> The subject is simply far too wide and important in its social and economic aspects to be entrusted to lawyers alone ...To put the Law Reform Commission in charge of such a report would be tantamount to setting the mice to guard the cheese.

Citing proposals by the President of the Australian Council of Trade Unions, Mr. R.J. Hawke, for greater collective bargaining in Australia's industrial relations, the *Sydney Morning Herald* came out in favour of a public national inquiry into the industrial relations system.

> Admittedly the record of national inquiries is not inspiring. Many subjects have been investigated, many reports have been written and very little has been done about them. Some subjects have been 'over investigated' ...But in industrial relations there has been no comprehensive review of the operation of the system at least since Federation. A national stocktaking is overdue.

The editorial in *The Australian* (22 April 1980) urged the banner 'Forget the politics and make industrial laws work'.

> Mr. Wran is seeking an independent inquiry into the whole conciliation and arbitration system by the Law Reform Commission. These are undoubtedly constructive suggestions, which at least open up the possibility of useful debate. ...Apart from the considerations of attempting to achieve simplicity, uniformity and effectiveness, any review of industrial laws must look seriously at the issue of enforcement. If there are to be penalties, applicable to unions or employers alike if they break the law, the law is worthless if the courts lack the ability and determination to enforce the sanctions.

Australia's system of industrial relations is deeply engraved on the national makeup. But no laws or institutions are now exempt from critical and regular public scrutiny. There will be many eyes on the report of the officers' working party examining the system. Constitutional, political, institutional and personal considerations stand in the way of the reformer here. But the problems of industrial relations are not likely to abate. Some day, fundamental re-scrutiny of the system may be called for.

legal profession reforms

A lawyer is a man who helps you get what is coming to him.

Dr. Laurence J. Peter

The last quarter has seen the publication in Britain of the *Report of the Royal Commission on Legal Services in Scotland.* The Commission was headed by Lord Hughes. It has put forward more than 200 recommendations for changes in the Scottish legal system. Some of the recommendations differ from those made by the Benson Commission which reported on the English legal profession. See [1980] *Reform* 17.

As a result of its four years of labour, the Scottish Commission has come up with proposals on legal aid, conveyancing and legal fees. Chief amongst the recommendations are:

- Integration of civil legal aid to be administered not by the Law Society but by a Legal Services Commission.
- Legal aid should not be available for conveyancing transactions, advice on tax planning or the like.
- Criminal legal aid should be available to all, at least on the issue of how to plead.
- Lawyers should lose their exclusive right to undertake domestic conveyancing for a fee. Appropriate bodies which met certain standards should also be able to do domestic conveyancing work.
- Simpler registered conveyancing should be introduced so that the State could provide low cost conveyancing of land.
- Divorce law should be simplified and legal aid spent on divorce (70% of present funds) should be reduced.

Predictably, the Law Society of Scotland strongly deprecated the recommendation that domestic conveyancing for a fee should no longer be monopolised by the legal profession. It claimed that it was wrong to believe that conveyancing was easy. The Society also objected to the establishment of a new independent legal fees body to take over from the judges the fixing of court fees.

Writing on the Scottish Commission report, Professor Michael Zander has said that although the composition of the Scottish Royal Commission was 'rather similar' to that of the English Royal Commission, the Scottish report is considerably 'more radical' than the English. Professor Zander said that it was curious that the NSWLRC, consisting entirely of lawyers should have produced

proposals for reform of the legal profession which were more radical than those of the 'mixed' Commissions in Britain, including laymen. Whilst the President of the English Law Society had declared the Benson Report to be 'magnificent', Professor Zander said that it had not in his view conducted adequate research. Nevertheless he felt that it could provide the basis for substantial further progress in reform of the legal profession. (1980) 130 *New LJ* 77.

Speaking at a conference at University College Cardiff, Professor Zander said that it was 'an irony worth pondering' that when asked to consider the needs of reform of the legal profession the NSWLRC – a group of lawyers – performed a 'proper critical analysis' which had eluded the Benson Commission with its majority lay component. Earlier this year, Professor Zander had written of the New South Wales Commission that:

> Its method of proceeding has included the publication of Discussion Papers on the lines of the Working Papers put out by the English Law Commission. The first of these, *General Regulations*, 1979, is wide ranging in scope and style. It describes and discusses a variety of models drawn from several jurisdictions in the U.K., Canada, and the U.S. as well as Australia. It is well written, stimulating and a contribution to knowledge and understanding in its field. It uses, and acknowledges use of, a mass of source material. Unfortunately in all these respects, the New South Wales Paper is of a higher quality than the Report of the English Royal Commission.

Several speakers at the Cardiff conference said the New South Wales Papers addressed themselves rigorously to the central issues of regulation and competence within the legal profession. Professor Arthurs of Osgoode Law School, Canada, another speaker at the conference, summarised what he described as the N.S.W. Commission's 'well-researched and far-reaching examination of the prospects and problems of professional accountability '. He expressed disappointment that the English Royal Commission's report 'does not address in any systematic way, as a matter of principle, the question of whether the legal profession ought to be made formally accountable for the manner in which it exercises its privileges of self-government'.

Mr. Geoffrey Robertson, an English barrister formerly of Sydney, told the conference that the investigation of complaints against lawyers by the NSWLRC provided a proper evidential basis for recommending improvements to the complaints system. He was less happy with the English Royal Commission's methodology. In the light of these responses to the NSWLRC's work, its next Discussion Paper seems sure to arouse interest at home and overseas. Due later this year, it concerns such controversial issues as fusion of the barristers and solicitors' branches of the legal profession, specialisation, Queen's Counsel, and that old reliable: wigs and gowns.

In Australia, the last few months have seen the revival of the controversy about the lawyer's monopoly in paid conveyancing. In Victoria, the Law Institute of Victoria (representing the State's solicitors) recommended to its members that they should refuse to co-operate with home buyers or sellers who use 'do it yourself' conveyancing kits instead of paying a solicitor to act for them. The Melbourne *Age* (12 March 1980) claimed:

> Enlightened solicitors recognise that the growth of conveyancing kits has been caused by excessive standard legal fees. Some solicitors now offer large discounts from the official scale and a Government Committee dominated by lawyers recently recommended a new fee scale substantially lower than the existing one. No progress has been made in introducing it, however, since the Law Society has declared its opposition to that part of the Committee's report. In doing so, it effectively has voted to keep up conveyancing kits and the problems they create.

The Law Institute's then President, Mr. Rowland Ball objected to the *Age* editorial. But the editorialist was unrepentant.

> The aim of our editorial was not so much to argue against an increase in Supreme Court fees but rather to point out that all solicitors' fees, including conveyancing fees – should be decided by an independent tribunal in the same way as the ordinary wages and salaries of most ordinary Australians.

Meanwhile, the second Background Paper of the NSWLRC on its Legal Profession Inquiry has been released. It suggests that barristers in N.S.W should be included in the proposed compulsory professional insurance scheme about to operate for solicitors along the lines proposed by the

LRC. The paper also shows in detail the claims experienced under the Law Society of N.S.W.'s voluntary indemnity insurance scheme, which has covered about half of the State's solicitors in recent years. For example, in respect of claims made between 1968 and 1978, over $1 million had been paid out by the end of 1978, and a further $2.5 million was allocated to claims which had not been finalised. Conveyancing, and the failure to commence court actions within prescribed times, were the most common sources of all claims and of the larger claims. Up to the end of 1978, one claim had been settled for over $100,000 and another four were regarded by the insurers as likely to involve payments of more than $100,000. The Commission's survey shows steep increases in the level of claims under the voluntary scheme. Over a five-year period the annual number of claims under the scheme has trebled and the annual amount paid out on them has risen about eight-fold. These increases far exceed the relatively small increases in the number of solicitors insured under the voluntary scheme.

rape conference concludes

Among the porcupines, rape is unknown.

Gregory Clark

The national conference on Rape Law Reform foreshadowed in the last issue of *Reform* took place in Hobart, Tasmania on 28-30 May 1980. It was attended by a large number of persons interested in the reform of rape laws and the provision of services for victims of rape and like sexual assualts. The conference was opened by Mr. J.B. Piggott, Chairman of the Tasmanian Law Reform Commission and Mr. Brian Miller, the Attorney-General of Tasmania. Chairman for the first session was Mr. Frank Walker, N.S.W. Attorney-General. The presence of the Victorian Attorney-General, Mr. Haddon Storey, Q.C., and representatives from all other States and Territories ensured a good cross section of information, views and opinions on rape law and its reform.

Amongst the papers delivered to the Conference were:

- A keynote address by Dr.V. Nordby on 'The Michigan Sexual Assault Law and Evaluation Study'. Dr. Nordby has been a leading figure in the reform of rape law which has taken place in Michigan, U.S.A.
- Papers on the reform of the substantive law of rape were delivered by Mr. William Cox, Crown Advocate of Tasmania, Ms. Helen Curran, Solicitor N.S.W., and Mr. Greg Woods, Head of the Attorney-General's Criminal Law Review Division in N.S.W.
- The reform of evidence law as it applies to rape trials was analysed by Dr. Jocelynne Scutt (Australian Institute of Criminology) Ms. Lisa Newby (W.A.) and Ms. Rosemary Kyburz, M.P. (Queensland).
- An analysis of police attitudes and problems relating to rape victims, their support and counselling was examined by Colonel Fogarty of the Tasmanian Police and Ms. Lee Henry of the Hospital Care Centre in Perth, W.A.
- The politics of rape law reform was examined by Mr. Peter Duncan, M.P., the former Attorney-General of South Australia and Ms. Marjorie Levis of the Women's Electoral Lobby of Tasmania.
- The ALRC was represented at the Conference by Commissioner Smith, the Commissioner in charge of the Evidence Reference. Some of the most important changes proposed for the reform of the law as it affects rape trials concern reforms of the law of evidence, e.g. cross-examination of the complainant as to her previous general sexual history.

Among the most interesting issues raised in the conference were the reports on the 'follow-up' of rape law reform already introduced in some jurisdictions. Both in South Australia and Victoria studies have been conducted concerning the operation of law reforms introduced in those States, such as those requiring the leave of the trial judge for cross-examination of the rape victim. The reports given to the conference emphasise the need in law reform to see the process as a continuing one which does not finish, even with the implementation of a report produced by a law reform agency. Studies of the 'follow-up' of law reform enactments will almost certainly point to the need for further reforms as repercussions