

new ways designed to overcome the problem which Sir Michael Kerr identifies, so pungently, in the comments above:

- The ALRC, in its latest report, *Insurance Agents and Brokers*, (see above p. 100) directly involved a team of more than 30 consultants, not only from all branches of the insurance industry and consumer groups but also from the relevant bureaucracies: the Federal Insurance Commissioners, a State Insurance Commissioner and the all-vital Federal Treasury.
- The English Law Commission has recently put out a short pamphlet with a brief summary of its full working paper. The pamphlet titled '*Divorce in the Early Years of Marriage*' comes under the banner 'Law Reform? An Invitation for Views'. It is ten pages long and concludes with a questionnaire posing the 'main questions on which we invite comments'. In many ways it resembles the ALRC discussion papers. Indeed, the business of preparing interim papers is catching. The Committee of Inquiry into the Australian Financial System (the Campbell Committee) at the end of August 1980 published an interim report. Though not brief (600 pages) it states the issues which the committee is addressing and invites further comment.

Let Professor Parkinson have the last word:

The reformer who wishes to outwit the Prohibitive Procrastinator finds to hand an unexpected ally in the form of a piece of modern technology. By ... a number of copies of a clearly thought out and convincing memorandum — the number calculated on the basis of the effective decisionmakers in his way — the Reformer by-passes both delay and unintelligence at one stroke. He gets his views in front of the right people at the right time. ... The writer of a crisp memorandum with a specific circulation has an advantage over the P.P. He has defined his purpose. He has undermined the confidence, in committee, of those who have failed to read it. And he has provided, quite probably, the basis of what will be agreed.

Is this the law reform solution to Parkinson's deadly Law of Delay?

NSWLRC progress

The reasonable man adapts himself to the world: the unreasonable one persists in trying to adapt the world to himself. Therefore all progress depends on the unreasonable man.

G.B. Shaw, *Man and Superman*, 1903

George Bernard Shaw also said that 'all progress means war with society'. There is no doubt that the N.S.W. Law Reform Commission, in some of its proposals on the reform of the legal profession in New South Wales, has provoked a kind of 'war' with the N.S.W. Law Society. Even more with the Bar Association. The acerbic President of that Association, Mr. R.P. Meagher, Q.C., writing in the *Australian Law News*, declared that the NSWLRC proposals for reform of the legal profession represent 'a great step towards anarchy':

They constitute a threat to traditional legal values and mark a great step towards the attainment of anarchy.

In particular, Mr. Meagher criticised proposals to bring barristers and solicitors under the same statutory machinery of professional government and discipline. He asserted:

The fact is that after some years of soliciting complaints against barristers, the Commission managed to dredge up only about 60 complaints. Many of these were trivial.

The NSWLRC *Annual Report* 1979 has now been published. After describing the thrust of the discussion papers on reform of the legal profession, the Commission points to the wide public interest in its proposals:

Their release attracted unprecedented publicity for Commission papers: the proposals were prominently reported in major newspapers across Australia. All Sydney daily papers and the Newcastle Morning Herald devoted their editorials to the papers. There was also considerable coverage on television and radio, including several interviews with the Chairman.

As to the future, the NSWLRC *Annual Report* says:

The Commission is now receiving responses of professional bodies, consumer groups and individuals to these proposals, which were deliberately cast in a detailed form in an endeavour to focus attention on specific points and elicit concrete rather than generalised discussion.

Amongst the other matters mentioned in the report are the large numbers of conferences and seminars which NSWLRC Commissioners and staff attended in the endeavour to outline and discuss proposals. One such conference attended in 1980 by Commissioner Julian Disney was the Second National Conference of Labor Lawyers held in Sydney on 6 July 1980. In a paper for that conference, 'Reform of the Legal Profession', Commissioner Disney sought to meet some of the criticisms of the Commission's proposals on the legal profession:

Some lawyers have criticised [our] proposed system as costly, unwieldy and bureaucratic. But neither the size of the new body's administrative staff nor the overall cost would be substantially greater than would be required if the Law Society and Bar Association were to remain as the general regulatory bodies of the profession. ... Some lawyers argue that our suggestions for a new system of general regulation would destroy the independence of the profession. I firmly reject this view and, indeed, regard it as stemming from philosophies which are not only wrong headed but counter-productive to the very goal they proclaim. Ultimately, the legal system and the legal profession depend upon community acceptance. They must earn respect rather than merely demand it. The best safeguard for the rule of law and the due independence of the legal profession is to be responsive to the needs of the community. But the prospects of perceiving and responding adequately to those needs are greatly enhanced if a wider range of community and professional views is reflected in the constitution of the profession's regulatory body.

In the course of his speech, Mr. Disney dealt with the topics which are under the careful scrutiny of the NSWLRC:

- general regulation of the legal profession
- complaints, discipline and professional standards
- division into barristers and solicitors
- specialisation of lawyers
- fees and costs
- the conveyancing monopoly

Some of Commissioner Disney's vehement critics would do well to read his concluding remark under the title 'In Praise of Diversity'. Far from urging a monolithic, Government-controlled legal profession (as is often represented) Mr. Disney told the Labor Lawyers

that it was vital to preserve a vigorous private profession but one newly alerted to modern tasks, including the legal needs of the poor and disadvantaged:

Awareness of the need for substantial reforms in the structure and rules of the profession [should not] blind one to the many aspects of the present system which are good. A vigorous and innovative private profession is an essential part of an adequate system for the delivery of legal services in Australia.

Mr. Disney points to the numerous other inquiries and efforts to improve the legal profession from which the NSWLRC has drawn 'assistance and inspiration'. In particular he refers to:

- new legislation in Victoria, especially on complaints and fees
- proposed legislation in New Zealand in professional organisations
- the Scottish Royal Commission on Legal Services, with its wide-ranging proposals for reform of lawyers in Scotland

He might also have mentioned the inquiry in Western Australia under the chairmanship of Mr. Justice Brinsden, established on 4 February 1980. Its terms of reference require it to inquire into the future organisation of the legal profession. It is now receiving comments and submissions. A leading submission by the Law Society of Western Australia was delivered in June 1980 signed by President Geoffrey Miller Q.C. Amongst submissions made are :

- that there should be lay participation in the adjudication of complaints against lawyers
- the Executive Director of the Law Society should play a major role in prosecuting complaints before a Legal Discipline Board
- fixed scales of costs should be abandoned and the role of judges in promulgating legal costs should 'generally cease' and be replaced by Law Society 'guidelines'
- there should be a scheme for compulsory professional insurance for all legal practitioners in Western Australia

Although the WA inquiry has a much narrower focus than that of the NSWLRC, it will

be interesting to compare and contrast the emerging reports. There is little doubt that on the subject matter of reform of the legal profession, it is the NSWLRC which sets the pace. One day, someone will write an analysis of the reforms which were adopted, in advance of the NSWLRC final report, not only in N.S.W. but in other states of Australia. Points upon which there has already been distinct progress include:

- lay involvement in complaints procedures
- adoption of compulsory professional indemnity insurance
- advertising by lawyers
- specialisation reform

The NSWLRC Annual Report deals, of course, with the other references before the Commission. It contains a handy list of all references made to the Commission and an 'action record' which boasts the high measure of success attained by the Commission in the implementation of its proposals. During the year under review, the proposals on frustrated contracts were implemented. Members of both sides of the Houses of State Parliament praised the 'high quality' of the NSWLRC report and its 'innovative' proposals. The report ends on a gracious note, even praising these pages!

tax avoidance reform?

Once upon a time, Robin Hood was an outlaw, but now it's the Sheriff of Nottingham who dresses in forest green!

R.B. Cook, 8 *Australian Accountant*, Sept. 1980, 523.

Recent decisions of the High Court of Australia concerning 'ingenious' manipulation of the Income Tax Assessment Act 1936, to reduce the incidence for certain taxpayers, of income tax liability, have produced something of a storm and calls for reform. Specifically, proposals have been made that section 260 of the Act, which deals (ineffectively) with the voiding of every 'contract, agreement or arrangement' designed to defeat, evade or

avoid tax, should be referred to the Australian Law Reform Commission.

The debate about this subject has been going on for years. It took on a new lease of life with the conference of the Australian Institute of Political Science in Canberra in 1980. The proceedings of that conference have now been published under the title *'The Politics of Taxation'* (edited by John Wilkes). Lord Ralph Harris urged that 'the momentum of government spending, taxation and resulting inflation must be halted ... [and] reversed'. Professor Russell Matthews of Canberra asserted that the attempt to achieve equity in the Australian tax system through progressive income tax had 'failed'. He said that the system of taxation in Australia was unsuitable in relation to most of the other objectives of a modern taxation policy. But it was the paper of Mr. S.E.K. Hulme Q.C. of the Melbourne Bar which became the subject of the greatest public controversy. Mr. Hulme's comments were to the effect that he was the only person in Australia humble enough to think he could not redraft the section and arrogant enough to believe that nobody else could either!

One decision of the High Court on this subject drew extensive newspaper attention. On 5 August 1980 reasons for judgment were handed down in *Commissioner of Taxation v. Westrad Pty Ltd* by a scheme described by the Chief Justice (Sir Garfield Barwick) as 'ingenious'. A pastoral company claimed a large deduction from tax by reason of a tax loss assigned to the taxpayer from a share trading partnership. The majority of the High Court justices upheld the 'ingenious' design and dismissed the Tax Commissioner's appeal from the Full Federal Court. But Justices Murphy and Wilson dissented vigorously and their dissent caught the editorialists' eye.

Chief Justice Barwick led the majority view:

[T]he case affords an opportunity to point out the respective functions of the Parliament and of the Courts in relation to the imposition of taxation. It is for Parliament to specify, and to do so, in my opinion, as far as language will permit, with unambiguous clarity, the circumstances which will attract an obligation on the part of the citizen to pay tax. The function of the Court is to interpret and apply