- clarification of the solicitors' right to co-operate with para-legals, such as the so-called 'cut price conveyancing companies';
- abolition or modification of the present power of the Law Society to prosecute persons for breaches of a monopoly.

In addition the NSWLRC proposes a number of possible changes to the composition of the committee that fixes lawyers' fees. These will include membership by:

- fewer judicial members;
- legal practitioners demonstrably independent of the Law Society;
- experts in economics, statistics and the fixing of salaries, wages and prices; and
- representatives of legal consumers.

what now? Responding to the NSWLRC options paper, the President of the NSW Law Society, Mr Rod McGeoch, said that the Commission's document was 'a worthwhile summary of the options available, but what now?' As for the monopoly on conveyancing, Mr McGeoch said:

> Competition does exist among solicitors as to their fees. Again, if the government is of the view that there is not enough competition, then the Society is happy to consider the advertising of fees, provided proper safeguards for the public exist. None of these options suggested by the Law Reform Commission are new, but they will take time to bring into operation. It is hoped that the Attorney-General will act promptly and not leave the public and the profession waiting months for the implementation of any options.

It was this issue of the conveyancing monopoly that led Richard Ackland to write in the *National Times* (6 January 1984) that the 'Conveyancing monopoly' is 'set to end'. It was, he declared, a 'comfortable and hugely profitable' monopoly enjoyed by solicitors in New South Wales and Victoria. It was 'in the process of crumbling'.

The *Sydney Morning Herald* (6 February 1984) commented, under the banner 'The law's pound of flesh', that the decision on whether or not to allow the fee increase voted at Christmas 1983 still remains unanswered:

> The 80-page report prepared by the Law Reform Commission specifically avoids addressing this issue. However, reading the arguments put forward, it is not difficult to form the belief that the Commission finds the present system of the legal profession itself deciding what its pound of flesh should be, a relic of the 19th century.

In a thinly veiled call for an end to the solicitors' monopoly in conveyancing the *Herald* urged:

> The policy behind the options for change, that competition, including price competition, is crucial, makes sense. The present system of conveyancing is archaic and imposes unnecessary restrictions on solicitors and their clients. If Mr Landa chances his arm and acts to drag the system into the 20th century, he will be able to parade as the home buyers' friend.

buccaneer professions?

It is, it is a glorious thing
To be a Pirate King

WS Gilbert, Pirates of Penzance, 1879

professional debate. The debate about the legal monopolies enjoyed by professions, in Australia and elsewhere, mentioned in the last item, has hotted up in the last quarter. Indeed, on the subject of conveyancing of title itself, the legal monopolies and professional fees, the debates have been heated.

- In an address to the Northern Suburbs Law Association in Melbourne on 7 December 1983, the Victorian Attorney-General, Mr JH Kennan, ruled out any immediate removal of the solicitors' monopoly in conveyancing work. 'I can understand your concern', he said, 'as to the future of the legal profession. Some people are concerned that solicitors will lose the conveyancing monopoly. Let me say that I do not propose to amend the law to take away

the monopoly of solicitors on conveyancing work, at least in the life of this Parliament. I should say, however, that solicitors must be prepared to provide efficient service for their clients or there will be pressure to allow unqualified persons to practise in this area. I welcome the initiatives of the Law Institute on advertising, but I believe more could be done so that the consumer will be fully informed and able to shop around. Lawyers must provide an efficient service, particularly as the Titles Office moves towards computerisation'.

- In the Australian Capital Territory on 8 January 1984 the legal correspondent of the *Canberra Times*, Crispin Hull, reported that the idea of a Government Conveyancing Office was being floated again. It was first mooted 10 years ago to reduce land transfers to an administrative procedure. The aim would be to provide a public office to supply conveyancing to citizens 'at half the cost'. But Mr Hull is sceptical. He suggests that such an approach is to attack the problem of high costs of conveyancing 'at the wrong end of the stick'. Instead of hiring a whole lot of public servants, he says, it would be better if the government reduced stamp duty, as proposed by the ACT Law Society. Law Society Vice President Mr Terry Higgins said that a government office would only prove the high cost of providing conveyancing services. He suggested that the answer was not to change the people doing the task but to make the task itself simpler – something which the NSWLRC also suggested in its options paper.

- Also in the Federal sphere, the Australian Government has been consulting 13 professional groups including lawyers, accountants, optometrists, engineers, surveyors, veterinarians and architects about having their fees determined by a member of the Arbitration Commission. One of the biggest fights accepted by the Federal Government in recent months relates to efforts to require standard fees of medical practitioners working in public hospitals under the government's new Medicare health insurance arrangements. The Federal Minister for Employment and Industrial Relations, Mr Ralph Willis, has presented a 189-page report on non-wage incomes to the Advisory Council on Prices and Incomes. The report calls attention to various limitations in the Federal power to regulate professional incomes in Australia. It noted the 'strong influence' on medical charges of medical benefits fees fixed by the Medical Fees Tribunal. However, in many of the professions resistance exists to arbitration and fixed fees.

- The Past President of the Law Council of Australia, Mr Ian Temby QC, was reported on 7 January 1984 as stating that the Federal Government should not force the legal profession to arbitrate their fees. He said that lawyers had consistently abided by the agreement into which the Law Council had entered at the Economic Summit in April 1983. However, Mr Temby made no reference to the recently approved substantial package of Christmas increases in conveyancing and other fees for lawyers in New South Wales.

- At the end of January 1984 it was announced that the ACT Legal Aid Commission would conduct an independent inquiry into the over-commitment of the Commission to fees and the manner in which legal assistance could be provided in a more effective, efficient and economical manner. A former Secretary of the Department of Secondary Industry and Acting Chairman of the Prices Justification Tribunal, Mr Frank Pryor, has been ap-

pointed to conduct the inquiry, which will essentially address the question of how the Legal Aid Office came to spend 'a whole year's allocation in only six months'. The case illustrates the growing public funding of professional fees with the consequential demands of public authorities to have a say in the fees fixed.

- This last point was made by the ALRC Chairman, Justice Kirby, in addressing the Australian Society of Orthodontists in Melbourne on 5 March 1984. Delivering the 1984 Wilkinson Oration, Justice Kirby referred to the resistance by the organised dental profession to the use of dental hygienists and to the prosecution of at least one dentist in NSW for using such an 'auxiliary', although she was highly trained and experienced in the United Kingdom. Remarked the ALRC Chairman 'When the ordinary man and woman receive an income determined in large part by industrial tribunals and when the highest officers of the country have their income determined by a Remuneration Tribunal, the demand of professional people, themselves drawing heavily and increasingly on the public purse, for old-fashioned independence and the free market, strikes most Austalians as a buccaneer attitude, strangely anachronistic in today's social circumstances'.

don't cheer yet. Meanwhile, in the United Kingdom, similar debates are proceeding over the solicitors' monopoly in land conveyancing. Mr Austin Mitchell, a Labour Member of the House of Commons, introduced a Bill drafted by the Consumers Association to reform land title conveyancing. According to the *Economist* (25 February 1984) the Commons defied 'government armtwisting' and the lobbying of the Law Society to give the Bill a Second Reading. The government then began to look carefully at the Bill and, as it transpired, the majority of the Ministers in the Thatcher Cabinet expressed themselves in favour of breaking the solicitors' monopoly, as an example of the free market competition to which the Cabinet is generally committed. The Lord Chancellor, Lord Hailsham, was reported to have put up 'stiff resistance' to the breach of the lawyers' monopoly and to have lost the argument to Ministers favouring competition though under conditions that would protect the client against mistakes or fraud.

By September 1984, a committee headed by a Manchester professor is to report on the 'tests or other evidence of competence' needed to protect house buyers who have their conveyancing done cheaply by non-solicitors. By the end of the year the committee is to suggest other ways of simplifying conveyancing and house purchases in general, including by reference to the Scottish system. Legislation is promised by the government for 1984-5.

The British Government has also indicated to the Law Society its support for the proposal that solicitors should advertise their charges for conveyancing. It has promised legislation to permit building societies to offer conveyancing services. But, cautions the *Economist*, don't cheer yet:

> Whitehall's own 'wide-ranging' internal review of house purchase will be vigorously lobbied by the cartel [of the Law Society]. The solicitors will argue for strict standards (translation: as many obstacles as possible) for their non-solicitor competitors, and they will fight fiercely against letting building societies in on the act ... At present, with the biggest investment he will ever make, the buyer gets less user information than if he bought an aerosol can of paint.

new reports

Australia

ALRC : *IP 4* : Contempt of Court 1982 (see above p 62).

: *IP 5* : Service and Execution of Process, 1984.