

School and two non-lawyers. Apart from the A.L.R.C. and the V.S.L.R.C., the Tasmanian Commission is the only law reform agency to have non-lawyers as members.

More on Accident Compensation

"... and it is great
To do that thing that ends all other deeds
Which shackles accidents, and bolts up change."
Shakespeare, *Antony and Cleopatra*, V, ii, 4.

If accidents cannot be "shackled" altogether, the debate continues in Australia as to how best to cope with the toll of injury and distress caused by industrial, motor vehicle and other "accidents".

Two models are before lawmakers in Australia:

- The adoption of the "no fault" national compensation scheme proposed by the National Committee of Inquiry in 1974
- The extension of current "no fault" schemes already in operation in some States.

One of the members of the National Committee of Inquiry, Mr. Justice Meares, addressed a congress in Sydney on 27 April 1979 and described the present position as "a national calamity"

"A man or woman injured other than at his or her work or travelling to and from it gets no workers' compensation; the road user, no matter how serious his injury may be, gets nothing under the compulsory motor vehicle third party insurance scheme unless he can prove negligence. Those who suffer accidents other than at work or on the road (and they are in the majority) receive no compensation unless they can prove that their accident has been due to some other person's breach of duty and that other person has the means to pay any damages awarded against him. While the percentage of death from disease decreases, that of deaths from injury does not improve and its toll of victims is a national calamity. There are more than 100,000 injuries suffered on our roads each year; at least five times as many are victims of work accidents and an infinitely greater number suffer accidents at home and elsewhere. . . . Present remedies are only available to a small minority of those injured but even to this minority they are inadequate."

Mr. Justice Meares urged reconsideration of

the Woodhouse Report. He said that schemes for adequate compensation on a periodic basis for all those injured, "irrespective of fault or location" could be funded for considerably less than the total amount of current workers' compensation and motor vehicle insurance. The saving of administrative and legal costs associated with the present schemes would help provide the funds. The comments by Meares J. were supported by Professor Harold Luntz of the Melbourne Law School in a paper delivered to the same conference.

Meanwhile, in Victoria the Report by Sir John Minogue, now the Victorian Law Reform Commissioner, suggested a number of changes in the no fault compulsory liability insurance scheme established by the *Motor Accidents Act* 1973

- Payment of compensation beyond the present limit of two years to retirement age
- Whilst periodic payments should be the norm, flexibility to allow for redemption by a lump sum in appropriate cases should be ensured
- The common law right to sue for damages for negligence should be retained
- Payment for loss of income should not include a component for loss of future promotion prospects.

In South Australia, a Committee of Inquiry is considering changes in the present compulsory third party insurance arrangements for motor vehicle accidents. The possible extension to a no fault scheme would appear to arise as a reaction in the State to the failure to implement a national compensation scheme. A Discussion Paper has been issued listing six deficiencies of the present Motor Vehicle Tort-Insurance Scheme. The defects of recovery of tort compensation have been well documented and are repeated in the South Australian Paper.

In the High Court of Australia, the current state of Australia's compensation laws has begun to attract attention. In *Raimondo v. The State of South Australia* (1979) 23 A.L.R. 513 Murphy J., talking of industrial safety, asserted that "Australia does not have a good record in industrial safety" and that "it is generally accepted that the standard of care by those responsible for industrial safety should be upgraded"

"Industrial accidents are a very serious national problem: every working day one Australian is killed and 1,500 suffer significant personal injury. In the financial year 1974, fatalities were 300, temporary disabilities involving the loss of one or more working days or shifts, 360,000 and working time lost from disabilities of one day or longer, 1,010,000 man-weeks. . . . Conservatively estimated, the annual social cost is about \$2,000,000,000 . . . This is of somewhat the same order as the national defence budget. These figures do not include those for accidents travelling to and from work or for industrial disease. . . ."

A new study of accident compensation law has been completed by Professor Geoffrey Palmer, who was a consultant to the Woodhouse Inquiry. Titled "*Compensation for Incapacity*", it traces the evolution of the idea of "accident compensation". It proceeds to analyse some of the political compromises that were made during the scheme's formative years in New Zealand. It examines the difficulties of extinguishing tort law. These difficulties were felt insurmountable by the Pearson Commission Report in Britain and, more recently, Sir John Minogue's Report in Victoria. Australians continue to observe the working of the New Zealand scheme. Fundamental changes in Australia's system seem a long way off.

Overseas Reformers

"The English sent all their bores abroad, and acquired the empire as a punishment."

Edward Bond,
Narrow Road to the Deep North.

Fiji: The latest member of the growing family of law reform commissions in the Commonwealth of Nations is the Fiji Law Reform Commission. Established by the *Fiji Law Reform Commission Act 1979*, the Commission is to comprise one Commissioner appointed by the Governor-General "acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition" and such other members as are appointed on a temporary and part-time basis suitable for examination of "any particular branch of the law". The part-time members may be appointed by the Attorney-General. The Act also provides for a Secretary and other officers.

The Commission has the orthodox functions of keeping the law of Fiji under review. Although not limited to references from the Attorney-General, it is obliged, when a subject is referred to it by him, to consider that subject. It must also, when requested by the Attorney-General to do so, provide assistance to any ministry or department "by undertaking the examination of any particular branch of the law and making recommendations for reform to bring it into accord with current conditions". Reports presented by the Commission to the Attorney-General are required to be laid before Parliament.

The Chairman of the Commission has not yet been named. If named before the A.L.R.A.C. Conference in Perth, it is expected that he or she will represent Fiji at the Conference. The Solicitor-General of Fiji, Mr. H. Picton-Smith, retired from his post in June 1979 and was succeeded by Mr. Qoriniasi Bale, formerly Crown Solicitor. Mr. Bale attended the third A.L.R.A.C. conference in Canberra in 1976.

Canada: The *Seventh Annual Report* of the Law Reform Commission of Canada (1978) has now become available. For the first time, the report of this national commission includes a schedule space for reporting legislative implementation of the Commission's recommendations. Although it is noted that to the end of the year under review, no report of the Canada L.R.C. has been implemented, it is pointed out

"There is another kind of implementation which may come about through the Commission's recommendations finding a favourable and persuasive place in judicial reasons for judgement."

An appendix to the report shows a large number of cases where the Canada L.R.C.'s tentative and final recommendations have been judicially noted by various courts and, especially, by the Supreme Court of Canada and other appellate tribunals. The splendid funding of the Canada L.R.C. will be a matter of envy in other parts of the world. In addition to the Commissioners, 54 researchers are named, and 9 other consultants are retained on a contractual basis. The mean general staff level to service the research team is given as 34.

The Commissioners observe

"All reform involves change, but not all changes are reforms. Reform, then, is change for the