

but only if implementation is undertaken with appropriate urgency — a course sadly neglected following the release of the New South Wales Law Reform Commission's proposals more than a year ago.

Now it seems, neglect is over and action is in. The prospect of such important and far-reaching reforms, achieved in part by persuasion and in part by legislation, causes heart-burning in some circles. As with all reform, it remains to be seen whether the objectives of the NSWLRC will be achieved. But the first step is implementation. And that is clearly now in prospect.

**What moves.** As noted above, moves are proceeding in Western Australia in tandem with NSW. The first of two reports to be submitted by the Clarkson Committee on the future organisation of the legal profession of WA has now been delivered to the WA Attorney-General, Mr J M Berinson. The main recommendations are:

- continuation of the amalgamated profession but with a voluntary independent Bar;
- general supervision of the legal profession through a Legal Practice Board including five QCs dealing with admission to practice;
- the Law Society of WA to continue its present voluntary functions together with certain public functions relating to discipline;
- a Complaints Committee should be established, independent of the Law Society and the Legal Service Board. A Legal Practitioners' Disciplinary Tribunal is also to be appointed, together with a Law Complaints Officer responsible to the Complaints Committee but paid from public funds;
- a Legal Practice Institute is to be created to provide practical training for persons intending to practise as legal practitioners;
- compulsory professional indemnity insurance is to be introduced;

- existing methods for appointing QCs are to be maintained, viz on the recommendation of the Chief Justice.

A feature of the recommendations is the introduction of lay members to a number of the proposed bodies, although they will be in the minority. The Law Society of WA has welcomed a number of the recommendations including the introduction of the lay component into the complaint and discipline field. Some time ago the voluntary complaints committee system had lay members appointed to it. However, the Society has been critical of the complexity of a number of the proposals and is preparing a detailed submission. Meantime, in another legal move in the West, it has been announced that the WA Post-Secondary Education Commission has recommended that a course of Legal Studies be established at the Murdoch University, whose Chancellor is Sir Ronald Wilson, a justice of the High Court of Australia. There is speculation in the West that Murdoch may become a second law school for the State, if Mr Wran's warning at the start of the next item is deemed inappropriate on the other side of the Australian continent.

### **faultless compo scheme**

Don't become lawyers. There are too many of them!

Premier N K Wran QC to students of Forbes High School outside the Banco Court, Sydney, *SMH*, 5 November 1983, 1.

**NSW search.** The search in New South Wales for an acceptable no-fault motor accident compensation scheme continues to attract a large measure of media and professional attention. Readers of *Reform* will recall the outline of the NSW scheme in [1983] *Reform* 105. In place of the present system of damages actions would be substituted a statutory no-fault scheme aimed to eliminate chance in the compensation of transport accident victims. But this reform would be bought at the price of abolishing damages actions and providing compensation often below present levels for a limited group of accident victims.

According to reports from the NSWLRC, the Commission is continuing its program of public consultation. Since the release of the working paper reviewed in *Reform*, the NSWLRC has received some 70 submissions. Meetings have also been held with major groups of interested organisations and persons. One feature of the public consultation process has been the conduct of public meetings out of the State capital, Sydney:

- A public meeting was held by the NSWLRC in Newcastle on 17 November 1983. The purpose was to discuss the working paper proposals and to obtain comments from participants in that heavy industry region of the State. Persons attending the meeting came mainly from organisations interested in welfare issues and members of the legal profession. Local press coverage of the meeting brought the complex issues involved in the NSWLRC's proposed scheme to the notice of the Hunter Valley community.
- The NSW Law Society held a public meeting in Wollongong on 4 November 1983. The new Commissioner of the NSWLRC, Deirdre O'Connor (see *Personalia* below) attended the meeting on behalf of the NSWLRC. The Law Society, as reported in the media, urged that the Commission's proposal to abolish the common law right to sue for negligence should be put to the people of New South Wales by referendum. *Illawarra Mercury*, 5 November 1983, 12.

**sheer lunacy.** The NSWLRC proposal has certainly engendered a vigorous debate. Mr W H Tuck, Public Relations Manager for the NSW Law Society, dismissed the scheme as 'sheer lunacy'. In a letter to the *Sydney Morning Herald* (5 September 1983) he said that it would 'rob' accident victims of a basic legal right'. In place of the NSW scheme, the

Law Society advocates a dual system which would preserve damages rights:

- no-fault loss of earnings limited to \$20 800;
- hospital and medical expenses for five years;
- the right to take a common law damages case if fault can be proved;
- no compensation for non-earners;
- payment to dependants limited to \$20 800.

The retiring president of the Law Council of Australia, Mr Gerry Murphy, denounced the NSWLRC scheme as 'a threat to democracy'. He was addressing the Medico-Legal Society of Queensland. Specifically he urged that the introduction of the dual system of no-fault with the preserved right to sue in the case of proof of fault, would be less objectionable than the totally bureaucratic scheme suggested. Specifically, he referred to the success of the workers' compensation legislation which had been operating in Australia for decades.

In its reply to the NSWLRC working paper, the Law Society of New South Wales challenged the actuarial costing of the NSWLRC scheme, claiming that the costs were likely to be much higher than the figures quoted to date. As well, the Law Society released a report based on a McNair Anderson survey showing that amongst paraplegics and quadraplegics up to 80% want the right to sue for lump sum damages when fault can be proved. Foolishly perhaps, many accident victims want the independence of the lump sum verdict.

**into the fray.** The counter-attack by the legal profession and some anxious letter writers produced a number of responses, many of them from the NSWLRC itself:

- Writing to the *SMH* (12 September 1983) Marcia Neave, Research Director of the NSWLRC, wondered aloud whether the criticism by Mr W H

Tuck of the LRC proposals did not 'spring to mind' solely because of a 'narrow escape from an accident' but because he was the public relations manager of the Law Society'.

- Mr James Wood QC, NSWLRC Commissioner, wrote to the *SMH* (10 October 1983) reassuring an anxious letter writer that the NSWLRC fully accepted the importance of providing for long-term care and restoring accident victims to independence.
- Perhaps most significantly, on 22 October 1983, Federal Attorney-General Gareth Evans told a Melbourne seminar on road accident compensation that the NSW scheme might be suitable for a national no-fault road accident compensation system. He said that it was 'more than a little curious' that the only opposition to it came from lawyers and legal associations 'who portray themselves as the selfless guardians of accident victims'. On the other hand, Mr Jeffrey Sher QC of Melbourne told the seminar that the NSW scheme would reduce the nation to one of 'mendicants, each member of which will have his or her hand out every time they slip or fall or in some way suffer injury whether it be whilst water ski-ing, hang-gliding, driving a car while inebriated, slipping on an orange peel in the supermarket or in their own kitchen'.
- At the same seminar, NSWLRC Chairman Professor Ronald Sackville defended his Commission's proposals and criticised the Victorian dual scheme under which no-fault and fault compensation live together. 'The low-cost ceiling on compensation for lost earning capacity, the limited duration for which health care expenses are available and the absence of any compensation in respect of permanent physical disability ... combine to

restrict the adequacy of compensation provided by the scheme in serious cases' said Professor Sackville of the Victorian system. Vice-President of the Victorian Law Institute, David Miles, was unconvinced. He claimed that the Victorian scheme, allowing for some minor deficiencies, was much superior to the NSWLRC system now offered for New South Wales. Today NSW. Tomorrow Australia?

**final report.** News coming in from the NSWLRC to the ALRC indicates that work is proceeding on a number of case studies sponsored by the Law Foundation of NSW in conjunction with the inquiry. The purpose of these studies is to survey people injured in car accidents who have received lump sum compensation from the courts. Specifically, the investigation will enquire into the adequacy of compensation payments and the social circumstances in which the accident victims now live. A number of statements issued by the NSWLRC suggest that although the lump sum may initially appear large, on an actuarial basis it may prove to be inadequate. But what is to be done if people cussedly and foolishly, against the actuaries, want the money not the box? The NSWLRC reports that work is in progress on the final report on the transport accidents scheme proposed in the working paper. It is expected that the report will be completed early in 1984.

## assuring insurance

It is ironic that people daily engaged in the business of insurance should resist the idea of applying insurance principles to the industry itself.

Justice Kirby at Australian Insurance Law Association  
Inaugural Seminar, Sydney, 8 November 1983.

**new laws.** Just before the Australian Federal Parliament rose for the Christmas recess, the Federal Attorney-General, Senator Gareth Evans QC, introduced the Insurance Contracts Bill 1983 based on the ALRC report on *Insurance Contracts* (ALRC 20). This major review of Australia's insurance contract law was led by Professor David St L Kelly, now