> to consider and effect recommendations for reform suggested by the judiciary.

Although this is not as wide a mandate as the ALRC and NSWLRC, it is plainly an important initiative in Queensland. Judges in all parts of Australia, and elsewhere, have long complained of the failure of the executive government to attend to proposals for reform made in the course of their judgments. Now, perhaps, there is new machinery to bring these to the attention of Parliament. The NSW Parliament has shown that it can respond promptly. Will the others follow suit?

reform and the falklands factor

Philosophy is unintelligible answers to insoluble problems.

Henry Adams, c 1803

panoramic wisdom. Mr Julian Disney, sometime the *bete noire* of the NSW legal profession, in 1983 proposed a meeting of the NSWLRC (of which he is a long-time member) and the ALRC to discuss law reform techniques. As in all things in law reform, it took a little time to achieve. But on a sunny Saturday, 3 March 1984, 30 law reform Commissioners, past Commissioners and staff of the two Sydney Commissions met in the Panorama Room of the Gazebo Hotel in Sydney. Inspired by the spectacular view of Sydney Harbour spread before them, the diligent law reformers got down to an informal discussion of ways in which they operate and could operate to improve institutional law reform in Australia. The meeting was a supplement to the regular meetings of the Australian Law Reform Agencies Conference. For a note on the last ALRAC meeting see [1983] *Reform* 140. The Ninth ALRAC meeting has been convened to take place in Sydney on 15-16 June 1984.

Explaining the purpose of the get-together, Julian Disney said that there was a need for more formal interchange between professional law reformers and self-critical scrutiny of their institutions and methodology:

> One of the main benefits of LRCs is, or should be, the accumulation of experience and expertise in the conduct of inquiries, preparation of reports, and 'after care'. New and old members of our respective Commissions will benefit from an organised, but informal sharing of experiences, leading perhaps to the preparation of a loose-leaf, in-house compilation of information and observations about the conduct of law reform inquiries.

It is plain from the results of the interchange in Sydney in March 1984 that the exchange of views on an informal basis, not limited to Commissioners but including research staff as well, should become a regular feature of law reform life in Australia.

To bring the debate down to earth, and to focus on a real law reform project, ALRC Commissioner David Hambly outlined his initial experiences in the inquiry into matrimonial property law reform (see also below, p 74). Professor Hambly outlined the way in which he was tackling the project. Among matters he discussed were:

- the desirability and otherwise of fixed deadlines for law reform reports;
- the adoption of in-house techniques to overcome 'drift' in the preparation of reports;
- the variation of consultative techniques, suitable to the size and nature of LRC programs;
- the extent to which Law Commissions should utilise empirical research, having regard to the staff, funds and expertise typically available to them; and
- the success of various procedures of public consultation.

hot issues. Before the participants was a list of questions prepared by Julian Disney and Marcia Neave (NSWLRC). The questions provided the agenda for the day-long discussion:

- How can non-lawyer LRC Commissioners play an effective role?
- How can part-time Commissioners participate effectively?
- How can research staff obtain adequate recognition?
- Should greater use be made of background papers and research papers?
- Should LRC reports be kept briefer with supporting material published separately?
- Should greater use be made of brochures, videos, graphic arts etc to communicate with the public and politicians?
- How effective are formal public hearings?
- How should government departments be formally involved in LRC work?
- Should a permanent parliamentary law reform committee be established to process reports?
- How can LRCs be involved in implementation of reports and monitoring operation of reforms?
- How can interchange with other Australian and overseas LRCs be improved?

falklands factor. A highlight of the afternoon session of the seminar was a stimulating paper by foundation ALRC researcher Bill Tearle. Mr Tearle is researcher in charge of the ALRC projects on debt recovery and insolvency (see below, p 58). as an illustration of the need for careful empirical work, Mr Tearle referred to the ALRC statistics on non-business bankruptcies in Australia. He said that the Commission's sixth report *Insolvency : The Regular Payment of Debts* set out the 'pathetically small' amounts which creditors recovered from the procedures of public bankruptcy in the case of non-business bankrupt estates in Australia. He referred to the debate in the United Kingdom about the future of the Falkland Islands, and the view that it would be less expensive to give each of the Falkland Islanders a resettlement grant of one million pounds each than to pour vast amounts of public funds into defending the islands. Could considerations apply to debt recovery procedures? Given the public costs of maintaining debt recovery and enforcement procedures in the courts, it might actually be cheaper for the community simply to pay directly to creditors the amount of their claim without any legal action being taken! Of course, the community will not do this; but the point illustrated the need for cost-benefit awareness in law reform and close attention to statistical and other empirical data, in addition to anecdotal evidence.

The ways in which law reform commissions could improve the use of social science material and facilitate ministerial consideration of law reform proposals dominated much of the discussion during the ALRC/NSWLRC meeting. Mr John Schwartzkoff, newly engaged social scientist working on the research staff of the ALRC, pointed to the wide range of material to which social scientists have regard, including non-statistical material. Reference was made to the important work done on the NSWLRC by Ms Bettina Cass, a social scientist Commissioner who will address the ALRAC meeting in June 1984.

new ideas. The report of the Sydney meeting is not yet available. But among ideas put forward, which appeared to receive wide acceptance, were:

- the need to adapt consultative documents specifically to the needs of each particular references;
- the desirability of the earliest possible distribution of an issues paper, outlining the questions the LRC was considering;
- the general need for law reformers and lawyers to be more alert to social science techniques as a supplement to examining judicial decisions or the opinions of other lawyers or LRCs about reform of the law;
- the need for LRCs to make better use

of the Australian Bureau of Statistics;
- the need for shorter reports;
- the desirability of giving greater recognition to the work of research officers and support staff;
- the necessity in big references to fix and adhere to a program with deadlines;
- the general desirability of involving more closely key government personnel, but with independence and freedom of action to them and to LRCs;
- the advantage of involving non-lawyers;
- the possible advantage of non-lawyer Commissioners or generalist consultants 'at large' over a range of LRC work;
- the desirability of involving practising lawyers as consultants;
- the importance of costing projects in making recommendations to governments;
- the impact of anecdotal material and the public media on community and political decision-making.

too political? In the last quarter, the *Sydney Morning Herald* (5 January 1984) offered editorial comments on the use of LRCs to produce quick reports on matters of high public controversy. Specifically, the *SMH* singled out for attention the very rapid production by the NSWLRC of two publications:

- an interim report on the Local Courts Act 1982 canvassing the issues underlying magisterial appointments to the new Local Courts; and
- an options paper on solicitors' costs and conveyancing, which followed Christmastime announcements of increases in the fees charged by solicitors for these services.

The *SMH* observed the State Attorney-General (Mr Landa) had discovered 'a useful new tool of government' in the NSWLRC. But it commented that there was no substitute for 'the Minister's own courage and determination to make hard decisions':

> The political element is present to a greater or lesser extent in every legal question. On one view, law reform commissions, especially those in NSW and WA and the Australian Law Reform Commission, have already moved too far from the early role of scrutinising the minutiae of lawyers' law to identify technical defects needing revision and are concerning themselves too much with broad policy questions. That view is unnecessarily conservative. But there is still a line to be drawn, beyond which a law reform commission risks its valuable reputation as an independent advice-giver, different from a government department, if it strays into an area where it seems merely to be serving the short-term political needs of a Minister.

The *SMH* was at pains to stress that the line had 'not yet been crossed in NSW' and that the NSWLRC report on the Local Courts Act was 'in the Commission's best tradition of impartiality'. But it sounded a warning bell about this development. No doubt law reformers will continue to get on with the jobs assigned to them under their statutes by Ministers having a multitude of motivations. On the other hand, Ministers may consider the competing points made in the editorial:

- the desirability of using LRCs, for their neutrality, in large projects of otherwise neglected law reform; and
- the desirability of LRCs rendering prompt assistance in limited and well defined projects of high community interest.

other views. Also in the last quarter a number of other views that have been stated about institutional law reform should be noted:

- Writing in the *Sydney Morning Herald* (23 January 1984) Mr Alan Tyree, Senior Lecturer in Law at the University of NSW, urged that recent developments in Australia, including the Apple and Wombat computer copyright case (see [1984] *Reform* 9) and the introduction of electronic

funds transfer (EFT) had proved that 'Australian law is even less capable of dealing with new technology than that of other Western countries'. Mr Tyree pointed out that universities and government agencies, including law reform commissions, have consistently indicated that the problem of updating the law for technological change belonged elsewhere. The solution he posed was the creation of 'yet another statutory body, a permanent Law and Technology Commission, charged with the responsibility of identifying legal problems and making explicit recommendations concerning legislation'. He stressed that any such body should 'reflect the multidisciplinary character of the problem'. Without it, he feared, 'we will continue to slide deeper into a legal morass of rights and liabilities which we neither understand nor desire'.

- Writing in the English *Guardian* (30 January 1984), Australian-born London barrister Geoffrey Robertson reviewed the developments of law reform in Australia. He listed a number of achievements in the first year of Attorney-General Evans. With the possible exception of the time of Lord Gardiner, writes Robertson, Labour Governments in Britain have 'depressing' records in law reform and civil liberties. The situation in Australia, he declared, 'makes an interesting comparison by showing the extent to which political determination can transform the legal systems which both countries have in common'. Specifically, Robertson praises the commitment in Australia to freedom of information which he points out was passed by the previous 'conservative administration'. He urges the establishment of a Parliamentary Select Committee on Legal Affairs in Britain, declaring that 'Britain's law on civil liberties is beginning to look distinctly undeveloped by comparison to its former colonies'. 'Without some action on these subjects', concludes Robertson, 'the mother country will start to resemble a granny with legal arthritis'.

- Just to show that not everybody loves the law reformer, it is apt to quote a letter written to the *Australian* on 20 January 1984 by G Garratt of Hunters Hill near Sydney. Mr Garratt, allegedly wrote 'on behalf of ordinary Australians who merely want to live their lives in a climate of freedom from unnecessary interference'. He expressed delight 'to hear that Senator Evans has had such a hard year'. According to Mr Garratt, the law reforms proposed are put forward by 'starry eyed reformers' and are 'self-defeating' and 'counter-productive'. So there.

and overseas. Two overseas developments in law reform reaching Australia in the last quarter deserve to be recorded:

- Delivering the Twelfth Lord Upjohn Lecture in April 1983, Lord Hooson QC addressed reform of the legislative process in the light of the Law Commission's work. Describing the setting up of the Law Commissions as a 'signal landmark' in the development of law reform in the United Kingdom, the author drew attention to the failure of government departments to respond to consultative documents of LRCs. He said that, so far as action on law reform reports was concerned, 'much depends on the *machismo* of Ministers and ministerial departments'. 'It is a game of chance and this is not good enough for our age. The systematic and continuous process of reviewing all aspects of our law with a view to its simplification and modernisation must be matched by a systematic and effective method in the consultative process on the Bills, their selection for the legisla-

tive process and their eventual enactment'. A number of specific proposals are made for changes in the legislative process. It might be hoped that Australian legislators will scrutinise these suggestions (see [1983] 18 *The Law Teacher* 67).

- In Canada, the Law Reform Commission of Canada has held the first public meeting in its 12-year history. The Commission President, Justice Allen Linden, is reported in the *Globe and Mail* (14 December 1983) as having found the exercise 'fascinating'. He said that the Canada LRC could benefit 'by meeting regular people' rather than 'just the groups of lawyers, judges and law enforcement officials the Commission usually meets'. According to the press report, members of the public were invited to air their views on any matter related to criminal law but also to specifically address matters the Commission staff is currently examining, including corporal punishment of children under the Criminal Code. Public hearings, focused on consultative documents, are now a well established procedure for the ALRC and NSWLRC in Australia. Their utility for gathering information and raising expectations of reform action was discussed at the Sydney Harbour meeting of law reformers in March 1984.

insolvency and credit

Money doesn't always buy happiness. People with ten million dollars are no happier than people with nine million dollars.
Hobart Brown in LJ Peter ' *Ideas For Our Time* ', 1977.

timely inquiry. In a so far little noticed announcement, the Federal Attorney-General, Senator Gareth Evans QC, has given the Australian Law Reform Commission a major new reference on the law and practice of insolvency. The new project is to relate both to business and non-business debtors. It is concerned with natural persons and with insolvency of companies. It amounts to the first major review of bankruptcy law in Australia since the report of the Clyne Committee (named for Sir Thomas Clyne, its Chairman) in 1965. It will be the first thorough review of the insolvency aspects of company law. In conducting its review, the ALRC is to consult closely with the new Australian Companies & Securities Law Review Committee, whose appointment was noted in [1984] *Reform* 45.

Announcing the new inquiry, Attorney-General Evans stressed the importance of the fact that bankruptcy law and company law would be considered simultaneously:

> The bankruptcy and winding up laws have a common ancestry which continues to be reflected in the way many company law provisions adopt or are modelled on the bankruptcy provisions. It is often the same individuals who operate as bankruptcy trustees and company liquidators. It is, therefore, desirable that procedures be as similar as possible.

Specifically, the Attorney-General invited practitioners in the field to make submissions on the deficiencies and inequities in current laws. He said that he had already received a number of such submissions himself. In view of hard economic circumstances, there seems little doubt that this is a timely examination of an area of the law sometimes neglected for headier stuff.

financial counselling. The reference to the ALRC follows an earlier report tabled in 1977. In this report, *Insolvency : The Regular Payment of Debts* (ALRC 6), the ALRC suggested that a further reference should be given to it on the wider aspects of bankruptcy law reform. The Commission then said that it was time for a full revision of the Bankruptcy Act 1966. The philosophy and provisions of this Act can be traced directly to the English laws of the 19th and early 20th centuries. The ALRC pointed out that there had been major studies undertaken on the subject of bankruptcy law reform in the United States,