generalised cross-examination about their sexual conduct.

Many of the law reform agencies of Australia have had the task of examining reform of the laws and procedures governing rape trials. In the Federal sphere, the Royal Commission on Human Relationships proposed important law changes and it is understood that draft legislation will shortly be forthcoming for reform in the Australian Capital Territory. The Federal Attorney-General, Senator Durack, on 23 October 1979 told the Senate that an interdepartmental committee had reported to him on the reform of rape laws in the Australian Capital Territory. As a result of discussions with departmental officers, he had given instructions for the preparation of a Bill and a draft of the Bill had been received and was under consideration *(CPD (Senate)* 23 Oct. 1979, 1605). A review of Australian reform proposals is found in the article by Deidre O'Connor [1979] 2 *Crim LJ* 115. The Tasmanian Law Reform Commission has now taken an important national initiative. Following the receipt by it of a reference on rape, the Commission is organising a National Conference on Rape and Other Sexual Offences to take place in Hobart on 28-31 May 1980. The Conference will be sponsored jointly by the TasLRC, the Faculty of Law at the University of Tasmania and the Australian Institute of Criminology. Preliminary discussions about the Conference have been held with Commonwealth and N.S.W. participation. At a time when legislation has been enacted in some Australian jurisdictions and is under immediate consideration in at least three others, the Conference should be extremely well timed. Explaining the purpose of the Conference, the TasLRC put it this way:

> "This subject [rape] has lately been of concern to most State Governments and law reform agencies and some States have legislated or are contemplating new legislation. It has also aroused great public interest, particularly from women's organisations and is one which we feel requires a balanced approach, preferably from a national rather than a purely local standpoint, with maximum community participation."

The preliminary announcement on the conference indicates that there will be participation from overseas. The work of the workshop and discussion groups will be divided into four major areas of study:

- Substantive law of rape and sexual offences
- Laws of evidence affecting rape trials
- Administrative procedures, concerning the handling of rape complaints by police and other officials
- Support services, e.g., special rape crisis units in hospitals, follow-up social work support, victim compensation, etc.

The circular advertising the Conference indicates that at the closing session an attempt will be made to consider 'consensus conference resolutions'. No doubt all Australian Governments will be examining the outcome of the conference with special attention. Inquiries about it should be addressed to: Mr W.H. Goudie, Executive Director, Law Reform Commission of Tasmania, Box 825H, Hobart. Tas.

Debtors and Creditors Again

> "The safest way to double your money is to fold it over once and put in your pocket."
>
> Frank McKinney Hubbard

Bankruptcy Reform. The Federal bankruptcy systems of Australia and the United States are undergoing change and reform, designed to provide procedures attuned to the modern credit economy. In November 1978, a Bankruptcy Reform Act was passed in the United States, substantially to implement recommendations of the U.S. Commission on the bankruptcy laws. Amongst changes introduced:

- Establishment of a U.S. Bankruptcy Court to take over judicial functions from referees of the Federal District Courts
- Consolidation of 'wage-earner' schemes, to be available for all persons with a regular income
- Abolition of the 'act of bankruptcy'.

Under the new code, petitioning creditors are no longer required to prove a specific act of bankruptcy on the part of the debtor

- Abandonment of 'balance sheet' tests of insolvency. A sequestration order may be made if a debtor is generally not paying his debts as they fall due, notwithstanding a theoretical ability to pay.

The Australian reforms for consumer bankruptcies were put forward by the ALRC in its report, *Insolvency: The Regular Payment of Debts* (ALRC 6), 1977. In essence, the ALRC scheme seeks to import into Australian practice, the 'wage-earner' system of U.S. bankruptcy law. Allowing for a short moratorium, in which debtors can secure credit counselling and a re-organisation of their financial affairs, the proposal is still under consideration by the Federal Government. An interesting review of Australian and United States bankruptcy reforms is found in (1979) 7 *Business Law Review,* 332. As pointed out in the *Review,* the R.P.D. scheme proposed by the Law Reform Commission would be:

> "Independent of bankruptcy administration so as to dissociate the co-operative rehabilitation of debtors from the extremes of bankruptcy and to assist debtors in financial difficulties who do not filter through to the bankruptcy machinery."

Meanwhile, the government has pressed on with other reforms of the Bankruptcy Act 1966. On 5 March 1980 the House of Representatives passed the Bankruptcy Amendment Bill. The Bill had been introduced into Parliament in November 1979 and allowed to remain on the Table for discussion and comment. One of the amendments contained in the Bill is relevant to the ALRC sixth report. In the report the Commission recommended a reduction of the period of automatic discharge from bankruptcy from five years to six months in the case of non-business bankrupts. The Commission justified this reduction by referring to:

- the collected statistics which show that very little indeed is recovered for creditors from consumer bankrupts and that time does not appreciate the prospects of recovery
- the reliance creditors nowadays place on the credit reference system, rather than formal bankruptcy, to protect them from truly incompetent debtors

As introduced, the Bankruptcy Amendment Bill proposed a reduction of the period of automatic discharge from five years to two years. However, as a result of submissions received, the qualifying period for automatic discharge from bankruptcy is now proposed to be three years, not two.

Among other reforms introduced by the Amendment Bill are:

- Provision for a common investment in fund of bankrupt estates
- The Registrar is given a discretion to dispense with unnecessary public examination of bankrupts
- Abolition of the Crown priority for income tax in some cases

In the course of the House of Representatives debate, Mr C.J. Hurford, for the Opposition, drew attention to the fact that the Bill did not provide 'for a full reform of the bankruptcy law', particularly with respect to arrangements. He moved that the House:

> "Express the view that a broad reference on the question of insolvency and the bankruptcy law should be made to the Australian Law Reform Commission."
> *C.P.D. (H of R)* 5 March 1980, 657.

Speaking to his motion, Mr Hurford said that:

> "The bankruptcy law should be reviewed comprehensively, not merely to raise more funds for and streamline its administration, but to alter the basic philosophy which underlines its provisions. This is essential in view of the quite dramatic social, economic and political changes which have occurred and will continue to occur in our society." ibid, 660.

Mr R. Jacobi also urged a 'broad reference' to the ALRC. The Minister for Business and Consumer Affairs, Mr Garland, responded to the Opposition call for a general inquiry:

> "The Government is actually considering a request by the Law Reform Commission for a general insolvency reference ... [It] would have implications for company law. I am told that the matter has been

> raised with State colleagues on a Ministerial Council for Companies and Securities and it is, in fact, still under active consideration ... That Council meets regularly. It has a lengthy agenda and that item is on its agenda. ibid, 679."

On the Government side, Mr Hodgman also turned to the philosophy that should motivate modern debt recovery laws:

> "The more enlightened approach to the commercial law of this country has come to a recognition that we do not, prima facie, punish people who get into debt as was the tradition in the last century and for most of this century. We now endeavour to rehabilitate them and assist them."

Mr Hodgman recalled the debtors' prisons described by Charles Dickens as:

> "very much an accepted form of the economic and commercial life of the United Kingdom little more than 100 years ago. If we have done anything in the 20th Century I think we have at least now reached the stage of accepting that an honest debtor who gets into debt, through no dishonest or corrupt means, should not be the subject of punishment per se, should certainly not be imprisoned, but should be counselled, rehabilitated and assisted." ibid, 661.

While most people would probably support the rehabilitative measures spoken of with approval by Mr Hodgman, it may be of interest to know that debtors are still being fined or imprisoned in most Australian jurisdictions to this very day.

With the exception of Queensland and New South Wales, it is possible for a debtor in every other Australian jurisdiction to be imprisoned as part of the debt recovery process. This arises largely because the procedures for imprisonment of allegedly fraudulently debtors follows civil process and still survives. Typically, what happens is that the courts finds that a person who is in default of paying his debts has obtained credit 'fraudulently' without a 'reasonable expectation of repayment', has 'concealed property with intend to defraud his creditors' or has 'refused or neglected to pay the debt or any instalment thereof, despite having or having had means and ability to pay the debt or instalment in question'. This is a very curious procedure. A finding of 'fraud' is made and then a criminal penalty is imposed on a debtor even though the proceedings arise in a civil debt recovery process.

When one discovers these procedures, they strike most lawyers as strange. Of course, the great majority of solicitors and barristers have very little (if anything) to do with debt recovery law and therefore do not know what is going on in this department of the law's operation.

Debt Recovery Laws. Meanwhile, within the ALRC, work is progressing on the project concerning the reform of debt recovery laws. Under Professor D.St.L. Kelly, a major survey has been conducted concerning the debt recovery procedures of courts in New South Wales. The survey has been organised in collaboration with the NSWLRC, which has a reference on the enforcement of money judgments. The recording of the data has now been completed. Arrangements are in hand for it to be processed by computer. The purpose of the survey is to examine and identify the inefficiencies of current debt recovery procedures and to test the tentative proposals for reform suggested in the ALRC discussion paper No.6, *Debt Recovery and Insolvency* (DP 6, 1978). In addition to co-operation with the NSWLRC, the Federal Commission is now working closely with the TasLRC in reform of debt recovery procedures. Preliminary soundings have been made with other Australian law reform agencies. Many business interests have urged the ALRC to pursue uniform reform of debt recovery laws, so that the reformed procedures, when introduced, will be consistent or at least compatible in different parts of Australia. At the heart of the ALRC scheme so far proposed is:

- provision for a short moratorium and debt counselling
- provision for R.P.D. schemes for repayment of aggregate debts similar to the U.S. 'wage earner' plans
- examination of debtors, to identify underlying credit problems and repayment possibilities

Privacy of Credit Records. The latest research paper in the ALRC Privacy Reference overlaps

the work of the Commission on debt recovery. Prepared by Senior Law Reform Officer, William Tearle, the paper, *Privacy: Credit Records* (Privacy RP 9, 1980):

- examines the way information about individuals flows through the credit industry
- gives particular attention to the impact of credit bureaux and credit cards on borrower privacy
- gives details of the information which credit bureaux are likely to hold about individuals and the way this information is made available to inquirers
- outlines relevant statutory and voluntary arrangements in the States, enabling subjects of credit records, in some circumstances, to correct errors

Mr Tearle's paper has not yet been considered by the ALRC Commissioners. It is being circulated for informed comment.

An interesting feature of Mr Tearle's paper is that it gives possibly the first comprehensive view of the records kept in credit bureaux throughout Australia. The paper makes a 'conservative' estimate that at the end of 1979, credit bureaux held records on some 5.5 million individuals in Australia. This estimate makes allowance for duplication of records. In aggregate number, there are over 12 million individual credit records currently being held. The maintenance of such an enormous collection of detailed and personal data about a large proportion of the population becomes significant, it is suggested, when it is realised that credit bureaux are largely free from public scrutiny. In some States, they are subject to legislation. But the relevant laws relate generally only to the question of access by subjects to their records and procedures for correction where errors are shown. Existing legislation assumes the legitimacy of credit bureaux, their reporting procedures and their criteria for selecting subscribers and permitting access. The research paper expresses the view that credit bureaux serve an important and useful function in today's society. Not only do they assist creditors to assess risks, they benefit applicants for credit, including by discouraging overcommitment. Nevertheless, the RP argues for forms of public scrutiny of centralised (and often, now, computerised) record-keeping systems. Some possible areas of privacy concern, identified in the RP are:

- One major credit bureau acknowledged that it recorded the existence of de facto relationships where this was known, on the ground that it was relevant to credit grantors
- For many years it has been a common practice for RAAF officers to enter and inspect the files of a major credit bureau, relating to servicemen in the Air Force.
- Information is sometimes provided by a credit bureau to the police on a co-operative basis or to certain government bodies, simply on the production of a form of identification, without requiring any particular authority to justify supply of the information sought
- Some trade publications circulating in the credit industry include details of writs or summonses but fail to publish defences and may include details of summonses and writs even before they have been served on the alleged debtor himself.

Law reform sometimes happens 'on the run'. In the course of researching for his *Credit Records* paper, Mr Tearle raised with a major Australian finance company the question why its consumer credit application forms required disclosure of trade union, lodge and church affiliations. When confronted with the question, the company said that it 'agreed 100%' with criticisms of the question and they were forthwith deleted. The advent of the consumer society, widespread credit, automated data systems and credit bureaux pose challenging new tasks for law reform.