- A pilot project for the introduction of computer recordings of Torrens title in N.S.W.
- Streamlined procedures to convert Crown land into the Torrens system.

The debate on the legal monopoly is important. Land conveyancing fees amount to about half the income of solicitors in Australia. Nor is the debate limited to this country. One of the specific terms of reference to the English Royal Commission on Legal Services concerned this issue. An American expert, Professor John Payne, has declared his support for conveyancing by solicitors. But he acknowledges that in order to retain the present monopoly, conveyancing must be made quicker and less expensive. In the age of the *Trade Practices Act* it is rare to see a monopoly defended. Those interested should look at (1977) 127 *New Law Journal* 1113.

Meanwhile, it is understood that the N.S.W.L.R.C. is giving priority to two issues:

- Complaints against the legal profession.
- Compulsory professional indemnity insurance.

Debt Recovery Made Simple

> "There can be no freedom or beauty about a home life that depends on borrowing and debt."
>
> Henrik Ibsen,
> *A Doll's House*, 1879, *act I.*

Debt recovery is not boring, so read on. Our society has come a long way since Ibsen's protest. Half a million summonses are issued in Australia each year by creditors, seeking to recover money owed to them. The laws and procedures that govern debt recovery are a monument to legal history. To those who have to work the machinery and show results, they are complex and confusing. To a debtor, they are often intimidating. The pressure is on him to settle with the most precipitate creditor, not to seek the total management of his debt problems.

The Australian Law Reform Commission received a reference requiring a new look at consumer indebtedness. Its first report on this reference, *Insolvency: The Regular Payment of Debts*, proposed a scheme outlined in [1978] *Reform* 6. The Commission has now proceeded to its second stage. A discussion paper, *Debt Recovery and Insolvency*, will soon be distributed throughout Australia for comment. It proposes radical changes in debt recovery laws, including efforts to simplify and unify procedures.

The scheme proposed includes:

- *Pre-action notice:* before commencing proceedings a creditor will have to notify a debtor of the availability of debt counselling and the new regular payment of debts programme. See [1978] *Reform* 6.
- *Simple summons service:* summons will be in simple language, and may be served by the court by ordinary mail. This will save vast sums for personal service.
- *Examination hearing:* the central procedure of debt recovery will be an examination as to the debtor's means to pay his debts.
- *Interest on unpaid debts:* a creditor should be able to recover interest on overdue debts, at least from the time stated in a demand for payment and at a rate applicable to judgment debts. This provision should help to redress the erosion of debt values that occur especially in times of inflation.
- *Enforcement: instalments:* the primary method of enforcement should be by instalment orders made after examination of the debtor.
- *Enforcement: flexible orders:* where an instalment order is inappropriate or default has occurred, other orders will be available (attaching salary or wages; charging property; ordering the sale of land or goods; attaching funds owing to the debtor). Antique language ("garnishment") will disappear.
- *Federal laws:* to back up the code of debt recovery and to ensure that the new federal insolvency procedures proposed in A.L.R.C.6 are observed, it is suggested that some current debt recovery procedures should be modified. In particular the use of debt enforcement will be forbidden against a judgment debtor who has not been examined to see whether he is suitable for debt counsel-

ling and the new Regular Payments Programme.

Copies of the discussion paper can be obtained from the A.L.R.C. Comments to improve debt recovery laws in Australia should be sent to the Commissioner in charge, Mr. David St.L. Kelly, A.L.R.C., Box 3708, G.P.O., Sydney. The discussion paper will be open for comment until August 1978.

Meanwhile action is being taken to implement the *Debts Repayment Bill* which was attached to the Australian Law Reform Commission's sixth report. A Bill, with the same title, was introduced in March 1978 into the South Australian Parliament. With some modifications, it follows the A.L.R.C. proposal. At a federal level, discussion is well advanced in the Department of Business & Consumer Affairs to consider the A.L.R.C. package. The Minister, Mr. Fife, announced in February the intention of the government to proceed with reforms of the *Bankruptcy Act* during 1978.

Australian society operates on the extension of vast amounts of credit. Most debts are paid. For those that are not, a simplified, rationalised scheme is necessary. At the heart of this scheme must be:

- Availability of debt counselling
- Examination by a skilled person of the debtor's *total* debt problem
- Flexible remedies apt for the debtor's means to pay his debts
- A telescoping of the dilatory and confused procedures which have not changed much since debtors were transported to Australia or put in the Clink prison in South London

Defamation Reform: New Zealand Style

> "It is by the goodness of God that in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practise either of them."
>
> Mark Twain, *Following the Equator.*

New Zealand reformers have suggested important changes to the law of defamation. The report of the Committee on Defamation (Mr. I. L. McKay, Chairman) was delivered in December 1977 and has now become available. The parallel reference on defamation reform before the A.L.R.C. makes the N.Z. report of critical importance.

A.L.R.C. Chairman, Mr. Justice Kirby, compares and contrasts the New Zealand and Australian proposals for reform in a paper delivered to the New Zealand Law Conference in Auckland on 28 March. The final report of the A.L.R.C. on defamation has not yet been completed. However, the discussion papers and the N.Z. report show important similarities (and some differences) in the suggestions for change.

Each scheme starts with a common theme. The business of defamation law is to strike a balance between the protection of people's reputation and the free flow of information. It is agreed that the current laws in Australia and New Zealand are unsatisfactory, particularly in the balance that is struck between free speech and responsible publication. The N.Z. report, like the A.L.R.C. discussion papers, rejects a number of proposals:

- That a "public figure" should not succeed unless he proves that the defendant actually knew his statement was false.
- That complaints against the media should be turned over to the Press Council in the place of judicial authorities.

There are other points of similarity.

- Introduction for the first time of a "right of reply" in certain circumstances. This is common in Europe but not in common law countries.
- The principal defence of justification to be truth alone (not "truth and public benefit").
- A limited cause of action for defamation of a dead person, within a period of his death.
- Shortening of the period within which a defamation action can be brought.

Here the similarities cease. Chief amongst the points of difference are:

- Australian emphasis on reform of procedures, e.g. immediate listing of cases to discourage stop writs and a new power in the court to order correction of facts found to be false.