

## LAW REFORM AGENCIES: THEIR ROLE AND EFFECTIVENESS

Paper by the Commonwealth Secretariat

### EXECUTIVE SUMMARY

1. Increasingly, law reform is vital to any legal system and to any nation. Law reform is also a key leader and participant in ensuring the practical application of the Commonwealth's agreed fundamental values. Independent law reform has particularly significant benefits. Independent Law Reform Agencies (LRAs) have been established in many jurisdictions, mostly in the Commonwealth and often with success.
2. Key features of LRAs are their independence, their expertise, their focus on law reform, and their continuity. Other important characteristics are their commitment to full consultation and public participation and their ability to handle new and complex problems, together with their thoroughness, use of outside volunteer experts, openness and accountability. Rightly, they vary greatly according to local circumstances. Especially in smaller jurisdictions, they do not need to be large to be worthwhile.
3. While independent law reform often works well, there is still considerable need for improvement.
  - LRAs need to be established in more Commonwealth countries.
  - LRAs need high quality personnel, organisational structures, methodology and resources.
  - LRAs need projects of real importance, in appropriate numbers and with practicable timetables.
  - There needs to be even more co-operative working across the Commonwealth, with special regard to LRAs in smaller jurisdictions.
  - Governments need to give full and prompt consideration to LRA recommendations – and to avoid unnecessary delay in any implementation.
4. This paper invites Law Ministers to consider a set of recommendations to help meet these needs.

## LAW REFORM AGENCIES: THEIR ROLE AND EFFECTIVENESS

### BACKGROUND

#### The number and types of Law Reform Agencies

1. A major innovation in the legal world over the last 40 years has been the establishment and development of Law Reform Agencies (LRAs). They have a variety of names such as Law Reform Commission, Law Reform Committee, Law Commission and Law Reform Institute. They have brought whole new features to the legal landscape. They can provide principled and imaginative new law, and can be catalysts of change, responsive to the world around and to the public they serve. Even on a conservative basis, there are some 60 LRAs across the world, with responsibilities to many millions of people. The great majority are in the Commonwealth. The most typical LRA covers a country or state, is substantially autonomous and has authority to review a wide range of areas of law. However, LRAs come in many shapes and sizes. For example:

(a) Some cover countries with populations of well over a hundred million people (for example, India, Pakistan and Bangladesh) while others are for jurisdictions with populations well under a million (for example, British Virgin Islands and the Northern Territory of Australia), and for many more there are populations in between those numbers.

(b) The countries concerned vary greatly in other ways. Their Gross Domestic Product varies immensely. Some are heavily industrialised, and others are much more agricultural. Some have high-density populations, and in others the populations are very scattered.

(c) The LRAs vary greatly in their size and capacity. For example, while one may have one very part-time Commissioner (such as Mauritius), another may have several full-time Commissioners (such as Australia, with 3 full-time and 3 part-time).<sup>1</sup> Some have very few staff, and others have large teams.

(d) The responsibilities of LRAs most typically concentrate on straightforward reform of the law but that field can be viewed broadly or narrowly. Some also have other responsibilities - for example, taking measures to harness law and the legal process in the service of the poor and keeping under review the system of judicial administration (India).

(e) While most are in countries with a long common law heritage, others are in countries with very different legal environments and traditions.

(f) While the majority cover a complete country, a significant minority cover a single state, territory or province (for example, in Australia, Canada and Nigeria) with other LRAs often covering the remainder.

(g) While most are statutory, some are not, for example in India, Alberta (Canada) and Northern Ireland.<sup>2</sup>

(h) LRAs vary greatly in how long they have been established, as demonstrated immediately below.

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<sup>1</sup> (For convenience, "Commissioner" is used to identify those who formally constitute an LRA. In some jurisdictions, other titles are used.)

<sup>2</sup> The Law Reform Advisory Committee for Northern Ireland is to be replaced under 2002 legislation by a statutory Northern Ireland Law Commission.

2. It is clear that, rightly, LRAs may work differently from each other, for all those reasons. In addition, while law reform is the core activity of virtually all LRAs, many are also involved in other work that is closely related to reform, including codification, revision, consolidation and repeals. A generous definition would include, among LRAs, those standing bodies which are established to keep certain limited areas of law under review, for example, criminal law, company law or criminal codification.

### **Their Growth**

3. The number of LRAs has grown considerably over the last 50 years. Some LRAs have been established now for many years: for example, India (55 years, apart from earlier origins since 1834), England and Wales and Scotland (40 years), the Australian Law Reform Commission (30 years) and Sri Lanka and Pakistan (over 25 years). Others have been formed far more recently or are being established. The following are just a few very recent examples:

- Canada (established in 1971) – abolished in 1992 and replaced by the Law Commission of Canada in 1997;
- Malawi established in 1998;
- Northern Ireland – being established, to replace an Advisory Committee; and
- Victoria (Australia) – several different bodies succeeded each other since 1974 – new LRA established in 2001.

4. This growth has been intermittent, has sometimes stalled badly, and has a long way still to go. A few LRAs have been abolished, and others have been replaced: for example Canada, as well as for two Canadian provinces (British Columbia and Nova Scotia) and two Australian States (Tasmania and Victoria).

5. Apart from numerical growth, there seems to be, very broadly and with exceptions, a sense of confidence about independent law reform. Many LRAs are working to capacity, or even beyond it. Several have more, or more important, work than for several years, with government support steady or increasing. There is often bipartisan political support for the work of independent law reform. There are several jurisdictions where steps are currently being taken towards the establishment of a new LRA – for example, Northern Ireland and South Australia. At the same time, there are parts of the Commonwealth where there is little independent law reform or where LRAs are not as active or well supported as they would wish.

### **The number of Commonwealth countries with and without national LRAs**

6. Independent national LRAs exist in approximately half of all Commonwealth countries.

## **LAW REFORM AGENCIES**

### **What they are**

7. LRAs are expert, advisory law reform bodies, independent of government. They are established to review a variety of areas of law and to recommend any changes needed. Their programmes of work need to be agreed with government, and they are normally accountable to government. They have lawyers of considerable ability. They are standing bodies, ready to take on new work quickly.

8. Until an LRA is established, law reform is usually undertaken by government ministries, governmental committees, parliamentary committees and other committees and bodies established for one-off reviews and inquiries constituted especially to consider a particular aspect of the law. This is generally done on a part-time and temporary basis. Such alternative mechanisms are worthwhile but very far from ideal. An LRA is established to overcome the disadvantages of transient bodies.

#### What they do

9. Some areas of law are relatively standard or core subjects for law reformers. They include substantive law in areas such as criminal law, civil law, family law, commercial law, and public and administrative law. In fact, LRAs frequently review key areas of law which affect large sections of society. The criminal law is clearly central in any country, providing justice as well as seeking to safeguard victims. LRAs are also accustomed to investigating the law which covers all “life events”, ranging through birth, marriage, children and death.

10. The following are just a few examples of important recent projects by LRAs:

- a whole justice system (New Zealand, South Africa and Western Australia);
- sentencing powers (Uganda, Nigeria and South Africa, and New South Wales and Tasmania in Australia);
- transformative justice (Canada);
- security legislation (South Africa);
- anti-terrorism legislation (India and Pakistan);
- bribery and corruption (Fiji);
- domestic violence (South Africa);
- electoral laws (Canada and India);
- harmonisation of laws with neighbouring states (Kenya);
- money laundering (South Africa); and
- establishing a family court (Mauritius).

11. Different jurisdictions use different methods for identifying topics for review by LRAs. However, it is important that LRAs have a role in identifying them, often with government. Indeed, in some jurisdictions LRAs take by far the major part in identifying and deciding about their future work. This process is clearly of central importance because it not only dictates the work of the LRA over the period of the project but it is also closely connected with the ultimate “success” of the LRA’s work.

12. Suggestions for new reform projects may come from different sources in different jurisdictions, apart from the LRA and the government. For example, the courts, the legal profession, academic lawyers, and professional associations may from time to time comment, with varying degrees of vigour, that particular areas of law merit review by the LRA. Many LRAs consult widely before settling on their programmes of work

## THE ADVANTAGES OF INDEPENDENT LAW REFORM AGENCIES

### Independence

13. An essential feature and a key advantage of an LRA is its independence, especially from government but also from all others. This independence has a particular value as it demonstrates that the LRA’s views are objective and impartial and are not dependent on others’ views. The Executive and the Legislature frequently need and value specialist advice in the planning and formulation of law reform. This advice is best provided by an independent body. An LRA is independent in the recommendations it makes as to the reform of any particular area of law. An LRA should have no

preconceptions and no in-built bias. It should therefore be composed of Commissioners and staff who do not have strong allegiances, who have open minds and who are sufficiently resilient not to be persuaded by any pressure other than sound argument. It is a body that has nothing to fear from expressing its views, after a sound law reform process.

14. An LRA's independence, together with its practice of wide public consultation, enhances the credibility of its work with everyone, including politicians of all parties. It sets an LRA apart and enables it to be more vibrant, innovative and authoritative.

### Aspects of Independence

15. An important aspect of this independence is the LRA's intellectual independence:

“the willingness to make findings and offer advice and recommendations to government without fear or favour... [The LRA must] be, and must be perceived to be, scrupulously free of political partisanship or association with private or special interests. It also means that the culture must be sufficiently robust to weather strong criticism at times, at all stages of the process. Few other institutions in our society are as accustomed as [LRAs] to sharing openly their work in progress. ...Sadly, our immature media and political cultures make it very difficult for governments to formulate and refine policy in this way...Institutional law reform provides an outlet for this more considered policy development process, without attracting so much heat” (Weisbrot, p 38).

16. An LRA's independence should be subject to checks and balances in certain areas. First, an LRA's work programme is generally agreed between the LRA and the government. Secondly, an LRA is publicly accountable, in reporting to the Minister at least annually, in having all its reports and programmes of work placed before parliament and published, and in complying with public sector requirements regarding, for example, openness, management and finances. Besides, an LRA only makes recommendations as to the reform of the law. Rightly, it is only parliament that can change the statute law.

### Safeguarding Independence

17. Key ways in which governments have to honour this independence include ensuring that appointments of Commissioners are non-political and free from conflicts of interest, that the terms of reference for law reform projects are not designed to produce any particular outcome and that there is no improper governmental or other external pressure upon the LRA to produce any particular recommendations. The great majority of LRAs are established by statute. Apart from the stability and stature that this tends to provide, the statute often ensures that the LRA has a separate existence from government.

18. When there is a mature and public balance between independence and accountability, an LRA should establish strong, constructive and open links with others. They include government ministers, ministries and departments, politicians, the Civil Service, the judiciary, legal and other academics, the media and all areas of the legal profession, NGOs and other groups and individuals with an interest in law reform and in the particular areas of law under review at a particular time. An LRA may need to be relatively ambitious and assertive to ensure, for example, that it obtains consultation responses from all the key experts in a field; on the other hand, an LRA needs to be humble in how it projects itself and its work and recommendations.

## Volunteer Input

19. “Another major benefit of an independent [LRA] is its ability to generate and harness an extraordinary volunteer effort in the course of its work, to supplement in-house research and expertise. The direct government expenditure on [an LRA] may be seen as a form of “pump-priming”, providing the focus and co-ordination that enables much greater public participation and the unleashing of volunteer effort in the public interest” (Weisbrot, p 39). Many LRAs obtain the assistance and involvement of the leading experts in the topics that they are reviewing - whom the LRA could not afford to pay what they are worth or could easily command as consultants in the private market.

20. It is vital to create and maintain confidence in the body carrying out the work of law reform. That confidence is needed by the government, which is the ultimate recipient of the LRA’s recommendations. It is also needed by key participants in the law reform process, including members of the public, community groups, minority groups, NGOs, interest groups, professional associations, academics, the legal profession, the judiciary and the government. They must be sure that they are participating in a project of real significance if they are going to take the time and make the effort to provide evidence and views, respond to consultation papers and discussion papers and take a real part in the process of law reform.

## Expertise

21. An LRA builds up a fund of expertise, knowledge and specialist contacts in both the law and law reform. This is vital for successful law reform. It increases the likelihood of consistently high quality work. The LRAs reputation and independence also attract to it over the years Commissioners, staff and consultants of great ability.

22. An LRA’s methods should ensure that its recommendations are thoroughly worked through before they reach the government and parliament. Where each Commissioner contributes to the overall work, including projects led by other Commissioners, this enables collegiate decisions. It ensures recommendations are from a wider focus than would be possible if they were based on the work of a single specialist.

23. Because of the great variety of circumstances in which they operate, LRAs vary greatly in their composition. However, many LRAs have at least some full-time element among their Commissioners, in addition to legal research staff. The difficulties involved in undertaking law reform on a temporary basis, and the unsatisfactory results produced, have not escaped comment. Referring to the Law Reform Committee and the Criminal Law Revision Committee, for England and Wales, Professor Gower said:

“Each is a body of part-timers who meet for short periods at regular and irregular intervals, and neither has an adequate infrastructure of full-time research staff. In consequence their results have been unspectacular, desperately slow in achievement, and sometimes downright unsatisfactory” (Gower, p 259).

24. LRAs are normally intended to be capable of undertaking work in the great majority of areas of law (substantive, evidential and procedural). Their ability and willingness to accept such a variety also has the advantage of providing a standing body ready to undertake work in most areas of law. While the Commissioners and staff will often have relatively broad previous experience, it can be supplemented crucially by assistance from experts and others outside the LRA. The consultants are mainly legal experts who assist with aspects of particular projects or conduct the empirical research that is sometimes needed. LRAs often also appoint working parties of experts, representatives of NGOs and other interested parties.

25. Open, thorough, imaginative and responsive consultation procedures assist an LRA in capturing the attention of additional expertise from a wide range of public consultees who may respond to a consultation document. Best practice would include acknowledgement of consultees' contributions, recognition in the final report and referencing where consultees' responses have influenced final recommendations.

26. In many countries, there is general acceptance of the need to ensure true public participation in major decisions affecting significant sections of the general public. Institutional law reform, which emphasises public consultation and participation, is a particularly good mechanism for restoring community confidence in the law and legal institutions. This is very welcome wherever a legal system has basic problems with legitimacy. A good example was South Africa at the end of the apartheid era.

27. An LRA gains the skills to undertake in-depth and sustained research, including legal, practical, social and empirical research. However, the strong links that an LRA forges with others enable it to benefit from the pooled knowledge and skills available and from a multidisciplinary approach. An LRA cultivates this dynamic relationship and the resulting interplay of legal ideas and arguments bear fruit, for example, in creativity and discussion of specific issues within law reform projects.

28. A distinctive feature of several LRAs is the availability of legislative drafters to the LRA. They draft all the LRA's law reform legislation, which saves the government's legislative drafters a substantial task at a more pressurised time later. The process of drafting the legislation also helps the LRA with its thinking and recommendations.

## FOCUS

29. An LRA has the great advantage of having a central focus and purpose: law reform. As a result, it can concentrate its energy and resources on this single purpose and is saved from the distractions, interruptions and trouble-shooting faced by many other bodies, not least by government and ministers and their ministries all over the world. Glanville Williams began "The Reform of the Law" by stating:

"Like everything else the law needs to be kept up to date; indeed, a great deal of it needs to be brought up to date in the first place. The problem is of course largely one of machinery; and the reason why so much of our English law is out of date, some of it indeed quite antediluvian, is that nobody has ever been entrusted with the job of looking after it" (Glanville Williams, p 9).

30. Law reform tends to lag behind other priorities unless there is an LRA. Lord Gardiner noted: "It may be your Lordships' experience that things in life do not get done unless it is somebody's job to do them. It has never been anybody's job in England, who could do it, to see that our law is in good working order and kept up-to-date". An LRA is able to devote its resources, time and energy to this purpose.

31. There is great benefit in having Commissioners and staff whose work is devoted to improving the law. A body established for the purpose of law reform is able to undertake reviews of subjects that are broader and more closely interlinked than would be feasible for others.

## Continuity

32. There is enormous advantage in having law reform undertaken by a body which is continuing in existence. Continuity enables an LRA to acquire and apply the great expertise and the

resources that have been mentioned above. It also gains considerable experience in the processes that are most useful for the complex task of law reform. It avoids successive bodies each having to learn the skills. It can help productivity and provide opportunity to establish a sound reputation. It also increases the justification for investing properly in modern technology, accommodation and library facilities.

33. In addition, projects are often linked by their subject matter, so that the knowledge and experience gained in one project benefits those working, often later, on another; and the LRA's continuity ensures a consistent approach both to particular areas of law and to the law reform process -- which is otherwise most unlikely. A permanent body makes it more possible to engage in a systematic review of the law, a statutory requirement for many LRAs. As a standing body, an LRA is able to discuss the reasons for its recommendations, and its strengths and any weaknesses with the government of the day. Continuity enables the LRA to have discussions with, and give responses and make submissions to, other bodies which consider similar issues some years later.

#### **ROLE AND EFFECTIVENESS OF LAW REFORM AGENCIES IN THE COMMONWEALTH**

34. LRAs are agents of change. They may have the opportunity to be at the forefront of legal development. For example, they may be able to lead the way nationally in identifying areas where there is a need for new law, in reviewing areas of law which are being affected by new features of life and in recommending imaginative new legislation. Examples of such fields of law are: environmental law; globalisation; internet law; e-commerce; HIV/AIDS; genetics-patenting; human rights; computer crime; rights of indigenous people; new family relationships; international trade; international aid; poverty; and ethics.

35. LRAs may also be able to use initiative and innovation in methods of law reform. For example, they may be able to lead the way in responsiveness to the needs of the public, as in many places such as Australia, Canada and East Africa -- which are all jurisdictions where they seek to capture the attention of outsiders; and their consultation processes are open, thorough, imaginative and responsive. For example, they may use public meetings (both general and focused on target groups), consultation forums, the media and websites -- both for assistance in particular law reform projects and for advice about the areas of law which cause greatest concern and which might therefore be reviewed by the LRA. In addition, opinions are not only obtained from all relevant quarters but are also taken fully and seriously into account. Another example is that they may be able to publish their work with an eye to capturing the attention and imagination of their readership, with part-reports geared to special interests or special needs of language, culture, disability etc. - on the internet, or on CD as well as in printed text, with a range of summaries for different readerships. An LRA saves government ministries considerable resources in actually conducting the law reform process and producing recommendations

#### **Standards and Values**

36. As purely advisory bodies, LRAs need to combine, on the one hand, the dynamic and innovative approach which can lead to ground-breaking work and radical ideas and, on the other hand, the high standards which are needed to gain the respect of those with whom they deal. Those high standards are demonstrated by the high quality of its work, the importance of the areas in which it works, and the wisdom of its recommendations.

37. When considering whether to review an area of law, LRAs will not shrink from topics which involve particular values. They could be issues concerning individuals, for example respect for the dignity of the individual (and his or her fallibility), respect for the rights and liberties of the citizen, and fair and equal treatment for everyone. They could be issues about changes in society -- for example, changes in formal and informal relationships, changes to community and cultural attitudes

and expectations, and keeping pace with scientific and technological developments. They could be issues about the effectiveness of the law -- for example, its accessibility to the citizen, its cost-effectiveness, and the speedy resolution of disputes without unnecessary confrontation and litigation.

38. The Commonwealth's long-accepted fundamental values relate to human rights and the rule of law, gender equality, democracy and good governance, and sustainable economic and social development (Singapore and Harare). The law has a vital role to play in ensuring the practical application of these values. Law reform is a key leader and participant in that process.

### Successes

39. The following are just a few samples of many particular successes in the last ten years or so.

- Since 1994 the South African Law Reform Commission has submitted 62 reports to the Government and published 57 discussion papers and 25 issues papers, contributing significantly to the fundamental transformation of the country into one that is non-racial and non-sexist. It has earned the respect of the new democratic Government for its work and independence.
- The Uganda Law Reform Commission in 2003 published a Revised Edition of the Laws of Uganda, containing 350 revised Acts from 1964 to 2000, with the subsidiary legislation; it was brought into force by Statutory Instrument No 69 of 2003.
- In Scotland there was constitutional change, resulting in the establishment of a new Parliament; the Scottish Law Commission contributed 6 statutes to the next 5 years' legislation. These ranged from the Abolition of the Feudal Tenure etc (Scotland) Act 2000 to the Tenements (Scotland) Act 2004.
- The Malawi Law Commission reviewed the country's constitution in 1998.
- The Law Commission of India reviewed the law on corrupt public servants' forfeiture of property (166<sup>th</sup> Report, 1999).
- Following reports by the respective LRAs in relation to dealing with mentally incapacitated people, new legislation has been introduced in England and Wales (the Mental Capacity Act 2005), and separately in Scotland (the Adults with Incapacity (Scotland) Act 2000).

### Problems

40. Despite the many advances made, significant improvement is needed.

- Half of all Commonwealth countries do not have independent national LRAs. There is considerable value in an LRA, including in a smaller jurisdiction. The LRA need not be large to be thoroughly worthwhile. Several smaller jurisdictions have LRAs, such as the British Virgin Islands and Mauritius.
- A common problem is great delay in obtaining a clear governmental response to an LRA's reports: for example, over 25 per cent of one LRA's 180 reports are still under consideration; some LRAs often have some reports awaiting governmental decisions for 10 years; and one LRA has 27 (44 per cent) of its last 10 years' reports under consideration by government or parliament.

- Some LRA's reports face long delays before they are implemented, even when they have been agreed by government: for example, one LRA has 50 reports awaiting consideration or implementation, out of its 190 reports; and another has 16 such reports awaiting implementation, which is the number of reports the LRA publishes in about 3 years.
- Some LRAs periodically receive too few significant projects or with too short a timetable: for example, one experienced LRA has needed extensions to the timetables set for the great majority of its recent projects.
- Some LRAs sometimes have staffing shortfalls or significant delays in Commissioner appointments – for example, one LRA has less than 2/3 of its permitted personnel.
- Some LRAs are from time to time poorly funded, either generally or in particular respects (for example, for modern technology or for their accommodation or library).

#### THE IMPACT AND IMPLEMENTATION OF LAW REFORM AGENCIES' RECOMMENDATIONS

41. LRAs have the task of making law reform recommendations. Law reform has far better prospects of genuine widespread acceptance if it is produced independently of the government and others, or at least where an LRA has functional autonomy from the executive and other arms of government. LRA's should fully recognise that it is the responsibility of government to decide the outcome of their recommendations, and whether to implement them by legislation or alternative means, or not at all. However, the nature of their recommendations should not be influenced by political receptivity to their approach or the likelihood of implementation by the government of the day. This level of independence can be difficult to achieve in practice. Real independence may be compromised where, for example, Commissioners may be reticent to suggest reforms which are not politically expedient where this may damage their chances of agreeing suitable terms of reference with the government for dependent or subsequent projects.

42. The great majority of experienced observers recognise that, while an LRA's implementation rate may be one of many ways of measuring success, it can never be a key indicator as it may bear little relationship to the quality and usefulness of the LRA's work and as so many factors about implementation are far beyond the control of the LRA. While implementation rates themselves are often commendable, they are sometimes surprisingly low.

##### (a) Legislation

43. New legislation is the most typical impact of LRA recommendations. Experiences of law reform legislation undoubtedly differ between LRAs. The rate of legislative implementation varies between LRAs and over different times in their histories.<sup>3</sup> Some of the highest implementation rates are:

- the Scottish Law Commission has an 80 per cent rate over its 40 years;
- the Australian Law Reform Commission has an 84 per cent rate of implementation (substantial or partial), with some 60 reports implemented;
- the Manitoba (Canada) Law Reform Commission has published over 100 papers, of which over 75 per cent have been implemented;
- the Law Commission for England and Wales has a 2/3 rate over its 40 years, with well over 100 reports implemented, fully or partly; and

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<sup>3</sup> "Truly strait is the gate, and narrow the path which, so far as law reform is concerned, leads to the statute book " (Lord Hailsham, p 283).

- the South African Law Reform Commission has a 48 per cent rate so far, for its 62 reports in the last 10 years.

**(b) Alternatives to Legislative Implementation**

44. LRA work has important alternative uses. Many LRAs occasionally publish reports which do not call for legislation at all. This may be because they do not recommend any change in the law, because their recommendations can be implemented without legislation or because they are intended purely as guidance, as advice or as vehicles for discussion rather than for law reform.

45. In addition, legislation is not the only way in which some recommendations can take effect. Some can in effect be implemented by the courts.<sup>3</sup>

46. LRA reports should be authoritative and have a significant effect in changing views and shaping attitudes, and in providing guidance to the courts on particular subjects. This can lead to a gradual change in the law by developments through the courts. In reported cases in England in a recent two-year period, over 40 referred to the work of the Law Commission for England and Wales.

**Co-operative Working among LRA's**

47. Some of the current co-operative activities between LRAs need to be developed much further. The following are examples:

**(i) Law Reform Methods**

48. One of the largest areas for pooling ideas is about methods of law reform. It is invariably helpful to share experience on methods and good practice for carrying out law reform, for example:

Planning	Planning and project management for law reform work.
Public participation and expertise	<ul style="list-style-type: none"> <li>- Engagement with the general public and with particular interest groups;</li> <li>- Approaches to diverse populations, such as those which are large, small, indigenous, ethnic minorities, scattered, disabled, illiterate or ill-educated;</li> <li>- Consultation methods and timing and use of consultation responses;</li> <li>- The use of consultants, working parties and advisory groups, seminars and public meetings.</li> </ul>
Research and publications	<ul style="list-style-type: none"> <li>- Legal research, writing skills;</li> <li>- Socio-legal, economic and other empirical research;</li> <li>- Discussion papers and consultation papers, reports and draft legislation.</li> </ul>
Communications	Presentation of material, e.g. length and style of writing, use of graphics, supplementary material such as separate summaries and publicity, websites, media contacts and IT systems.
Post-report work	Whether, and how, to engage with government and others to ensure proper consideration of a final report.

Lessons can also be learnt from the different existing models for the constitution, organisation and establishment of LRAs themselves.<sup>4</sup>

49. Many LRAs would also find it valuable to know where other LRAs have obtained financial resources. Some may receive all theirs from their sponsor government ministry. Others may have obtained significant sums from other ministries. Some may also have obtained small but significant sums of money, or other assistance with their work, from other sources. Some countries often provide assistance in a range of fields to developing countries. They are sometimes sympathetic to helping either by means of expertise, technical assistance or finance. Canada and several European countries are examples. Some international institutions can also be sources, such as the World Bank.

50. There may be scope for LRAs to share their own resources rather further – ranging from legal textbooks to technological expertise or equipment.

#### **(ii) Providing Information about Each Other's Projects**

51. It clearly makes sense for an LRA which is reviewing an area of law to consider reviews of that area which have been conducted elsewhere – rather as the courts are well used to looking at authoritative decisions in the courts in other jurisdictions. Having made due allowance for all the differences between the jurisdictions and the factors surrounding the area of law, an LRA can often find extremely useful ideas in the reports of another LRA. Frequently, LRA reports cite reviews in other countries – ideally with an evaluation of how implemented recommendations have worked in practice. LRAs are increasingly exchanging their publications with each other, or alerting each other to their new publications.

52. Some LRAs may have additional common interests. For example, some may need to be mindful of legal agreements in their region -- for example, international or regional Treaties and Conventions on human rights, on business, on trade, or on the treatment of women, of children or of minorities. It is useful for LRAs within a region to pool information and ideas about the effects of those agreements.

#### **(iii) Co-operative Work on Particular Reviews**

53. The number of law reform tasks with international significance has grown commensurately with the advance of global technology. There can be opportunities for LRAs to co-operate on reviews of particular areas of law. This would most likely arise where either there are similar problems with an area of law in different jurisdictions or where an area of law has strong cross-border importance. The co-operation can consist of mutual exchange of papers, or be as full as joint working: this is difficult but, if successful, can provide an even better and more acceptable outcome. The two LRAs for England and Wales and for Scotland conduct a number of projects jointly. Some of the Australian LRAs have also done so, and the Western Canadian LRAs currently have such a review.

#### **(iv) Mutual Support and Smaller or Newer Law Reform Agencies**

54. Mutual support can be particularly helpful for LRAs which are newly established or in smaller jurisdictions – and therefore probably smaller themselves. The deliberately independent and separate position which most LRAs have tends to make them lonely and isolated places to work – even more so if they are small. Besides practical inter-action and support, many LRAs therefore greatly value encouragement and moral support from others across the world with the same role in their jurisdictions – so that they do not become weary in well doing. Some LRAs have especially

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<sup>4</sup> See, for example, Dickson and Hamilton, Re-forming Law in Northern Ireland, Research Report for the Criminal Justice Group in Northern Ireland.

close relationships, perhaps because of geographical proximity or for historical reasons. There would also be advantages in twinning arrangements being formed between certain LRAs, most obviously between larger and smaller LRAs.

**(v) Visits, Exchanges, Secondments and Internships**

55. A good deal of interaction between LRAs already takes place by way of individual visits, which generally prove extremely valuable. These opportunities should be expanded, both in number and sometimes in duration. More LRAs might be prepared to have a Commissioner or staff member seconded to them, or to participate in internships or exchanges of personnel.

**(vi) Regionally**

56. There are several regional arrangements in place.

- An Australasian Law Reform Agencies Conference has been a regular feature since 1973.
- The Federation of LRAs of Canada covers the six LRAs across Canada.
- The Association of Law Reform Agencies of Eastern and Southern Africa was formed in 2000 and covers some 13 countries.
- There have been meetings of the LRAs of the Indian subcontinent.

**(vii) Across the Commonwealth**

57. The Commonwealth Association of Law Reform Agencies (CALRAs) has recently been formed to foster and promote international co-operation on law reform. CALRAs has the potential to take forward initiatives to strengthen independent law reform in the Commonwealth.

58. For many years there has been strong and widespread informal support for establishing a Commonwealth Association to encourage, facilitate and take forward co-operative initiatives in law reform. CALRAs' website ([www.calras.org](http://www.calras.org)) includes information about CALRAs and has links to the websites of LRAs and others across the world.

59. CALRAs has been granted accreditation to the Commonwealth. It has been established with the strong support of the Commonwealth Secretariat. The establishment of such an association is particularly appropriate at this time. Most existing LRAs are now well established, many are in a time of change – both in the law, in legal systems and in public sector management – and it is a time of particular pressure on many.

**CONCLUSION AND RECOMMENDATIONS**

60. Law Ministers are invited to note:

- the benefits brought by independent Law Reform Agencies;
- both the advances made and the difficulties faced by many such Law Reform Agencies;
- that about half of all Commonwealth countries have independent Law Reform Agencies but about half do not;
- the need for differences between Law Reform Agencies and between law reform processes in different jurisdictions, according to local circumstances; and
- the need for work to advance independent law reform further in the Commonwealth.

61. Law Ministers are accordingly invited to examine the strategy of mandating the Legal and Constitutional Affairs Division of the Commonwealth Secretariat in co-operation, as appropriate, with the Commonwealth Association of Law Reform Agencies, Commonwealth governments, Law Reform Agencies and others, to encourage:

- 1) more governments to consider establishing independent Law Reform Agencies;
- 2) governments to use the most appropriate organisational structures for independent law reform;
- 3) governments to support and co-operate with existing Law Reform Agencies, while ensuring their independence from government and others, especially their independence in writing their reports and recommendations;
- 4) governments and Law Reform Agencies to ensure that Law Reform Agencies have law reform projects which are of real importance, which are in appropriate numbers (neither too few nor too many at any one time) and which have practicable timetables for completion;
- 5) Law Reform Agencies to observe best modern practice for law reform – for example, the highest quality legal scholarship (including international and comparative perspectives), a deep commitment to community consultation and, where appropriate, empirical and multidisciplinary work;
- 6) governments and Law Reform Agencies to support co-operative working across and beyond the Commonwealth, in such matters as information-sharing, advice, training and capacity-building – making use of regional and other organisations such as the Commonwealth Association of Law Reform Agencies;
- 7) governments to have special regard to the position of Law Reform Agencies in small jurisdictions;
- 8) governments to ensure that their Law Reform Agencies are provided with satisfactory resources, such as:-
  - personnel (with high-quality Commissioners and legal, research and other staff),
  - funding and
  - modern technology, accommodation and library facilities.
- 9) governments to give serious and prompt consideration to enacting and implementing the recommendations of Law Reform Agencies.

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