

this as mere "window-dressing" which could not be justified. In fact, all of the reports produced by the A.L.R.C. have been dealt with promptly. The report on *Alcohol, Drugs and Driving* has now been approved by the Legislative Assembly of the Capital Territory on the recommendation of the Minister for the Capital Territory, Mr. Staley. The substance of the Commission's report on *Criminal Investigation* has now been accepted by the Government and is contained in the *Criminal Investigation Bill 1977*, which is presently being considered by Federal Parliament. The report on *Complaints Against Police* is being reconsidered following the decision not to proceed with the proposed Australia Police. The two Annual Reports of the A.L.R.C. have also obviously sparked the interest of the Senate Standing Committee on Constitutional and Legal Affairs. The question of Parliamentary and Party machinery remains. Sir Anthony Mason suggested in 1975 that Parliament might delegate legislative powers to L.R.C.s (1975) 49 *A.L.J.* 572. Even if this procedure is not accepted, the introduction of regular and fairly automatic scrutiny by a bipartisan committee may be the way to avoid those pigeon-holes. The Senate Committee's inquiry will be followed closely by law reformers throughout Australia and in all parts of the world.

Aboriginal Tribal Laws: Inquiry Begins

"Decisions based on facts, arguments on the rules of law, impartiality of the bench and so on are essentially notions which belong to the common law but they do not represent the *only* concepts of law".

Mary Daunton-Fear & A. Freiberg,
"Gum-Tree" Justice, 1976.

On the lawns outside the Aboriginal Legal Service in Alice Springs, the A.L.R.C. inquiry into Aboriginal Customary Law got off to a start on 13 June 1977. The A.L.R.C. Chairman, Mr. Justice Kirby, and Commissioners David Kelly and Professor Alex Castles, heard viewpoints of the Aboriginal and other communities in the Centre before moving on to Darwin where similar public sessions were held. These sittings are only the first in what will obviously become a complicated and sensitive inquiry. The A.L.R.C. has been asked by the Commonwealth Attorney-General, Mr. Ellicott, in consultation with the Minister for Aboriginal Affairs, Mr. Viner, to look into a number of questions concerning Aboriginal Tribal Law :

- * Whether existing courts dealing with criminal charges could apply Aboriginal Customary laws and practices.
- * Whether Aboriginal communities should have the power to apply their own laws and practices and if so how.
- * Whether special exceptions need to be made to ensure that no person is subject to treatment or punishment which is cruel or inhumane.

The A.L.R.C. inquiry mirrors growing concern in the Australian community to strike a "new deal" with the indigenous Aboriginal people. The movement took impetus from the Referendum to amend the Constitution, carried in 1967. A number of recent developments have brought the issue to public attention and sent the editorialists rushing for their pens :

- * The trial in Adelaide in May 1976 when a tribal Aboriginal was handed over to the tribal elders and subsequently speared, as punishment for killing his wife.
- * The acquittal in the Supreme Court of Western Australia sitting in Kalgoorlie in May 1977 of a number of tribal Aboriginals charged with murder.
- * The call by Mr. Stewart Harris on the A.B.C. *Guest of Honour* programme for a new "treaty of commitment" with the Aboriginal people of Australia.
- * The stinging attack in mid June by Mr. Justice Muirhead of the Northern Territory Supreme Court on the system of criminal justice for Aboriginal children in the Northern Territory.

The A.L.R.C. team is concentrating in the first instance on the Northern Territory but will subsequently broaden its inquiry to all States and Territories. It will also study overseas attempts to harmonise common law and civil law systems with the customary laws of indigenous people. Explaining the A.L.R.C. project in Darwin, Mr. Justice Kirby, the A.L.R.C. Chairman, said that the Commission fully realised the arguments against "legal Apartheid". He said that the first step would be to find out just what Aboriginal customary laws were. Only then could a decision be made as to whether, and if so how, they could be acknowledged by the Australian legal system.

"It is now more than 200 years since the first contact between the white community and Aborigines in Australia. It is nearly 200 years since the legal system was established. Especially since the Referendum in 1967 this country has been in the throes of important efforts designed to reform the relationship between the indigenous Aboriginal people and the rest of the community. Until recently we simply imposed our system of law and it must, at times, have seemed unfair and irrelevant".

The A.L.R.C. has published a *Seminar Paper* raising a large number of issues for answer in the reference. Some of the questions raised are :

- * Have particular problems arisen in applying tribal laws to young people, especially women, educated in schools and later returned to the tribe?
- * To what extent have Aborigines now accepted the values of Australian criminal law and its system of punishments?
- * To what extent will an Aboriginal community exact "pay-back" or other punishments, regardless of the decisions of a criminal court?

Various proposals have been put forward to allow some recognition of Aboriginal customary laws, at least in the tribal situation :

- * A requirement that criminal courts should take into account Aboriginal customs, especially punishments, to which the prisoner is subject amongst his own people.
- * An attempt to make our criminal law more sensitive by the use of Aboriginal assessors sitting with judges or magistrates, when an Aboriginal is being tried.
- * Authorisation of Aboriginal groups to apply their own laws and practices, unless cruel or inhumane.

An A.L.R.C. spokesman said that the views of the community, including the non-Aboriginal community, were being sought. No report would be delivered until proposals had been thoroughly canvassed and discussed in all parts of Australia. Those interested in commenting on the A.L.R.C. *Seminar Paper* are invited to write in for it. It is distributed without charge.

Uniform Law Reform at a Snail's Pace

"Celerity is the mother of good fortune. He has done much who leaves nothing over till tomorrow".

Baltasar Gracian, The Art of Worldly Wisdom, 1647.

Views differ about the advantages of speed in law reform. There are many who would say with Shakespeare that "celerity is never more admired than by the negligent". Some practitioners of law reform have urged that haste is the enemy of true reform. No-one can accuse Australia of this sin, at least in the department of uniform law reform. The American and Canadian federations have their uniformity conference. With 50 States in the union, the Americans can agree upon major uniform legislation, ranging from the Uniform Commercial Code (in force in 49 States) to legislation on such a sensitive matter as organ and tissue transplants (in force in 50 States). Against this record, Australia's list looks pitiful.