

## Inside the Legal Profession

"Why, may not that be the skull of a lawyer?  
Where be his quiddities now, his quillets, his  
cases, his tenures and his tricks?"

Shakespeare, *Hamlet*, V, i, 104.

"It can hardly be said" declares the editor of the N.S.W. *Law Society Journal* "that the year 1977 has been a good one." Disappointments and frustrations have faced the legal profession. The Legal Convention saw a public parade of soul-searching with many suggestions for reform. A large number of young graduates, particularly in Sydney and Melbourne, have not been able to find work in the profession. The N.S.W.L.R.C. has continued its work on its reference on the reform of the legal profession in New South Wales. The old, comfortable days have gone, so it seems. The search is on for the new role of the legal profession in a rapidly changing society.

Visits have been made by the N.S.W.L.R.C. Commissioners to South Australia and Western Australia. These have involved comparative investigations concerning the work, remuneration and organisation of the legal profession in those States. Doubtless on the list of topics for investigation were the systems of land agents who break the lawyer's monopoly on land conveyancing in those States. Whether lawyers should retain that monopoly in N.S.W. is one of the issues before the N.S.W.L.R.C. That Commission has received and is in the process of completing its analysis of about eight hundred communications from individual members of the public. A large number of submissions from organisations and interested persons have been placed on the public files of the Commission. The Commission is also analysing a large amount of materials supplied by the N.S.W. Bar Association and the Law Society of New South Wales from their complaints files. Work is in progress on a discussion paper on "Complaints and discipline". Christmas parties of the legal profession in Sydney were subdued, according to some observers, with all eyes turned to the N.S.W.L.R.C.'s forthcoming consultative papers. Lawyers throughout Australia will be looking for pointers to the final report.

Meanwhile, in Victoria, the Victoria Law Foundation has published material that will be included in a first report on its research project *Lawyers in the Community*. A market

research firm, working with staff of the Foundation, have conducted detailed analyses of lawyers in Victoria. The profile of the legal profession in Australia followed a 1965 examination by D. S. Anderson and a paper by John Goldring, *Admission to Law Courses in Australia* (1976) 20 *Vestes* 61.

A number of principal characteristics emerge from the Victoria Law Foundation preliminary draft.

- More than half the profession is under the age of 35 years, three quarters under 45 years.
- Nearly 59% of Melbourne solicitors are under the age of 35 years (44% for barristers).
- Compared to the general population, Australian-born are over-represented among practising lawyers (84%).
- The class background of lawyers continues to be unrepresentative. Nearly 25% had fathers in upper professional occupations. Among the general population only 1.5% were in these occupational groups.
- Almost 40% of practising lawyers came from families in which there was at least one member qualified in law.
- 50% indicated that demand for lawyers' services exceeded their capacity to supply them comfortably.

When the First Report is published in 1978 it will make interesting reading. The best compilation of statistical and other material on the profile of the legal profession in Australia is to be found in Chapter 3 of Disney & Ors, *Lawyers*, Law Book Co., Sydney, 1977.

Legal education remains in the spotlight. Thanks to the initiative of the Law Council of Australia, two developments have occurred which are worthy of note.

- The formation by agreement with the Australasian Universities Law Schools Association of the Australian Legal Education Council.
- The formation within the Law Council itself of a federal co-ordinating committee on continuing legal education.

The first meeting of the Council was held on 17 November 1977. The Law Council hopes that both bodies will carry forward the work of the 1976 National Conference on Legal

Education in Australia and will pilot change and development in legal education with obvious implications for law reform. The stated purpose of the Council is to “bring together at the national level those elements involved in and concerned with legal education”. At present various stages of legal education are related at the State, but not at the Federal level in Australia. Amongst other matters, the Council proposes to examine:

- Career mobility
- Reciprocity of admission to practice between the States
- Continuing legal education
- Harmonisation in practical legal training.

Two criticisms have been made of the Council.

- The absence of any lay representation amongst the 12 members.
- The absence of a stated concern for legal education of the community, as distinct from the profession.

Nevertheless, it took a long time to get the Council off the drawing boards. Perhaps it will expand its membership and role as time goes by. Surveys of the legal profession and common knowledge teach us that the community is woefully ignorant of even rudimentary principles of the law and of legal rights and duties. Lawyers must do something about this. Whilst lawyers alone design legal courses and whilst they come from unrepresentative groups as shown in the Victoria Law Foundation’s survey, the gulf between the profession and the general population will remain. A notable step towards reducing that gulf is the N.S.W. Law Foundation’s *Legal Eagle* and community education project. There is room for national expansion of this important professional initiative.

## A Totally New Approach to Debt Laws

“Creditors are a superstitious sect, great observers of set days and times.”

Benjamin Franklin, *Poor Richard’s Almanack*.

In the first century before our era, Publilius Syrus in his *Moral Sayings* declared that “the small loan makes a debtor; a great one, an enemy”. The A.L.R.C. report, *Insolvency: The Regular Payment of Debts* (A.L.R.C.6)

was tabled in Federal Parliament in November by Attorney-General Durack. It seeks to take the enmity and also the irrationality out of debt recovery in Australia. It is the first of two reports on debt. The second, to be published in 1978, will propose reforms of judgment debt recovery procedures. The Commissioner in charge of the Insolvency reference is Mr. David St.L. Kelly.

The report has attached to it two draft Bills. One is designed to amend various provisions of the *Bankruptcy Act* 1966. The other, optimistically called *Debts Repayment Bill 1978* sets out major reforms of debt recovery law. It is grounded in the Commonwealth’s little-known and infrequently used constitutional power to make laws with respect to “Bankruptcy and insolvency” (s.51(xvii) *Australian Constitution*). The scheme put forward by the A.L.R.C. is, in essence, a simple one. It is modelled substantially on the Wage Earner Plans which have been in successful operation throughout the United States since 1938. Essentially the scheme provides that certain persons who are in receipt of a regular income will have a statutory right, outside of bankruptcy, to secure a moratorium on their total debt in order to put forward a plan for the regular reduction of all their debts out of future income. If the plan is not vetoed by a majority in number and value of creditors, it becomes binding on all creditors, including the Crown.

The scheme seeks to substitute a rational handling of *total* debt for the present, irrational scramble by *individual* creditors to protect their own individual interest. It provides that certain persons will have the right to “work the machinery” of the scheme. These persons include:

- Trained and licensed debt counsellors.
- Legal practitioners.
- Tax agents and trustees.

At a time when so many doors appear to be closing on the legal profession, the A.L.R.C. proposal for a new role for lawyers to assist and counsel persons with debt problems represents one suggestion for a relevant task for modern lawyers.

The A.L.R.C. report contains a profile of bankrupts under the present *Bankruptcy Act*. Emerging clearly from the statistical survey is the need for a major review of the *Bankruptcy*