister has power of initiative under s.3(1)(e) and that any other body has such power under s.3(1)(a). Again, this is technically true and can be considered as a limited power of initiative. (The Commission adds that in practice the Lord Chancellor is the only other person with such power.)

(1) The English Law Commission

The Law Commission consists of five members (Chairman and four Commissioners) appointed by the Lord Chancellor (s.1). All the members must be lawyers. The first members were appointed on 16 June 1965. The first four ordinary Commissioners were Professor L.C.B. Gower, Norman S. Marsh, Professor Andrew Martin and Neil Lawson, Q.C. These were men of obvious integrity and expertise, and their appointments were widely welcomed as indicating the importance of the Commission in the Government's eyes. The Chairman was Sir Leslie Scarman (now Lord Scarman), a judge of the Family Division of the High Court. His personality was ideal for the job:

It appears to have been his inspirational addresses on the subject of law reform and on the subject of the Law Commissions and his ability to attract the help and support of those influential in legal and political life which enabled him to establish a position from which to influence the adoption of his commission's proposals.26

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25 Section 1(2): "The persons appointed to be Commissioners shall be persons appearing to the Lord Chancellor to be suitably qualified by the holding of judicial office or by experience as a barrister or solicitor or as a teacher of law in a university."

26 Hurlburt, supra n.4, p.387.
The first years of the Commission were exciting times. Two ambitious law reform programmes were approved, although Lord Gardiner excised from its first programme the subject of liability for personal injuries and excluded the Commission from the field of administrative law. The Law Commission engaged in extensive consultation and developed the device of the Working Paper. These activities were new to England, and to law reform generally. Professor Gower characterised the Working Paper as the Commission's "major contribution towards the methodology of law reform" and Lord Scarman called it "perhaps the greatest contribution to the public life of the nation made by the Commission" since governments had borrowed the method to invent the idea of "green papers".

Twenty-three years later, there is far less excitement. Hurlburt believes that this is only natural -- The enthusiasm of Scarman et al has "settled down into professionalism and mundane beaverizing on complex and useful but often uninspiring tasks". Others are not so positive. Scarman said in 1979:

The enthusiasms of 1965 have been replaced by a chiller attitude towards law reform. Some doubt its wisdom: others its efficacy: and there is a general feeling that society suffers from too many laws, too many lawyers, and would be re-invigorated by less legislation and fewer lawyers.

27 Law Com. 1, First Programme of Law Reform (1965); Law Com. 14, Second Programme of Law Reform (1968).


29 Hurlburt, supra n.4, p.60.

30 Gower, supra n.28, p.263.


32 Hurlburt, supra n.4, p.485.

33 Scarman, supra n.31, p.2.
The Law Commission has achieved a great deal in the twenty-three years of its existence. It has five full-time Commissioners and a Secretary, four parliamentary counsel, 13 other civil servants, 14 research assistants and 4 consultants. Its administrative and secretarial staff numbers twenty-one. Up to the end of 1987, it had produced 3 programmes of law reform, 2 programmes of consolidation and statute law revision, 22 annual reports, 103 working papers and 144 reform reports. Allowing two years for implementation, 77.9% of the reform reports up to the end of 1985 which called for legislation had been implemented in full by the end of 1987, 4.9% had been implemented in part and 17.2% had not been implemented. (Details at Appendix 5). Its budget for 1986/87 was £2,062,300 sterling, which is the second highest in Appendix 1.

While this may seem an impressive record, there are problems which have not been surmounted. The Law Commission's attempts at codification have been scaled down, as reported in Chapter II above. It has not had the resources to supervise a coherent strategy for law reform by government departments, royal commissions and the Commission itself. Nor has it had the resources to collect as much empirical data as it requires. Recently, there has been some disillusionment with the consultation process, with the usefulness of lengthy working papers and with the Commission's implementation rate.

Peter M. North was a member of the Law Commission from 1976 to 1984 and said in 1985:

I am highly sceptical whether all or any of the legitimate purposes of consultation are adequately achieved.


He says it seems that consultation is seen as more important than the end results. Consultation is time-consuming, breeds bureaucracy and consultees are showing signs of wilting under the burden of excessive consultation, since the government often conducts a "second round" of consultation after the Law Commission's report. Consultation papers are perhaps too long and commentators do not have time to master them, he says. Selective consultation is more effective than generalised distribution of consultation papers. It is useless to send papers to academics; it is far better to ask them to be a member of a working party etc. He believes that any claim to some form of democratic legitimacy due to widespread consultation is spurious. Pamphlets may produce a substantial response but it is not necessarily statistically relevant.\(^{37}\)

In reply, Hurlburt believes the note sounded by North is "too melancholy".\(^{38}\) It is better to tap some wisdom than none at all. Lack of widespread response to wide-spread invitations does not demonstrate the failure of consultation. He says that on the whole the consultation process has the effects which it is intended to bring about, namely improving the quality of law reform proposals, making them more acceptable and giving those affected by law reform proposals an opportunity to be heard.

Whilst the implementation rate is not the sole criterion of success, it is only natural that many people are interested in discovering why certain reports have not been implemented and whether anything can be done to improve the statistics. Views differ as to whether there is a problem of non-implementation at all. Michael Zander stated in 1979 that the Law Commission was outstandingly successful in getting its reports implemented\(^{39}\) and Stephen Cretney believes that

\(^{37}\) For example, the Working Paper on blasphemy (Offences against Religion and Public Worship, W.P. 79, 1981) produced about 1,000 letters and petitions with 20,000 signatures in favour of retaining the offence. However, the reaction came as a result of an orchestrated campaign of response. In the end, the final report (Law Com. 145) recommended abolition of the common law crimes of blasphemy and blasphemous libel.

\(^{38}\) Hurlburt, supra n.4, p.348.

\(^{39}\) Zander, 'Promoting Change in the Legal System' (1979) 42 MLR 489 at 502.
"the extent of the problem of non-implementation is exaggerated". However, Mr. Justice Kerr was "concerned" that the implementation rate was slowing down. Gavin Drewry found that there were parliamentary obstacles to law reform and North complains of "legislative pneumoconiosis" as law reform reports are left on the shelf to gather dust. North points out that the complaint should not be about non-implementation as such, but about non-implementation by inaction, by lack of a publicly expressed decision. There has been a calculated non-implementation of most criminal law recommendations, he says. And Cremey has found that the Home Office and the Department of the Environment are responsible for most of the unimplemented reports. (Suggested methods of improving implementation rates are discussed below, Section 2 (d)).

(2) The Scottish Law Commission

The Scottish Law Commission was very much an afterthought. Lord Gardiner did not contemplate its establishment, but protests at an early stage prompted its creation. The Earl of Selkirk referred to the Bill as "an English Bill to which has been tacked an item providing for Scotland", and accused Lord Gardiner of devoting only one sentence of his second-reading speech to Scotland.

The Commission has far less resources than the English Law Commission. Two of its Commissioners are part-time and it has a Secretary, nine legal staff, 13 administrative and secretarial staff, one draftsman and 2 part-time draftsmen. Nevertheless, it had produced 82 reform reports

43 North, supra n.36, p.354.
45 258 H.L. Deb. 1190; Hurlburt, supra n.4, p.86.
and 74 consultative memoranda by January 1988. Allowing two years for implementation, its implementation rate is 94% (89.5% in full, 4.5% in part).\textsuperscript{45a}

The Scottish Law Commission is established on the same lines as the English, except that the Lord Advocate is its law minister. It prepares many reports jointly with the English Law Commission, but it also jealously guards the civilian elements of Scots law. This function which the Commission has given to itself - the preservation of Scots law - is unique among the law reform commissions of the U.K., Australia and Canada.\textsuperscript{46} Like the English Law Commission, its attempts at codification have been scaled down. In fact Woolman found in 1982 that behind the high statistics of implementation, the Scottish Law Commission did not live up to the aspirations in the 1965 Act or in its three law reform programmes.\textsuperscript{47} Professor D.M. Walker is also extremely critical:

Do we give three hearty cheers for the Commission's twenty year's effort? It is a personal expression of view, but the writer can only acquiesce in one muted cheer.\textsuperscript{48}

One achievement of importance has been the Commission's contribution to legal life which it has made through its research, its published reports and its widespread consultation. Such activities are particularly welcome in a small jurisdiction like Scotland, where there is a scarcity of legal materials.\textsuperscript{49} The Commission has also been one of the only law reform agencies to deal

\textsuperscript{45a} Information from \textit{Twenty-Second Annual Report 1986-87} (H.C. 114, Scot. Law Com. No. 109). The report was completed on 4 September 1987 (p.iii). Rate calculated is implementation up to end August 1987 of reports issued up to end August 1985. 70 Reform Reports (No's 91, 94 and 96 were published from Jan.-Aug.1985); 3 do not call for legislation (No's 30, 66 and 80); 67 reports calling for legislation; 63 implemented (60 in full, 3 in part).

\textsuperscript{46} Hurlburt, supra n.4, p.92. The function is not mentioned in the 1965 Act.

\textsuperscript{47} Stephen Woolman, 'The Scottish Law Commission' (1982) Stat.LR 164. In the Commission's defence, it may be added that no Commonwealth law reform agency has lived up to its early aspirations.


\textsuperscript{49} Woolman, supra n.47, p.164.
with the constitution of its jurisdiction.\(^5\)

Finally, its drafting of a Bill on judicial precedent in the House of Lords prompted the famous 1966 Practice Statement, according to Lord Kilbrandon and Lord Scarman.\(^5\)

**IRELAND**

The recent history of law reform in Ireland begins in 1962 with the publication by Charles Haughey (then Minister for Justice and now Taoiseach) of a White Paper entitled *Programme of Law Reform*.\(^5\)

Haughey sang the paper's praises in Luxembourg in 1964,\(^5\)

and as a result, the general impression was spread that Ireland was a progressive reform jurisdiction.\(^5\)

However, while much was achieved in the early 1960's,\(^5\) the programme slowed down thereafter.\(^5\)

Apart from its low implementation rate, the paper was limited by its being confined to areas within the jurisdiction of the Department of Justice and by its rejection of any form of permanent committee on law reform. Various committees were established on specific areas. For example, there were the Committee on Court Practice and Procedure,\(^5\)

the Landlord and Tenant Commission\(^5\) and the

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52 Pr. 6379, 1962

53 Haughey, 'Law Reform in Ireland' (1964) 13 ICLQ 1300.

54 For example, Lord Gardiner referred to Ireland as a country in which law reform was "extremely active" -- 'Comparative Law Reform' (1966) 52 ABAJ 1021 at 1024.


In 1966, the Advisory Committee on Law Reform was established. In 1969, two lecturers of Trinity College questioned the then Minister for Justice as to when the White Paper would be implemented in full. One of them, Kader Asmal, urged that a permanent law reform agency, similar to the U.K. Law Commissions, be set up, since there were two main weaknesses in the machinery of law reform -- it was neither comprehensive nor systematic and there was little public participation in law reform.

In 1974, the Attorney General, Mr. Declan Costello (now a judge of the High Court), announced that a new Law Reform Commission would be established. It would operate on lines broadly similar to the agencies in England, Scotland, Australia and Canada. Its programme would not be confined to technical law, but would cover areas of social policy, where legal knowledge and expertise were necessary to assist in the formulation of reforming legislation. Later, the Attorney General was reported as announcing further details with obvious enthusiasm.

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59 The Committee was set up in August 1962 but did not report until 1972 (Bankruptcy Law Committee, Report on the Law and Practice Concerning Bankruptcy and Administration of Insolvent Estates of Deceased Persons. 591pp.) It then took another 16 years for legislation to reach the statute book -- Bankruptcy Act 1988. (EC harmonisation moves were partly responsible for the delay).

60 The Committee was formed of representatives of the Benchers of King's Inns, the Bar Council, the Incorporated Law Society and the Law Faculties. Andrias O Caoimh P. was its President. The Minister for Justice provided secretarial services. See Report of the Advisory Committee on Law Reform. Occupiers' Liability (Prl 4403, 1974).


63 Government Information Service statement, quoted by O'Connor, supra n.56, p.15; See also Irish Times 17 September 1974, p.9. The announcement came as the Attorney General was being relieved of his prosecution duties by the establishment of the office of Director of Public Prosecutions (Prosecution of Offences Act 1974).

64 Irish Times, 18 January 1975, p.9.
Introducing the Bill in the Dáil, he defined law reform as "the activity of reforming laws which require legal knowledge and expertise if reforms are satisfactorily to be effected". This was not confined to "lawyers' law", but would involve family law, consumer protection law, employer and employee law, landlord and tenant law, law of personal injuries and basic human rights. The Attorney General's Statute Law Reform and Consolidation Office would still exist, but could be involved in the Commission's programmes. The Bill was welcomed by all parties in the Dáil. Gerard Collins, John Kelly, Desmond O'Malley and Brendan Toal used the opportunity to point out what they considered to be the areas most urgently in need of reform. Mr. O'Malley hoped that the Commissioners would be appointed on their merits, but did not have great confidence that they would be "in the light of events of the past 23 months". Similarly, Mr. Collins thought that the Bill needed amendment since a civil servant would almost certainly be appointed, perhaps "with no very obvious claim to such an appointment." He hoped that once the Commission was set up, its independence would not be interfered with in any way, for any reason, by any member of the Fine Gael party or the Labour party in Government. Deputies Toal and Kelly defended the Bill as regards appointments, Mr. Toal saying that no matter what was brought into the Dáil, Mr. O'Malley said it was "jobs for the Boys" and Mr. Kelly saying that the Attorney General was the very person who had put an end to political patronage in the assignment of State work at the Bar by establishing the office of D.P.P.

65 277 Dáil Debs. 1578. He continued: "Obviously many legislative changes or innovations which could properly be classed as reforms in the law require no specialised legal knowledge to bring them about; an alteration in the age qualification for the old age pension, or alterations in the local authority tenant purchase schemes do not require a law reform commission to assist in their enactment."

66 Ibid., 1606. He was dissatisfied with the recent appointment of the D.P.P. since he claimed the unanimous recommendation of the committee established to vet candidates was ignored by the Government.

67 Ibid., 1595.

68 Ibid., 1612.

69 Ibid., 1596.
The Bill was then referred to a Special Committee of the Dáil. The accusations about appointments continued. Mr. David Andrews said it had become clear that the Coalition had been ruthless from the day they took office from the point of view of appointments. Mr. O'Malley said they "did not even appoint their best hacks" and

Without exception every appointee since the Government came to office has been a Coalition camp follower.

After much discussion, the Bill was eventually amended to state that any non-lawyer who would be appointed should have "such other special experience, qualification or training, as in the opinion of the Government is appropriate having regard to the functions of the Commission." Another amendment, by which any judge appointed to the Commission would have to be its President and not just an ordinary member, was put to a vote and failed. Mr. O'Malley was also worried that the position on Commissioners' remuneration was "full of open-ended commitments and it should not be". The position regarding the Commission's functions was clarified by the insertion of a new subparagraph. It was clarified that if it happened that the government had vetoed its programme in any respect, the Commission could state this in its annual report which would be laid before the Oireachtas. Finally, Mr. O'Malley proposed the deletion of the proce-

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70 See Parliamentary Debates, Dáil Éireann, Law Reform Commission Bill 1975 -- Special Committee, D 18, No's 1, 2 and 3 (Wednesday 12th, Tuesday 18th and Wednesday 19th Feb. 1975).

71 Ibid., p.13.

72 Loc. cit. He hoped the Law Reform Commission would not be "used as a place of refuge for disused hacks, as unfortunately some even more eminent places have been used" (p.15).

73 See 279 Dáil Debs. 396. This was in substitution for an earlier version which said "by reason of other experience or of other special qualifications or training."

74 Supra n.70, pp.23-24.

75 Ibid., p.25. He said one Commissioner might be paid £1,000 and another £10,000. It was not enough for the Attorney General to say that it would not happen in practice. This was an open invitation to haggle with the Government.

76 Ibid., pp.31-37. Under s.4(3)(g), the Commission may "indicate the desirability, priority, scope and extent of any law reform proposed."
dure whereby the Attorney General can control the method of appointment of officers, but withdrew the proposal once the drafting was tidied up and the Attorney General explained that there was nothing sinister about the procedure.\textsuperscript{78}

In the Seanad,\textsuperscript{79} Standing Orders were amended so that the Attorney General could participate in the debate. Senators Eoin Ryan, Alexis Fitzgerald, Brian Lenihan, Mary Robinson and Noel Browne outlined the areas they thought most urgently needed reform. Mr. Fitzgerald particularly welcomed the fact that sociologists, psychologists and economists would be involved.\textsuperscript{80} Professor Robinson emphasised the social function of law, criticised the universities and law schools for not being sufficiently interested in law reform, and blamed the practitioners and the academics for allowing the field of law itself to become very narrow, rather rigid and unresponsive to modern developments.\textsuperscript{81} She also asked whether the reform of the Constitution was within the terms of reference of the Commission, and the Attorney General replied that it was.\textsuperscript{82} Dr. Browne discussed the psycho-dynamics of criminality and spoke of the need for reform regarding the McNaghten rules, homosexuality, therapeutic legal abortion and contraception. He said the Commission appeared to be greatly overloaded on the side of the law, and he would be inclined to put the legal profession pretty low in the list of those with advanced or radical or even forward-looking views on sociology, psychology and psychiatry.\textsuperscript{83} In reply, Mr. Costello said he hoped the Commission would obtain the advice of psychologists and psychiatrists in improving the crimi-

\textsuperscript{77} Ibid., pp.37-8.
\textsuperscript{78} Ibid., pp.40-45, dealing with s.10(4) and (5).
\textsuperscript{79} See 80 Seanad Debs. 201-270. A brief summary of the debate is given at (1975) 69 Inc.Law Soc.Irl.Gaz. 164-5.
\textsuperscript{80} Ibid., 221.
\textsuperscript{81} Ibid., 230.
\textsuperscript{82} Ibid., 250-1.
\textsuperscript{83} Ibid., 238-9.
The 1975 Act is, as the Attorney General said, broadly similar to the Acts in the U.K., Australia and Canada. The Commission consists of a President and four other members appointed by the Government. The members must be either lawyers (judges, barristers, solicitors, law teachers) or persons with other special experience/qualification/training (see above). Their term of office cannot exceed five years, but they can be reappointed. The Commission's function is to keep the law under review and undertake examinations and conduct research with a view to reforming the law and formulate proposals for law reform (s.4(1)). "Reform" includes development, codification (in particular simplification and modernisation) and the revision and consolidation of statute law (s.1). The Commission prepares programmes in consultation with the Attorney General subject to veto by the Government (s.4(2)(a), s.5). The Attorney General can also request proposals for reform on particular matters (s.4(2)(c)). The Commission must publish an annual report (s.6), and may conduct comparative law research, prepare draft Bills, establish working parties, etc. (s.4(3)). Copies of approved programmes, annual reports and accounts are laid before the Oireachtas. However, in contrast to the U.K. Act, reports with proposals for reform do not have to be tabled.

Although the Act allows for five full-time appointments, this has not happened. From the beginning, there have been two full-time and three part-time members. The first full-time Commissioners were Mr. Justice Brian Walsh (President), judge of the Supreme Court and Mr. Justice...

84 Ibid., 253.
85 The provisions of the 1975 Act are set out in more detail in O'Connor, supra n.56.
86 The Government appoints the members on the request of the Taoiseach, made by him after consultation with the Attorney General (s.3(2)).
87 John O'Connor's initial expectations for codification (supra n.56) have not been fulfilled. In the Oireachtas debates, there was emphasis on the English problems with codification, and the Commission has not pursued any systematic project of codification.
88 S.5(2), S.6, S.9(2).
The part-time members were Mr. Martin E. Marren, Solicitor (five year appointment), Professor Robert Heuston, Trinity College Regius Professor of Laws (three years) and Mrs. Helen Burke, U.C.D. Lecturer in the Department of Social Science (two years). There was surprise in some circles at Mrs. Burke's appointment, but the appointment of a non-lawyer had been a constant theme in the Oireachtas debates. The Irish Law Reform Commission is one of the few agencies (apart from U.S. agencies) which has repeatedly included a non-lawyer member. Roger Hayes was appointed Director of Research, Frank Ryan, Secretary and William Binchy and Brian McMahon, Research Counsellors.

The Commission's first programme was published in 1976. The matters dealt with in the programme were: Administrative Law, Animals, Conflict of Laws, Criminal Law, Evidence, Family Law, Privacy, Sales, State Side Actions and Statute Law. By the end of 1984, it had produced 7 Annual Reports, 11 Working Papers (6 family law) and 9 Reform Reports (6 family law). However, only one report had been implemented (and only in part). In 1985, it pro-

89 The appointees' curricula vitae are at (1975) 109 ILTSJ 232. It may be added that Mr. Justice Walsh had been Chairman of the Committee on Court Practice and Procedure and Mr. Justice Conroy had been Chairman of the Landlord and Tenant Commission.


91 Currently, that member is Ms. Maureen Gaffney, senior clinical psychologist with the Eastern Health Board and course organiser of the E.H.B./ Trinity College training scheme in clinical psychology.

92 First Programme for Examination of Certain Branches of the Law with a View to their Reform (Prl. 5984, Dec. 1976).

92a It also produced some unpublished background papers which it said it would make available to bona fide researchers (Second (Annual) Report 1978-79 (Prl.8855), p.19). One of these reports concerned Artificial Insemination and the Law.

duced 11 more Reform Reports (4 with a family law element) and its eighth Annual Report. Two Commissioners died (Mr. Hayes and Mr. John Lovatt-Dolan, S.C.), one resigned (Miss Mary Finlay) and on October 19th, 1985, the terms of office of Mr. Justice Walsh* and Professor James P. Casey expired. From October 19th 1985 to January 2nd 1987, there were no Commissioners and the office was run by its Secretary (Mr. Ryan) and its two part-time Research Counsellors (Mr. Binchy and Mr. Charles Lysaght). There was speculation that its new President might be the former Attorney General, Mr. Justice Costello. On 27th November 1986, the post went to Mr. Justice Ronan Keane of the High Court. Four other new faces were also appointed. The new members began their work on 2nd January 1987. On 6th March, the Attorney General asked them to review as a matter of urgency five areas of law. Mr. Justice Keane said

The Commission believes that the choice of specific areas where the need for reform is urgent and widely accepted signals a new and important departure in the approach to law reform in general and the work of this Commission in particular.

* Mr. Justice Walsh returned to the Supreme Court and increased it to six members, a situation which was foreseen in 1975 and led to some debate as to whether the Chief Justice would be in a difficult position as to which judges to allocate to important cases -- supra n.70, pp.46-47.


The other full-time member is Simon O'Leary, on secondment from the office of the D.P.P. The part-time members are John Buckley, solicitor, former vice-President of the Law Society, William Duncan, senior lecturer in law and registrar of Trinity College and Maureen Gaffney (supra n.91). Charles Lysaght is no longer a research counsellor, but William Binchy remains.

(1) Conveyancing (2) Sexual offences, including rape and child sexual abuse (3) Sheriffs/ tax and debt collection (4) Certain issues re compensation in personal injury cases (5) Various criminal law matters, including sentencing policy, indexation of fines, confiscating the proceeds of crime and updating a number of offences which are still governed by pre-1922 legislation, in particular dishonesty, malicious damage and offences against the person. (Ninth Annual Report 1986-87 (Pt. 5625), p.2.)

He strongly urged the implementation of the Commission's previous reports, saying its work would become "futile" if its reports did not have the optimum prospects of success. He said that the Commission was changing its practice as regards Working Papers:

The experience of law reform agencies, including this Commission, of this procedure has been singularly disheartening: the gloomy experience has been -- and I stress again that this is not a problem unique to Ireland -- that the response tends to be minimal.

To tackle this problem, Discussion Papers would be circulated on a limited basis, working groups would be established of persons with an interest in topics, empirical research would be commissioned from other state or outside agencies, there would be co-operation with third level law faculties and young law graduates would be employed. (There would still, of course, be circumstances in which the topic being dealt with would raise policy questions of such a nature as to require a more widely circulated document.) These new practices were already in operation. The Commission would constantly monitor the progress of implementation of its reports. He was anxious to receive the views of the public "so as to ensure that the ever present danger of law reform being produced in a vacuum isolated from reality can be avoided so far as is humanly possible".

The new Commission has so far produced one Consultation Paper, one Annual Report and six Reform Reports. The reports are attractively presented and typeset, and the Consultation

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100 Ibid., p.133. Five days later, the Taoiseach came under pressure in the Dáil from Deputies Taylor and Enright to implement the Commission's reports. The Taoiseach said he did not think that setting up a Dáil committee to consider these reports would help. See 372 Dáil Debs. 5-10 (28 April, 1987).


102 See Ninth Annual Report 1986-87 (Pl. 5625), pp.3-4 (New Procedure) and pp.4-7 (The Year's Work).

103 Supra n.99, p.134.

Paper was accompanied by a short leaflet summarising its contents. This is in line with the practice in several jurisdictions, and is to be welcomed as increasing the readability and digestibility of the proposals. As Hurlburt has said:

The disadvantage of a summary is that it can give only a superficial statement of what a report is about. On the other hand, it gives some information to a reader who would not otherwise be informed at all; it is a guide to a casual reader; and it helps the media to decide whether there is anything in the report which is newsworthy. Perhaps most important of all, if it is well prepared it may well serve as the executive summary which goes to the minister.\(^{105}\)

The Commission's handling of the controversial rape reference was a test of its new procedures. It decided that this was an area where a published Consultation Paper would be needed. The Paper's publication was front-page news.\(^{106}\) It recommended the abolition of the marital rape exemption and the creation of two new offences, sexual assault and aggravated sexual assault. It recommended that a judge might scrutinise the sexual history of the complainant with the defendant and that the complainant should not have separate legal representation. The Commission thought that the legal definition of rape, based on vaginal sexual intercourse, should remain unchanged. The unique feature of rape was the fact that pregnancy might result from the act. This latter recommendation was widely criticised. One writer said:

It would seem to me that by retaining the traditional definition of rape, an opportunity may be missed whereby polarisation on a male/female basis might have been removed.\(^{107}\)

Anne O'Donnell, Manager of Dublin Rape Crisis Centre, said:

Pregnancy is the last thing on the minds of the victims we treat. It is AIDS they are scared of .... If a bottle is used on a woman, she is degraded. She doesn't sit

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\(^{105}\) Hurlburt, supra n.4, p.353.


back and say 'Thank God - at least I won't get pregnant'.

She was "seriously concerned" about the composition of the Law Reform Commission on two counts -- four of the five members are men and all four male members are lawyers. In the media, Maureen Gaffney and Simon O'Leary emphasised that the Commission was anxious to receive "reasoned comments" on the Paper. The Commission then held a seminar, which was private and by invitation, on January 30th.

As a result of the seminar and the media discussions, the Commission decided in its final Report to change its views and extend the definition of rape. Its consultation with the public had obviously influenced it greatly, and its proposals for reform are now more in line with the wishes of interest groups and probably a large proportion of the population as well. The Commission has shown itself to be extremely open to the views of non-lawyers. Without compromising its independence, it obviously learnt much from the experience of people who deal with rape on a day-to-day basis. As Mr. Justice Keane had promised, the danger of law reform proposals being formulated in a vacuum was avoided.

At present, the Commission's budget is IR£310,000 (£267,800 sterling), a respectable amount which ranks eleventh on a table of 25 budgets available for comparison. It has two full-time and three part-time Commissioners, a part-time Research Counsellor, a full-time Secretary, three full-time Research Assistants (recent law graduates) and five administrative and secretarial staff. However, its implementation rate is poor. There has been governmental action on only 6 of the Commission's 24 Reform Reports. No report has been implemented in full. Allowing two

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108 Irish Times, Mon. 14 Dec. 1987, p.11. An editorial in the Irish Times of 2 Dec. seems to have supported this view.

109 Irish Times, Sat. 5 Dec. 1987, Letters Page. See Chapter IV below, Observations (b) Non-lawyer Members.


years for implementation, its implementation rate is 6 out of 20 reports (30%) implemented in part.112

The Commission recently held a seminar on "Priorities in Law Reform" at Trinity College, Dublin. There were sessions on "Child Sexual Abuse", "Defamation, Privacy and Contempt of Court" and other topics. Mr. Justice Keane said that a review of the existing programme undertaken by the Commission must be undertaken at some stage.113 He discussed the distinction between "lawyers' law" and laws where there are no agreed social or political objectives. He said there was some force in Lord Scarman's view that all law reform raises either social, political or economic issues.114 The reference on Child Sexual Abuse, the inclusion of Protection of Privacy in the Commission's first programme and the Commission's interest in defamation and contempt of court illustrated the social relevance of its work. He pointed out that the Commission was operating with greatly reduced resources and diminished staff levels and this made husbanding of its scarce resources more important than ever.115 He felt it was his duty to again criticise the implementation rate,116 quoting Kirby's observation that publicity is the antidote to indifference to injustice and indifference is the special enemy of law reform.117 He urged greater use of the sys-


112 A new version of the Rules of the Superior Courts enacted in 1986 gives effect to most of the recommendations in Working Paper 8 (Judicial Review of Administrative Action: The Problem of Remedies, 1979). However, it would be statistically inconsistent to include this as an implemented report as it was a working paper only.


114 Ibid., p.4. See Scarman, supra n.51, p.28 and Chapter IV below, Observations (a) Lawyers' Law vs. Social-Policy Law.

115 Ibid., p.5. This is also mentioned in the Ninth (Annual) Report (1986-87, Pl.5625), pp.1-2, where it is added that its limited resources have obliged the Commission to effect economies in the purchase of books and periodicals and the organisation of seminars, etc.

116 Ibid., p.10.
tem of Oireachtas committees as a means of implementing the Commission’s reports.\textsuperscript{118}

In October 1988, Mr. Justice Keane warned that the law reform movement in Ireland could "run out of steam" unless the implementation rate improved. He said that all future Taoisigh should nominate the Attorney General as a member of the Seanad so that he could introduce legislation based on accepted LRC proposals. He again urged the introduction of a joint Oireachtas committee which would oversee the passage of non-contentious law which is in urgent need of updating.\textsuperscript{118a}

\textbf{CANADA}

\textbf{(1) Federal}

The Law Reform Commission of Canada was established by the Law Reform Commission Act 1971.\textsuperscript{119} It is given functions similar to those of the U.K. and Irish Commissions, except for two important differences. Firstly, under s.11(b), its objects include

the reflection in and by the law of the distinctive concepts and institutions of the common law and civil law legal systems in Canada, and the reconciliation of differences and discrepancies in the expression and application of the law arising out of differences in those concepts and institutions.

Secondly, under s.11(d), the objects include

the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of modern Canadian society and of individual members of that society.

When first established, its main emphasis was on criminal law. The LRC took its broad mandate very seriously and in its early years its main goal was not to change the law but to bring about the change in attitudes necessary for law reform.\textsuperscript{120} It wanted to "cut through the jargon and get to

\begin{itemize}
  \item \textsuperscript{117} Ibid., p.12. See Kirby, \textit{Canberra Times}, July 21 1982; cited in Hurlburt, supra n.4, p.114.
  \item \textsuperscript{118} Ibid., pp.13-14. See the Taoiseach’s earlier reply to such a suggestion, supra n.100.
  \item \textsuperscript{118a} \textit{Irish Times}, Mon. 3 Oct. 1988.
  \item \textsuperscript{119} S.C., 1969-70, c.64; amended by 1974-75, c.40.
\end{itemize}
the social questions that are involved in all law reform. The LRC deliberately omitted draft legislation from five of its first six reports, which demonstrated its view that legislative reform was not its main goal. The Commission issued study papers even before it issued working papers and final reports. Its documents were written in a distinctively readable, interesting and intelligible style. It tried to involve the public more by establishing a local Ottawa study group to comment on its work and it thought of providing public libraries with books explaining law in simple terms.

Much of this experimentation of the early years was not successful. In 1978, when Mr. Justice Muldoon became President, the LRC began to take a more pragmatic approach. Hurlburt comments:

The change in the Canada LRC's approach to law reform is symbolized by changes in the format of its reports. Since 1978 these have been issued in standard covers, and there appear in the annual reports lists of judicial references and, later, lists of steps taken towards the implementation of the Commission's proposals.

The reports now contain draft legislation. The LRC now participates in a unique co-operation between an independent LRC and a government department, known as the "Criminal Law Review". Its work has never ceased to be imaginative and exciting. For example, it has dealt with the vexed questions of euthanasia and the criteria for the determination of death, and it is currently dealing with options for abortion policy reform and with environmental law under the Protection of Life project and with demystifying Government forms under the Plain Language

120 Third Annual Report, pp.8-9.
121 Mr. Justice Antonio Lamer, 'In and Out of Court' (1976) 4 Canadian Daily Newspapers Association M.C.E.C. Newsletter; cited in Hurlburt, supra n.4, p.184.
122 Hurlburt, supra n.4, p.190.
The LRC currently has the largest budget of any law reform agency in the world. In 1986/87, its budget was $4,799,000 (£2,323,500 sterling). It has published 16 Annual Reports, 56 Working Papers, 73 Study Papers and 31 Reform Reports. Only 13 Reports have been implemented in whole or in part. Allowing two years for implementation, its implementation rate up to July 1987 is 12 reports in whole or in part out of 25 reports published up to July 1985, i.e. 48%.\textsuperscript{125} Hurlburt says that much has been achieved in changing attitudes and opinions,\textsuperscript{126} but the problem of non-implementation of its reports is a major drawback. He says there are six possible explanations:

1. The LRC did not issue a final report until its fifth year of existence and the receptiveness upon which the Commission might have counted had cooled by then.
2. The early reports were heavily philosophical and did not contain draft legislation.
3. Lack of parliamentary time.
4. The problems of the federal system.
5. The government's energetic response to the first report (Evidence) encountered stormy weather.
6. Ministers of Justice were otherwise preoccupied, e.g. with the new Constitution for Canada.

The literature on the LRC of Canada is wide-ranging and interesting.\textsuperscript{127}

\section*{(2) Alberta}

The Alberta Institute of Law Research and Reform is quite different from the U.K. model. The Institute is governed by an agreement dated November 15th 1967 between the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The ILRR

\textsuperscript{125} Information from \textit{16th Annual Report 1986-87}, pp.27-28. It seems that most of these reports have only been implemented in part.

\textsuperscript{126} Hurlburt, supra n.4, p.199.

is located at the University of Alberta. It works in close liaison with the Attorney General's Department. It chooses its own law reform programme, though it has undertaken much of its work at the suggestion of the Attorney General and other government departments.

The ILRR did not complete the questionnaire, but it did send three sample reports and its 1986-87 Annual Report in reply to the survey. Unfortunately, the Report does not give its budget. But Hurlburt says that its resources have been substantial, coming second of the provincial Canadian law reform agencies, after Ontario.\(^{128}\) It now has a legal staff of six people. By February 1988, it had produced 16 Research Papers, 4 Reports for Discussion, 1 Issues Paper and 50 Reform Reports (including Report 37A). Allowing two years for implementation, 30 of the 44 reports (including 37A) issued up to March 1985 had been implemented in whole or in part by March 1987. That gives an implementation rate of 68%. However, the rate of enactment slowed from 1980. Hurlburt hoped that usage of an Assembly committee would solve this,\(^{129}\) but this does not appear to have been successful, judging from the 1986-87 Report.\(^{130}\)

(3) British Columbia

The British Columbia LRC was established by the Law Reform Commission Act 1969.\(^{131}\) Its Act is largely similar to the 1965 U.K. Act. It submits programmes to the Attorney General which are not subject to a veto, but it cannot formulate proposals for reform without the approval of the Attorney General. Its reply to question 10 ("Does the agency have power of initiation of projects?"; "Yes") must be read in this light. The Commission now has a full-time Chairman (Mr. Justice Arthur L. Close), four part-time Commissioners, 3 full-time legal research officers, a full-

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\(^{128}\) Hurlburt, supra n.4, p.217. Funding from the Alberta Law Foundation has been of great assistance.

\(^{129}\) Ibid., p.223.


time Secretary and two administrative staff. Its budget is $550,000 (£267,000 sterling), about the same as the Irish LRC's. By December 1987, it had published 17 Annual Reports, 58 Working Papers and 78 Reform Reports (including 2 Minor Reports in Annual Reports for 1979 and 1980). 39 Reports had been implemented in whole or in part. Allowing two years for implementation, 39 of the 86 reports published by December 1985 had been implemented in whole or in part by December 1987. This gives an implementation rate of 45.3% in whole or in part.

Two points of interest are: Firstly, there is a Judges' Law Reform Committee which responds to the LRC's Working Papers and calls the LRC's attention to defects in the law. Secondly, its annual report contains its criteria for the choice of projects and expresses a preference for internal research rather than usage of outside experts.

(4) Manitoba

The Manitoba LRC was established by the Law Reform Commission Act 1970 "to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law" (s.5(1)). While it must accept references from the Attorney General and give them the priority which the Attorney General prescribes, the statute does not restrict it to acting upon such references. From the beginning, the Chairman has been the only full-time member. At present, the Chair is vacant but there is a full-time Secretary and two full-time legal research officers. There have always been non-lawyer members. At one stage there were three, but now there is only one -- Ms. Lee Gibson, a teacher. It has also been the practice to appoint persons known to be adherents of the three major political parties. This has been a successful policy which in fact makes the LRC more credible to outsiders.


of the Commission have not divided along party lines. It has done work in the field of constitutional law, where the law reform agencies have rarely trod.\textsuperscript{135} It has also recommended that trans-sexual persons be entitled to revised birth certificates and issued a report on a Human Tissue Act.\textsuperscript{136}

By February 1988, the LRC had published 24 Working Papers and 101 Reform Reports (69 formal, 32 informal). Allowing two years for implementation and discounting the 7 reports which recommended no provincial action, its implementation rate is 83.3\% (67.9\% in full, 15.4\% in part).\textsuperscript{137} Unfortunately, according to lengthy comments attached to the survey, the LRC was informed in mid-December 1987 that it was the intention of the Government to phase out the Commission over the next fiscal year.\textsuperscript{138}

\textbf{(5) New Brunswick}

New Brunswick does not have an independent law reform agency, but there is a Law Reform Division attached to the Attorney General's office and its address is listed in Appendix 1. Up to the end of 1982, it had issued 10 Working Papers and worked on 7 projects.\textsuperscript{139}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{135} The Case for a Provincial Bill of Rights (Report 25, 1976).
\item \textsuperscript{136} Revision of Birth Certificates of Trans-sexual Persons (Report 26, 1976), The Human Tissue Act (Report 66, 1986). The Human Tissue Act has now been enacted -- Law Reform (LRC of Canada Newsletter), No.9, January 1988, p.4.
\item \textsuperscript{137} Information from Sixteenth Annual Report 1986/87 (April 1987). This is a calculation of implementation up to April 1987 of reports up to April 1985. There were 84 reports, 70 implemented (57 in full, 13 in part). This does not tally with the reply to Question 18 of the survey, which states that 74 reports were implemented. This difference presumably means that 4 reports were implemented between April 1987 and February 1988.
\item \textsuperscript{138} See Appendix 5 below, Manitoba.
\item \textsuperscript{139} Commonwealth Secretariat, supra n.6, pp.62-63.
\end{itemize}
\end{footnotesize}
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(6) Newfoundland

Although the Newfoundland Law Reform Commission Act was passed in 1971, no members were appointed until April 1984. The Commission has an unfettered initiative of projects, except that it must consider any subject referred to it by the Minister of Justice. At present, it has 6 part-time members (including a non-lawyer, Ms. Carol Ann Benson), a part-time Secretary and a full-time executive director. Its budget is $100,000 (£48,500 sterling), which is very low by any standards. It has produced one report and two working papers.\(^{140}\) It used Australian-style public hearings in its work on Limitation of Actions and changed some of its views as a result.\(^{140a}\) The Report has not yet been implemented.

(7) Northwest Territories

The Northwest Territories Committee on Law Reform is a non-statutory body established in 1986. By March 1988, it had only produced one document, a Working Paper on the topic of aborigines on juries in the province.\(^{141}\)

(8) Nova Scotia

The Nova Scotia Law Reform Advisory Commission was established in 1969.\(^{142}\) The LRAC could exercise its powers only with the Attorney General's approval. From the beginning, Nova Scotia's attitude to it was reserved and suspicious. Its offices were on the same floor as the Legislative Counsel. Commission reports were not published unless the Attorney General decided to

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\(^{140a}\) See WP1 Supp.


publish them. It has been one of the few law reform agencies to have a woman as Chair (Mrs. Lilias M. Toward). The LRAC's reports were largely unimplemented, and it has had no members since 1981, although it continues to exist in law.

(9) Ontario

The Ontario LRC was established in 1964, a fact which led the current Chairman to suggest that its establishment sparked the zeal for law reform in the Commonwealth in the 1960's. However, Hurlburt, even though he is a Canadian, points out that this is not true:

It was the inspiration of English lawyers which led to the establishment of the law reform commissions in the United Kingdom, Australia and Canada .... The Ontario LRC was established a year earlier than [the U.K. Law Commissions], but one of its principal inspirations was the law reform committee which already existed in Ontario and which was in turn based on [the] model of the English law reform committees.

Its statute is remarkably short (less than 200 words). It can conduct inquiries of its own initiative, but must conduct inquiries on any subject referred to it by the Attorney General. To an unusual degree, it has its research work done by outside teams of academic lawyers. Many of its reports are massive tomes. It has tackled the administration of Ontario courts (other LRC's have done little in the field of procedure and less in the field of administration), Sunday observance legislation and Human Artificial Reproduction.

143 Currently, it appears that only three agencies have a woman as Chair, i.e. federal Australia, New South Wales and Washington (Law Revision Commission).


145 See Appendix 5 below, Ontario, covering letter.

146 Hurlburt, supra n.4, p.255, text and footnote 1.

147 Reports 43, 45 and 49.


The LRC has a full-time Chairman, 4 part-time members, a full-time Counsel, 5 full-time staff lawyers and 9 administrative staff. Its budget of $1,200,000 (£580,000 sterling) ranks 6th on the table of budgets. It does not publish working papers since its research teams cover much of the ground which other law reform agencies tend to cover by circulating discussion documents. It had published 65 Reform Reports by February 1988. Allowing two years for implementation, 49 of the 64 reports issued by the end of March 1985 had been implemented by the end of March 1987, 38 of them in full and 11 in part. This gives an implementation rate of 76.6% (59.4% in full, 17.2% in part).

(10) Prince Edward Island

The Prince Edward Island Law Reform Commission was established in 1970. However, it did not commence work until 1976, and was hampered by a lack of resources until its demise in 1983. Hurlburt believes that the LRC was established merely due to a desire to conform to fashion and there was no interest in its work. Only three of its recommendations had reached the statute book by the end of 1982.

(11) Quebec

150 Information from Twenty-Second Annual Report 1986-87 (Report 87, 1987). It is often difficult to decide from the Annual Report whether a report has been implemented in whole or in part. In particular, no explanation is given as to why some entries in the column 'Original Legislation Concerning Commission Proposals' are phrased as "See" a certain statute, whilst others simply list a statute. The "See" entries have been interpreted as implementation in full, unless the words "partial implementation" appear.


152 In reply to the survey, a letter was received from Nancy K. Orr, Secretary-Treasurer of the Law Society of P.E.I., which stated that no steps had been taken to have the Commission re-established since 1983.

153 The letter, dated 7 December 1987, states that a completed questionnaire is enclosed, but no completed questionnaire was received.
In reply to the survey, a letter was received from Marie José Longtin, Director of the Direction générale des affaires législatives, saying that in Quebec there is no agency responsible for recommending legislative reforms to the Government. However, she stated that the Direction générale des affaires législatives is responsible for developing legislative orientations in private law and in certain areas of public law (administrative and penal). The Office for the Revision of the Civil Code was established in 1955 and ceased all activities at the end of 1977, when the jurist tabled his report. In 1980, an act was adopted to establish a new Civil Code (1980, SQ, c.39) and to date, reforms in family law (1980, SQ, c.39) and in law of persons, successions and property (1987, SQ, c.18) have been adopted.

(12) Saskatchewan

The Law Reform Act 1971 (SS 1971, c.21) created the Saskatchewan LRC. The Commission must act either on the Attorney General's request or with his/her approval. It has usually had three members. The Chairman has always been a professor in the College of Law of the University of Saskatchewan. The first two Chairmen served full-time. In 1986, the Chairman was serving part-time. The other two members have always served part-time. The Commission has always had a full-time legal staff of a Research Director and one or two lawyers. Its funding is increased by income from the Law Foundation of Saskatchewan. By the end of 1984, it had issued 16 Reform Reports. It has recently produced a Report on Proposals for a Human Artificial Insemination Act. Its implementation rate is not good.


See further Law Reform (LRC of Canada Newsletter), No.8, July 1987, p.4.


See Law Reform (LRC of Canada Newsletter), No.8, July 1987, p.2.
(13) Yukon Territory

There has never been a law reform agency in the Yukon Territory.

AUSTRALIA

(1) Federal

The Australian Law Reform Commission was established by the Law Reform Commission Act 1973, but its first members were not appointed until February 1975. Under Section 6 of the Act, the Commission can only act in pursuance of references from the Attorney General ("whether at the suggestion of the Commission or otherwise"). The Attorney General can also give directions as to the order in which the LRC is to deal with references. Under Section 7, the Commission is under a duty to ensure that laws and law reform proposals

(a) ... do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
(b) ... as far as practicable, ... are consistent with the Articles of the International Covenant on Civil and Political Rights.

Membership of the Commission is open to non-lawyers (s.12(1)(f)), but there has only been one non-lawyer member -- Associate Professor G.J. Hawkins, a Criminologist.

The Commission's first Chairman was Justice Michael D. Kirby, Deputy President of the Australian Conciliation and Arbitration Commission. The Commission had modest beginnings, in two disused robing rooms tucked away behind the Industrial Court in Sydney. However, on 16 May 1975 it was plunged into hectic activity by two references which included the unusual instruction that the reports be delivered within three months. The LRC somehow met the deadline (with a short extension for the second report) and was immediately involved in controversy as regards the latter report on Criminal Investigation.

troversial, and Mr. Justice Kirby once expressed the view that it is precisely in areas of controversy that a law reform commission can be of the greatest value. Justice Kirby's personality was an important factor in the development of the LRC's standing in Australian life. He remained President for almost a decade (until September 1984). He was not only a workaholic but also particularly skilful in dealing with the media and in delivering public speeches. Mr. Justice Kirby became a "media star" and his name became a household word in Australia. Kirby's efforts at media publicity were extraordinarily successful:

\[\text{It seems likely that his efforts in the field have made the Australian LRC more successful than it would otherwise have been; indeed, were it not for these efforts it might have been entirely overlooked.}\]

He realised that the media have inherent dangers (sensationalisation, personalisation and trivialisation of information), but felt that "a serious attempt to involve society in the process of law improvement must involve a utilization of the modern mass media of communication". This was what Prime Minister Fraser termed "participatory law reform".

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Australia, 1982), pp.81-83.

159 Statement to the 1984 meeting of the law reform agencies of Canada, August 1984; cited in Hurlburt, supra n.4, p.453.

160 Supra n.157, p.131.

161 He delivered 38 speeches in 1978 (Ross, supra n. 158, p.76). Hurlburt states that he delivered 80 to 100 speeches each year (supra n.4, p.113).

162 Ross, supra n.158, p.55.

163 Hurlburt, supra n.4, p.110.

164 Ibid., p.114.

165 Kirby, 
legal Chge: Essays in Honour of Julius Stone (Butterworths, Sydney, 1983), 201 at 211.

Kirby was also responsible for the widespread use of public hearings by the Australian LRC. The LRC systematically uses public hearings as a matter of course, and no other law reform agency has used them on as wide a scale. The hearings are held in capital cities and in some provincial centres. Kirby took the idea from Professor Geoffrey Sawer,\(^ {167} \) who in turn cited the precedent of legislative committees in the United States. Kirby has said that time is only "occasionally" lost by irrelevant submissions.\(^ {168} \) On the whole, he thought that the hearings were successful in bringing forward the lobby groups, identifying defects in the law through personal case histories and attracting media attention. He thought that they were also desirable in point of principle, allowing ordinary citizens to have their say.

One particular project of the Australian LRC deserves special mention as it was its largest and longest enquiry ever conducted. The reference was on Aboriginal customary laws, and it came five years after the establishment of the 'Aboriginal Embassy'\(^ {169} \) and nine months after the celebrated case of Sydney Williams in the Supreme Court of South Australia (1976).\(^ {170} \) On 9th February 1977, the reference from the Attorney General instructed the LRC to consider whether existing courts or Aboriginal communities should have power to apply customary laws and punishments, bearing in mind that no person should be subject to any cruel or inhumane treatment, conduct or punishment.\(^ {171} \) The final report was tabled nine years later,\(^ {172} \) after 15 Research


\(^ {168} \) Kirby, supra n.165, p.59 (Reform the Law), p.210 (Legal Change).

\(^ {169} \) The 'Aboriginal Embassy' was a small number of shabby tents first erected on the lawns of Parliament House in Canberra on 14 July 1972. See Ross, supra n.158, p.37.

\(^ {170} \) Kirby, supra n.165, p.123. Sydney Williams was an Aboriginal convicted of manslaughter. He had killed his wife after they had been drinking together. He claimed that his wife mentioned secrets which under tribal law women were not supposed to know. By Aboriginal customary law, the wife's outburst warranted death. Mr. Justice Wells imposed a suspended sentence on condition that Williams submit to the tribal elders. The elders punished Williams in accordance with tribal custom, by spearing him in the leg with a spear without barbs.

\(^ {171} \) For the terms of the reference, see Annual Report 1986 (ALRC 34), p.84.

\(^ {172} \) The Recognition of Aboriginal Customary Laws (ALRC 31, 1986), 2 volumes. Tabled on 12
Papers, 4 Discussion Papers and extensive discussions with Aboriginal people and Aboriginal organisations. Hundreds of Aboriginals converged on the public hearings in remote outback centres, and special audio tapes explaining the LRC's proposals were produced in Aboriginal languages. In the area of criminal law, the Report proposed, inter alia, that there should be a partial customary law defence similar to diminished responsibility, which would reduce a charge of murder to manslaughter where an accused acted in the well-founded belief that the customary laws of his/her Aboriginal community required the act which constituted the offence, that the Aboriginal customary laws be taken into account in the exercise of sentencing discretion, and that there should be special rules to protect Aboriginal suspects under police interrogation. Traditional Aboriginal marriages should be recognised for nine specified purposes but not for five others, there should be legislative endorsement of an Aboriginal child placement scheme and Aboriginal people should have access to non-Aboriginal land for the purposes of traditional hunting.

Two years later, and in the midst of the Australian Bicentenary, there has been no action to implement these proposals. Mr. Justice Kirby rightly realises that their implementation would merely scratch the surface in removing the major sources of injustice, but has urged their implementation as a step towards rectifying the damage done by the colonial denial of aboriginal Australia.173 The Australian LRC currently has a budget of $2.8 million (£1.3 million sterling), which ranks third on the table of budgets (Appendix 1). From 5th January 1988, its President has been Justice Elizabeth Evatt, Chief Judge of the Family Court, who worked at the English Law Commission in 1968 and was an editor of the International and Comparative Law Quarterly.174

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There are two other full-time Commissioners, 12 part-time Commissioners, 15 legal staff and 15 administrative and secretarial staff. The Commission's offices are in Sydney, and the distance from Canberra causes problems.\(^\text{175}\) By February 1988, it had issued 86 Research Papers and Working Papers, 43 Discussion Papers etc., 17 Annual Reports and 28 Reform Reports. Allowing two years for implementation, and disregarding its interim report on Evidence (ALRC 26), its implementation rate is 70.6% (47.1% in full, 23.5% in part).\(^\text{176}\)

In 1979, the Senate Standing Committee on Constitutional and Legal Affairs recommended various improvements in the machinery for processing LRC proposals.\(^\text{177}\) It recommended that there should be a system to guarantee regular debate of Private Members' Bills (along the lines of the Westminster ballot procedure) and that all LRC reports should be referred to a parliamentary committee. The Government's response was hostile and unco-operative.\(^\text{178}\) The Senate itself therefore referred to the Standing Committee the continuing oversight of the implementation of the LRC's reports.\(^\text{179}\) Kirby was optimistic about the chances for an improvement,\(^\text{180}\) but the Committee's powers did not prove sufficient to enable it to have much effect upon the process of implementation.\(^\text{181}\)

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\(^{174}\) [1988] Refonn 45. From 1985 to 1987, the President was the Hon. Xavier Connor.

\(^{175}\) Ross, supra n.158, p.80. The LRC had a small Canberra office at one stage, but it was closed on 5 December 1986 ([1987] Refonn 99).

\(^{176}\) Implementation up to end 1987 of reports issued up to end 1985. 17 Reports calling for legislation, 12 implemented (8 in full, 4 in part). Annual Report 1987 (ALRC 41), Appendix D.


\(^{180}\) "This is an important new development. It represents an institutional advance on anything found elsewhere in non-parliamentary law reform bodies in the Commonwealth of Nations." (Supra n.165, p.16.)

\(^{181}\) Hurlburt, supra n.4, p.119.
(2) Australian Capital Territory

The Law Reform Commission for the Australian Capital Territory was established by the Law Reform Ordinance 1971. It remained in existence until the establishment of the Australian LRC in 1975. It had three part-time members and issued eight reports. The report on guardianship and custody of infants was partially implemented and the report on the civil procedure of the court of Petty Sessions was implemented in full. The implementation of the latter report was the most noticeable result of its work.

The Australian LRC now has responsibility for law reform proposals for the A.C.T. This responsibility has allowed the Australian LRC to consider a number of subjects which would otherwise be wholly or partially beyond the legislative jurisdiction of the federal Parliament to implement, e.g. the references on alcohol, drugs and driving, on human tissue transplants and on defamation and privacy. In 1984, the Australian LRC received a New South Wales-style Community Law Reform reference for the laws of the A.C.T. (This type of reference is explained below.) The LRC placed advertisements in the newspapers, on television and on milk cartons to solicit suggestions for reform. The A.C.T. Community Law Reform Programme operates with limited resources and has so far produced four Consultative Papers and two Reports. None of the proposals has been implemented. However, certain of the other Australian LRC reports have been implemented in the A.C.T.

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182 See Hurlburt, supra n.4, pp.120-123.
183 Ibid., p.109.
184 See Annual Report 1986 (ALRC 34), pp.33-35. Since then, the fourth consultative paper and the second report have been produced.
185 See Annual Report 1987 (ALRC 41), pp.104-107 -- ACT legislation was enacted on ALRC reports 4, 7, 18 and 30; ACT legislation is mentioned in connection with ALRC 15.
(3) New South Wales

The N.S.W. Law Reform Commission was established soon after the 1965 U.K. Act. It was established first by administrative act on 1st January 1966 and then by the Law Reform Commission Act 1967. The statute is largely similar to the U.K. Act. The Commission may only act in accordance with references made to it by the Minister. The Act originally required the Chairman to be a judge and all the members to be lawyers, but was amended in 1981 to allow Professor Ronald Sackville become Chairman and to allow for the appointment of a sociologist and an economist.

The Commission has dealt with three unusual areas. Firstly, it devoted most of its resources for five years to a reference on the legal profession. This has been the single largest project of any LRC on an institution of the legal system. The reference precipitated the Commission into an area of passion and controversy and Hurlburt believes in retrospect that the reference should have been given to a separate agency established especially for the purpose. In 1987, many of the LRC's recommendations were enacted, except for the proposal that legal practitioners be admitted to practice under a common title.

Secondly, the Commission began its "Community Law Reform Program" in 1982. The idea is that the LRC places advertisements requesting the public and the legal professions to submit suggestions for relatively minor alterations in the law. The LRC evaluates the suggestions, does

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187 Hurlburt, supra n.4, p.478.

188 Ibid., p.131 and p.478.

189 Annual Report 1987, pp.46-48. At the time of preparation of that Report (July 1987), the Legal Profession Bill 1987 was awaiting Royal Assent. The new legislation was expected to come into operation on 1 January 1988.
preliminary work upon them and, in appropriate cases, asks the Attorney General to make a reference to enable it to prepare a report and recommendations. The programme has been extremely successful in opening "a direct institutional path between the legal profession and members of the community and the legislative process". Since 1982, 350 proposals for reform have been received. Thirteen reports have been completed, on subjects from service of civil process on Sunday (LRC 37) to conscientious objection to jury service (LRC 42). The points are not always small; the Commission is completing references under the programme on employees' liability to indemnify employers (Ref. 54) and contributory negligence (Ref. 57).

Thirdly, the Commission is dealing with the controversial area of artificial conception. Reference 50 (received on 5th October 1983) requires it to report on human artificial insemination, in vitro fertilisation, "surrogate mothering", etc. The Commissioner in charge of the reference, Mr. Russell Scott is a member of the Medical Research Ethics Committee. A gynaecologist, Dr. Susan Fleming, is also a member of the Commission. Public hearings on artificial insemination (16 April, 1985) and in vitro fertilisation (15 April 1988, [1988] Reform 84) have been held. There have been four documents issued under the reference. 

The Commission has recently received an unusual reference in the following terms:

THE WORK OF LAW REFORM AGENCIES THROUGHOUT AUSTRALIA:
(a) to inquire into and report on the publication of Reports and Discussion Papers by other agencies and as to whether such Reports or Papers are of sufficient importance and relevance to warrant their formal examination by the Commission either alone or in conjunction with another Commission;
(b) the suitability for New South Wales of reforms proposed in those Reports specified by the Attorney General; and
(c) any related matter. 

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This reference resembles one recently given to the Victorian LRC (see below).

Since 18 May 1987, the Commission's Chairman has been Ms. Helen Gamble. It currently has two other full-time members, 13 part-time members, nine full-time professionals (Research Director, Secretary, 6 legal staff, Librarian), five temporary or seconded legal staff and nine administrative and secretarial staff. Its budget is $1.1 million (£510,000), which ranks seventh on the table of budgets (Appendix 1). It has produced 22 Working Papers, 36 Discussion Papers, etc. and 53 Reform Reports. Allowing two years for implementation, its implementation rate is 81%.192

(4) Northern Territory

The Northern Territory established its Law Reform Committee in 1976, after the territory had attained self-government.193 The Committee is governed by a Constitution which was updated in 1987. It cannot submit proposals for reform unless it has been given a reference from the Attorney General. All of its members are part-time. It has one legal staff member, occupied 50% on its work, and one administrative/secretarial person, occupied 30% on its work. Its budget for 1986-87 was $74,000 (£34,300 sterling). It has produced 12 reports. Allowing two years for implementation, its implementation rate is 60% in full.194 The Committee's reply to Question 12 of the survey ("With whom does the agency normally consult in the preparation of its reports? (interest groups, etc.?)") was the most negative received. It reads:

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192 Information from Annual Report 1987, Appendix D. Implementation up to June 1987 of reports issued up to June 1985. 44 reports, 42 calling for legislation (disregarding No. 15 - no action recommended; No. 41 - interim report), 34 implemented in full or in part (vast majority in full). This does not tally with the answer to Question 18 (d) of the survey. 40 reports are classified as implemented there. 5 of the 6 difference are as a result of the Legal Profession Act (4 reports) plus the enactment of Report 46. The one remaining may be an Act passed between July 1987 and May 1988. It may also be that the count includes Report 41, the interim report disregarded above.

193 See Hurlburt, supra n. 4, pp.104-105.

Not done in the normal course of events. However has been done on projects concerning (a) De Facto Relationships -- all members of the public and specialist organisations invited to comment on Discussion Paper ..., (b) Administrative Appeals -- public service.

But the second sentence shows that in fact the Committee has consulted widely, and it has consulted more than some agencies which gave positively-phrased answers.\(^{195}\)

(5) **Queensland**

The Queensland Law Reform Commission was established by the Law Reform Commission Act, 1968.\(^{196}\) The LRC may work on programmes approved by the Minister of Justice, but may also work on its own initiative. Under s.10(4) (formerly, s.10(3)), only those recommendations of the Commission which are approved by the Governor in Council must be laid before Parliament. As a result, some reports have never been tabled, and some have been tabled long after the LRC has delivered them to the Minister. The LRC has one full-time member, some part-time members, a Secretary and two Senior Legal Officers. Its budget for 1986-87 was $250,000 (£115,800 sterling). It had issued 32 Reform Reports by the end of 1982. It had issued 30 Working Papers by April 1987.\(^{197}\) No reply to the survey was received from Queensland, and so no up-to-date figures are available. By the end of 1982, 19 of the 30 reports delivered by the end of 1980 had been implemented. The Commission has issued several massive reports on large areas of private law, e.g. real property, trusts, evidence, succession. Its enacted reports have had a substantial effect on Queensland's private law.

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\(^{195}\) For example, the Washington Statute Law Committee said that it merely "consults amongst its own legal staff and reports to the Statute Law Committee; the South Dakota Code Commission merely consults "the State Bar Association".


\(^{197}\) [1987] Reform 97.
(6) South Australia

The Law Reform Committee of South Australia was established by proclamation in 1968. It must accept references from the Attorney General. In 1986, Hurlburt said that the Committee could act of its own motion as well. However, in his reply to Question 10 of the survey, the Chairman stated that the Committee does not have a power of initiative. Reports are not published unless the Attorney General consents. The Hon. Dr. Howard Zelling has been its Chairman from its inception to the present day. He serves part-time, as do the eight other members. By the end of 1982, the Committee had issued 68 Reform Reports. By February 1988, this had risen to 108. The reports are very short, but can deal with large subjects, e.g. privacy, illegitimacy, libel and slander. The Committee does not publish annual reports, but the Hon. Dr. Zelling stated in his reply to the survey that about 40% of the reports have been implemented in full and about 10% have been implemented in part. He also stated in his covering letter that as a cost-cutting measure Cabinet had put the Committee on hold until the next budget review in August 1988 and the Committee was merely completing partly done references until then.

(7) Tasmania

The Tasmanian Law Reform Commission was established by the Law Reform Commission Act 1974. The Commission could only act on references from the Attorney General. When it


199 Hurlburt, supra n.4, p.144.

200 This information has not been included in Appendix 2 as it does not allow two years for implementation, and as it is too imprecise.


202 In reply to Question 10 of the survey, the Research Director said that the Commission had a power of initiative. Presumably he meant that the Commission may suggest references to the Attorney General (s.7(1)(b)) and may place before him/her suggestions and suggested pro-
The LRC was obliged, on request, to advise the Attorney General on a confidential basis on any legal matter which involved relations between Tasmania and the federal or other State governments. The Commission had a Chairman and four other members. The Chairman served part-time, the Research Director/member served full-time and the three other part-time members represented the Bar Association, the Law Society and the University of Tasmania Law Faculty respectively. The 1974 Act originally required the LRC to have two non-lawyer members. Two teachers held these positions for a period. In 1982, the incumbents were the Administrator of the Family Planning Association and a member who held supervisory positions in child care services. All eight of the "lay representatives" who were appointed over the years were women.\textsuperscript{203} The subject of tranquilizer guns (Report 30, 1982) was undertaken upon the initiative of one of these non-lawyer representatives.\textsuperscript{204} They played an important role at the National Conference on Rape held in Hobart in May 1980 and made an important contribution to the work of the LRC generally.\textsuperscript{205} However, Stan Ross says that at the sixth Australian Law Reform Agencies Conference held in Hobart in 1981, the Chairman of the Tasmanian LRC announced that the two women members would be serving tea and coffee during the breaks!\textsuperscript{206} The provision for non-lawyer representatives was deleted in 1984.

The Commission's budget for 1986-87 was $93,000 (£43,000 sterling). It was assisted by grants from the Law Foundation of Tasmania. By the end of 1987, it had issued 13 Annual Reports, 17 Working Papers and 53 Reports. Allowing two years for implementation, its imple-

\textsuperscript{203} Thirteenth Report 1987, typescript, p.18.

\textsuperscript{204} Hurlburt, supra n.4, p.168.

\textsuperscript{205} Ross, supra n.158, p.168.

\textsuperscript{206} Ibid., loc. cit.
mentation rate is 51.1% (42.2% in full, 8.9% in part).207

In February 1988, the Law Reform Commission of Tasmania was due to be abolished and replaced by a single Law Reform Commissioner.208 In its annual report, the Commission defended itself as "probably the cheapest law reform agency in the world".209 The Chairman, Mr. J.B. Piggott, objected to the abolition of the Commission on the basis that a collegiate Commission was better able to serve the needs of law reform in the State and that the government would only save $6,000 a year by its action.210 He objected to the appointment of a judge as a single Law Reform Commissioner as his/her investigations would cause embarrassment in a small community like Tasmania, his/her appointment would reduce the efficiency of the Courts by depriving them of adequate numbers of judges, and he/she could not go in person to government departments etc. in order to obtain submissions.

**(8) Victoria**

The Chief Justice's Law Reform Committee of Victoria was established in 1944.211 By November 1982, it had issued 214 reports (40% implemented). It has a very high proportion of judicial members, and its reports have largely been in areas of technical law.

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207 Information from *Thirteenth Annual Report 1987*, typescript, Appendix A. Implementation up to end December 1987 of reports issued up to end December 1985. 45 reports, 23 implemented (19 in full, 4 in part). The figure of 22 non-implemented includes reports 12 ("No action proposed") and 29 ("No action contemplated"), despite the ambiguous wording of these entries. The reason is that the wording is similar to the clearer wording of the entry for Report 32 ("No action is to be taken on this report").

208 See Appendix 5 below, Tasmania, covering letter; [1988] Reform 3; *Thirteenth Annual Report 1987*.

209 *Thirteenth Annual Report 1987*, transcript, p.12. The statement is not completely true. Appendix 1 below places five agencies as being cheaper than the Tasmanian LRC (Sri Lanka, Michigan, Northern Territory, South Dakota, Gambia).


From 1973 to 1984, there was a Law Reform Commissioner in Victoria. Twelve reports by successive Commissioners had been issued by the end of 1982. Six of the ten reports issued by 1980 had been implemented by that time. In 1984, the office of Law Reform Commissioner was replaced by a Law Reform Commission by the Law Reform Commission Act 1984. The Commission can work on any matter raising "relatively minor legal issues" on its own initiative, provided the examination of the matter will not require a significant deployment of resources. Otherwise, it must work on references from the Attorney General. Much of the Commission's funding comes from the Victorian Law Foundation. In 1986-87, its budget was $1,600,000 (£740,800 sterling), the highest of any state agency in Australia, and $500,000 more than the nearest Australian state agency (the New South Wales LRC).

The Commission has received a reference in the controversial area of medicine, science and the law, studying such topics as gene modification and informed consent. It has also studied the area of "plain English" in drafting of legislation, legal agreements and government forms. Finally, it has received a standing reference from the Attorney General to improve co-ordination between its work and the work of other Australian agencies. There are two aspects to the reference. Firstly, the Attorney General can specify a particular report of another law reform agency which the Victorian LRC must examine and report upon its possible implementation in Victoria. Secondly, the Victorian LRC can enter 'joint-ventures' with other agencies. For example, it received a companion reference on product liability when the Australian LRC received such a reference on 11 September 1987. It has also undertaken a "joint venture" with the New South Wales LRC on informed consent to medical procedures. A joint discussion paper on the topic was issued

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212 Hurlburt, supra n.4, pp.159-161.

213 S VICT 1984 No.10131; Hurlburt, supra n.4, pp.162-164.


214a The text of the reference is at [1987] Reform 201. It resembles the recent reference given to the New South Wales LRC (see above).
in November 1987.\textsuperscript{215}

\textbf{(9) Western Australia}

A Law Reform Committee was established in Western Australia in 1968. It was converted to a Law Reform Commission by the Law Reform Commission Act 1972.\textsuperscript{216} Originally, it had three part-time members. In 1979, two full-time members were added. It is confined to acting on references from the Attorney General. By the middle of 1982, it had issued 62 final law reform reports. Action had ensued on 29 of the 57 reports which recommended legislative action. Its budget for 1986-87 was $700,000 (£324,000 sterling). It has worked in conjunction with the Australian LRC on the topics of privacy and defamation.

\textbf{NEW ZEALAND}

Until 1985, there was no full-time law reform commission in New Zealand. Instead, there was a system of part-time committees, which were quite effective.\textsuperscript{217} In 1985, a full-time Commission was established.\textsuperscript{218} It is known as the "Law Commission" in an attempt to emphasise "the wider objective of keeping under systematic review the country's developing law considered as a whole."\textsuperscript{219}

There are two points of interest in the Act. Firstly, the Commission has an unfettered initiative if it wishes to consider any topic (s.6). It must, however, report on a topic referred to it by the Minister of Justice and give topics priority if he/she so requests (s.7). The Act contains the unusual requirement that the Commission must submit programmes to the Minister "at least once

\textsuperscript{215} Informed Consent to Medical Treatment (VLRC DP 7, 1987).

\textsuperscript{216} S WA 1972, No.59. See Hurlburt, supra n.4, pp.137-144.

\textsuperscript{217} See Farrar, supra n.3, pp.80-89.


\textsuperscript{219} Woodhouse, ibid., p.108.
a year" (s.7(1)). Secondly, Section 5(2)(a) states:

In making its recommendations, the Commission -- (a) shall take into account te ao Maori (the Maori dimension) and shall also give consideration to the multicultural character of New Zealand society.

This was described as a "timely and important directive" by the Minister of Justice at the time.\footnote{220} However, John H. Farrar, who now lectures in New Zealand, is far more sceptical.\footnote{221} He says that Maoris constitute less than a tenth of the population but more than half of the prison inmates. Their life expectancy is shorter than that of the pakeha. He is doubtful about the prospects for improvement, given the proposal to make the dated and ambiguous Treaty of Waitangi part of the supreme law of the land, and given what he calls "market oriented policies ... which even Mrs. Thatcher might envy." He goes on to criticise the new Law Commission in more general terms:

The full-time Law Commission has been set up with wide-ranging responsibilities but a modest budget and no economic input. At the end of the day, however, a full-time Law Commission with the odd sociologist and economist begs the question. It is, after all, simply a committee with a grandiose name. Its creation does nothing per se to solve the problems generated by social and economic change. So far it has been slow off the mark. It will be interesting to see how it copes.\footnote{222}

Farrar may believe that the Law Commission has a "modest budget", but it ranks fourth in Appendix 1 and NZ$2,800,000 (£1,120,000 sterling is a large amount for a country with New Zealand's population. Furthermore, all five Commissioners are full-time. The President is Sir Owen Woodhouse, author of the famous "Woodhouse Report".\footnote{223} The Principal Research Officer (Prue Oxley) is an anthropologist/social researcher. There are five more full-time legal staff listed in reply to Question 5 of the survey, three in reply to Question 6, and eleven administrative and secretarial staff. On 21 July 1987, it had twelve projects on its work programme, six of them

\footnote{220 Palmer, supra n.218, p.106.}
\footnote{221 Farrar, 'Law Reform in New Zealand' (1987) 7 Oxf.J.Leg.Studies 151-4.}
\footnote{222 Ibid., pp.153-4.}
\footnote{223 New Zealand. Royal Commission. Compensation for Personal Injury in New Zealand (Shearer, Wellington, 1967).}
referred to it by the Minister and six chosen on its own initiative. The six topics referred to it by the Minister cover wide areas -- The Courts, Maori Fisheries, Legislation and its Interpretation, Companies, The Limitation Act 1950 and Accident Compensation. By April 1988, it had published five preliminary papers and two Reform Reports. A Bill had been introduced to implement the first report, and it was at committee stage.

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