- The annual report of the WALRC for the year ended 30 June 1982 includes the terms of a new reference received by the Commission dealing with prescribed interests under the Companies (WA) Code. The WALRC has been asked to give particular attention to the need to facilitate fund-raising schemes which benefit the community but at the same time to provide adequate safeguards for investors having regard to the nature and size of the investment. Some of the matters which will need to be considered under this new reference include time sharing, film and horse racing syndicates and franchising agreements as well as unit trusts of the more traditional type.
- The prospectus for the 53rd Congress of the Australia and New Zealand Association for the Advancement of Science is now available. The Congress is to be held in Perth from 16 to 20 May 1983. Section 42, Law, appears for the second time in an ANZAAS Congress and a major program of great interest has been prepared under the direction of the Chairman, Professor Richard Harding, Dean of Law at the University of WA Law School. President of the Section is Dr Michael Crommelin, Reader in Law at the University of Adelaide. Amongst items being dealt with in the Law Section are papers on mining law, the law and solar energy, Aboriginal law and energy resources, and judges and scientific evidence. Joint sessions are being planned on Aborigines and the law with Section 27 (Criminology) and communication technology and the law with Section 33 (Communications). The organiser of the Section for ANZAAS is Mr W. S. Cooper, WA Institute of Technology, Perth.
- One of the established features of the WA legal scene is the Law Summer School which attracts leading legal speakers from all parts of Australia. The School held in February 1983 was no exception. Devoted, aptly enough for the economic times, to insolvency and debt recovery law, it included a lead paper by Mr Justice B.H. McPherson, Chairman of the QLRC. The paper reviews options for debtor and creditor insolvency. In the course of his paper, the judge referred to the still unimplemented report of the ALRC *Insolvency: The Regular Payment of Debts* (ALRC 6, 1976). As pointed out, this report was confined by its terms of reference to the 'small or consumer debtor'. According to the QLRC Chairman, it represented a 'thoughtful attempt to find a solution to some of the social and economic problems besetting poorer members of the community and the solution suggested is one with which perhaps not many would disagree'. It is pointed out that the proposals in ALRC 6 do not set out to 'suggest a novel alternative for creditors and debtors in circumstances in which insolvency is most frequently encountered i.e. corporations and individuals who engage in trade'. Work on the ALRC project on debt recovery continues in the ALRC with a report expected late '83 or early '84.

A time of action and change in the west.

## courts' reform

'The people can change Congress, but only God can change the Supreme Court'.
George W Norris

***national court?*** In response to criticism about the developing dichotomy of the Federal and State court systems in Australia (see [1982] *Reform* 144) the outgoing Federal Government indicated in February 1983 its strong support for a major plan to create an integrated court system for Australia. Senator Peter Durack, Q.C., in an announcement coinciding with the

Australian Federal election described the move as 'the most ambitious and far-reaching proposal for reform in the administration of justice since Federation'. The Federal Government indicated its support for recommendations of Standing Committee D of the Australian Constitutional Convention, this time to be held in Adelaide at the end of April 1983. The framework under consideration by the Committee envisages:

- The High Court of Australia at the apex of legal system and final court of appeal for all legal matters in Australia.
- A new National Court of Appeal which would be a Federal court exercising all State and Federal appellate jurisdiction from the national trial courts.
- A National Trial Court, equivalent to the present State Supreme Court and constituted by Divisions corresponding with the States.

According to Senator Durack, Federal and State Governments would remain politically accountable for the administration of the courts for which they were responsible and a Ministerial Council would be established to co-ordinate arrangements including consultation on appointments. A preliminary draft of proposals for inter-governmental consultation suggest that caution may be needed in relation to any 'blackball' system for judicial appointment. Otherwise the tendency to prevent the appointment of judges of known views might produce a process of judicial 'cloning' in an institution already criticised in some quarters for its orthodox conservatism.

The incoming Federal Attorney-General, Senator Gareth Evans, in the announced law and justice policy of the ALP has indicated general support for the establishment of a 'single uniform system of courts throughout Australia':

> 'Labor is committed to the integration of the present bewildering miscellany of State, Federal and Territorial courts into a single national court system. A proposal to enable such integration has been developed by a Standing Committee of the Australian Constitutional Convention, with significant Labor Party participation and support. This proposal will be put to the Constitutional Convention in Adelaide in April, and appears likely to receive significant bipartisan support. A Labor Government would seek its early implementation in co-operation with the States'.

It may be expected that, when refined, the proposal for the Constitutional Convention will make clear:

- Procedures for judicial appointments to ensure the continuance of the legitimate function of political patronage.
- Provision for judicial inventiveness and experimentation in procedures and in the establishment of special courts for special tasks;
- Provision for lines of appeal from specialised courts, such as the Family Court of Australia.

***constitutional reforms.*** The proposal for integration of the Australian courts system would involve constitutional reforms. So too would other items on the agenda for the Adelaide meeting. These include:

- consideration of amendment of the Constitution to permit the High Court of Australia to give advisory opinions including on the validity of Federal and State legislation, proposed enactments and treaties;
- abolition of all remaining appeals from State Supreme Courts to the Privy Council in London;
- fixing the powers of the Governor-General to remove uncertainty about constitutional conventions affecting his powers;
- extending the term of the House of Representatives from three to four

years and proposal for fixed term Parliament; and
- limits on Territory representation in Federal Parliament.

***nsw courts.*** An issues paper issued by the NSWLRC in December 1982 foreshadowed major changes in the proceedings and administration of criminal courts and criminal law in New South Wales, including possible new limits on the right to trial by jury. The paper is the first of a series of papers involving what NSWLRC chairman Professor Ronald Sackville has described as 'a far reaching enquiry aimed at simplifying court procedures and reducing delays in criminal cases'. Amongst proposals in the issues paper, to be developed in more detail later in 1983, are:

- the abolition of committal proceedings (preliminary criminal hearing) which at present are required in all serious cases in NSW;
- limiting the right to trial by jury by extending the range of offences which can be tried by a Magistrate sitting alone; and
- removing certain offences such as littering or evading fares from the court lists altogether, unless the defendant chooses to defend the charge.

On the subject of committals, the NSWLRC cites observations of Mr Justice Murphy in the High Court of Australia questioning the desirability of committal proceedings in modern times. It proposes, in their place, so-called 'paper committals' such as are followed in most other jurisdictions of Australia and England. It is pointed out that, at the moment, criminal cases take an average of 14 to 15 months from committal for trial before a Magistrate to the hearing of the trial in the District Court. If the prisoner is refused bail, the hearing will be held more quickly; but even then a 6 month delay may occur whilst the prisoner is in custody. Among reasons offered for the delay in criminal trial are:

- inadequate numbers of magistrates;
- increasing numbers of defended cases with expanded legal aid;
- the growth of corporate crime with consequential lengthy hearings;
- extra time taken in disposing of cases in which a plea of guilty is entered;
- loss of sitting time due to unpunctuality and the absence of witnesses;
- the too ready granting of adjournments without good cause; and
- the increasing number of cases in which the services of interpreters are required.

A number of practical suggestions are included in the issues paper, including greater assistance to jurors to help them perform their role more effectively by providing them with more information to understand court procedures. An interesting statistic provided by the paper reveals that in 1981 traffic cases dealt with by summons totalled 54.7% of all cases dealt with in the Courts of Petty Session. The NSWLRC issues paper provoked The *Australian* (13 December 1982) in a lead editorial to opine that the law was 'an ass that really deserves a kick':

> 'The list of delays and eminent people complaining about them is lengthy. Even the High Court is not blameless. The President of the Australian Bar Association, Mr B.J. Shaw, Q.C., told a ceremonial sitting of the High Court in July that serious injustices could occur through long delays in the court's decisions. It is all too easy to deride firmly entrenched and occasionally frustrating institutions like the law, parliamentary democracy and the bureaucracy. And it is often a cheap point-scoring exercise, rich in destructive rhetoric but short on constructive alternatives. But if Professor Sackville's discussion paper goes unheeded, the law in 1982 – indeed in 1983 – will still be an ass'.

***new courts.*** Whilst great proposals are being made for major reorganisation of the national court system in Australia, the NSW

Parliament has been proceeding with a number of changes in the States courts system.

- The Local Courts Act 1982 has now received the Royal Assent. It provides for the establishment of local courts which will take the place of the Courts of Petty Session which are to be abolished after 150 years of operation in NSW. NSW magistrates will be appointed in future by the Governor and be given statutory independence similar to that of other judicial officers. From henceforth, Magistrates in the State will not be subject to the provisions of the Public Service Act and will be completely independent of the executive arm of Government. The legislation brings to conclusion a major effort by the chief NSW Magistrate, Mr C. Briese and the outgoing Attorney-General of NSW, Mr Frank Walker, Q.C., to modernise the 'People's courts' in which the great bulk of litigation in the State (nearly 700,000 cases in 1981) is despatched.
- The Compensation Court Bill 1982 was also introduced into the NSW Parliament in December 1982 by Mr Frank Walker. It has not yet passed through the Parliament having been held over for public debate. The Bill would abolish the Workers' Compensation Commission and replace it by a court, severing from it the administrative and insurance functions formerly enjoyed by the WCC judges. A most controversial provision is the provision for the appointment of Commissioners who may be non-lawyers.

***compo reform.*** The restructuring of the NSW Workers' Compensation Commission may be a temporary expedient on the path to a greater reform in this area – at least if Federal Attorney-General Evans pursues the ALP policy on accident compensation. The law and justice policy of the ALP Government includes a denunciation of the present system as 'a scandalous waste of human and financial resources...complicated, slow, capricious and expensive'. These barbs are aimed both at the common law system and at the compensation procedures. The ALP is committed 'to major reform of accident compensation law but on the basis of Commonwealth-State co-operation, rather than unilateral Commonwealth action of the kind recommended by the Woodhouse Committee'.

The ALP policy document makes it plain that the incoming Government will be looking to the NSWLRC report on accident compensation as a 'crucial element in the formulation of a national model'. It charts the way ahead:

> 'As presently contemplated, the proposed Commonwealth-State model will involve successive adoption of the following steps:
> (1) No fault motor accident compensation system to be introduced, accompanied by abolition of common law claims arising out of such accidents;
> (2) Increased workers' compensation benefits under existing statutory systems to match the bench-mark set by motor accident scheme;
> (3) Extend workers' compensation to 24-hour a day cover for earners with abolition of common law claims;
> (4) 24-hour a day cover for non-earner non-road accident victims.

Commenting on workers' compensation as a field 'Ripe for reform', the *Age* (8 January 1983) thundered:

> 'If there is one field in society that is over-ripe for reform, it is workers' compensation. The ideal, that workers should be compensated for injury sustained in their work, is as valid as ever. But the practice of workers' compensation today has become a rort, a drain on society and a disincentive to employment. More than 22% of the money paid out in workers' compensation by the State insurance office goes in legal fees. Doctors too have become wealth beneficiaries of the system. How does such a state of affairs continue? It is not for a lack of diagnosis, or ability to identify the solution.'.

On the eve of the Australian election on 2 March 1983, the Insurance Council of Australia revealed that it was 'not happy' with the 'solution' offered by the ALP. It criticised the ALP policy on accident compensation which it claimed would result in withdrawal of about a quarter of the Australian insurancy industry's funds into a national 'Government controlled' compensation scheme. The Chief Executive of ICA, Mr Rodney Smith, went in to bat for the present system despite the fact that it confines the recovery of compensation to chance factors such as association with motor cars, work, sporting injuries or crime injuries:

> 'There is no justification for employers to be burdened with the initial cost of extending the cover to 24 hours a day, as employers should surely not be expected to accept the responsibility for economic welfare resulting from actions which have no relationship with the work they perform for their benefit and over which they have no control'.

Mr Smith was reported as supporting the present system of workers' compensation as an appropriate interweaving of compensation insurance with general welfare schemes.

With the advent of the Labor Government, the 'tangled compensation web' with its courts, lawyers and cost-intensive procedures will come under the microscope again. The election puts pressure on the NSWLRC to deliver its report on accident compensation reform without delay.

***privy council.*** If the Australian reformers are at one that the residual appeals to the Privy Council in London from State courts in Australia should be terminated, the position is different across the Tasman. Mr Paul Temm, Q.C., Vice President of the Auckland District Law Society commented in the *Auckland Star* (9 February 1983) that most lawyers in New Zealand believed that the country should retain its rights of appeal to the Privy Council. The comments followed expression of views by the NZ Minister of Justice, Mr Jim McLay, who told a meeting in Auckland that he favoured abolition of the appeal to London. Mr McLay stressed that the view could not be taken as Government policy 'at this stage'. Mr Temm said that with a small population it was inevitable that social and other pressures in NZ would be produced 'from which the Court of Appeal was not immune'. He urged retention of NZ 'access to the world's top judges'. On the other hand, his reported comments did not explore the legitimate extent to which courts should be responsive to local social conditions and attitudes. This view was at least inherent in the comments on Labor's Shadow Minister of Justice, Mr Frank O'Flynn. He said that the right of appeal to a court outside the country was 'seen by some people as a derogation of our sovereignty and nationhood'. The debate in New Zealand has become more active following at least two recent celebrated appeals to the Privy Council. The first involves the Samoan citizenship issue. The second involved an appeal by the former Mr Justice Mahon against an order of the Court of Appeal of New Zealand concerning the Royal Commission he chaired into the Mount Erebus airline disaster in Antartica. In Australia there is consensus that residual imperial links with London should be terminated, save for the connection with the Crown. Even the links to the Crown have been under question with reported comments of the incoming Prime Minister (Mr Hawke) and Attorney-General (Senator Evans) favouring a republican system of Government. These comments neatly coincided with the arrival in Australia in March 1983 of the Prince and Princess of Wales together with Prince William – all accompanied by tabloid enthusiasm and the usual media spread.