The problem of ensuring a fair trial for defendants in cases which attract saturation publicity is one which presents no easy solutions. And yet, the damage to a defendant's right to a fair trial can be more extreme in these cases than in those involving 'one-'off' technical breaches of the *sub judice* rule. In such cases, the provision for an application to the trial judge for suppression orders is one of the options available for reform. Alternatively, or perhaps additionally, the selective nature of court reporting might be effectively addressed by a system of internal control by media organizations, such as the Press Council.

Justice Wood's report is expected to be completed in late March or early April and tabled in State Parliament soon after.

■ ***lands acquisitions.*** It is believed that legislation based on the ALRC's Report on *Lands Acquisition and Compensation* (ALRC14) will be presented in both the Victorian and the Commonwealth Parliament shortly. The Report, which recommended major changes to lands acquisition procedures, has already been implemented in large measure in the Northern Territory. The legislation will have significant implications to those land holders in New South Wales affected by proposals to establish a new army manoeuvre area somewhere interior from the Great Dividing Range. A site of 1.2 million hectres at Cobar has been mentioned in press reports. (*Sydney Morning Herald*, March 23, 1985.)

■ ***criminal investigation at last.*** Legislation based on the ALRC's *Criminal Investigation* Report (ALRC2) has finally reached the statute books. However, particular legislation is confined in its application to the defence force and others subject to defence force discipline. The provisions make up Part IV, titled 'Investigation of Service Offences' of the Defence Force Discipline Act 1984. The legislation is expected to come into effect in July 1985. Criminal investigation legislation which would give affect to ALRC2 in relation to the activities of the Australian Federal Police in the civilian community is expected to be reintroduced into Federal Parliament this year also. The Bill has been introduced into Federal Parliament on two previous occasions, only to lapse each time.

■ ***drugs and crime.*** A working party has been established by the Victorian Association of Alcohol and Drug Agencies to review the objects, provisions and operation of section 13 of the Victorian Alcoholics and Drug Dependent Persons Act 1968. That section enables a court to order that a drug dependent defendant submit to treatment or serve a suspended term of imprisonment. The aim of section 13 is to break the cycle of criminal behaviour and addiction. The Victorian Association of Alcohol and Drug Agencies, which includes all Victorian agencies working with the problems of alcohol and drug abuse, will employ a research officer to undertake research into the operation of section 13 in Victoria. The research is being funded by a grant from the Victorian Law Foundation. Submissions may be directed to the working party via the Victorian Law Reform Commission in Melbourne.

letters to the editor

Mr FC Hutley QC, Former Judge of Appeal of New South Wales, has written to 'Reform' about the last issue. An extract from his letter, dated 21 March 1985, is contained in the item about about defamation. (see page 51.) The letter continues in relation to defamation:

> Whether the law-making process is concentrated in the Federal Parliament or uniformity is brought about under its aegis, restrictive elements become entrenched and entrenched upon a national basis. Once anything becomes entrenched on a national basis, the attempt to change it is greatly disadvantaged. For one thing there are no comparative examples except those to be found internationally, secondly the uniformity which will benefit the mass media will cause the media to become supportive of the Defamation law whatever state it is in.
>
> Law reform in Australia in my view, should begin by dismantling much of our centralised controls so that the situation we have whereby there is apoplexy at the centre and complete apathy in the limbs is ended. Law reformers look to America as an example. The fundamental virtue of America is to be found in the fact that there is such variety in that country, a

variety very much based upon the fact that the states are more numerous and are centres of experiment.

Another matter you regard as 'automatic' illustrates the same obsession. You treat as automatic that it is unfortunate that it has not been possible to create, for Constitutional reasons, uniform control of all aspects of family life by the Federal Parliament. Mr Justice Kirby has referred to the 'lack of support' given to the Family Court in its recent disasters by the profession. He does not appear to understand that that lack of support is due to the almost universal dissatisfaction with the Family Law Act by most people other than the centralised bureaucracy which has followed its creation who have anything to do with it.

If it is the case, as it well may be, that all members of the de facto family should be dealt with by one system of courts, then the obvious way to achieve that is to demolish the Family Court of Australia and return the effective day to day administration of all these matters to the States.

Family Law is not a matter for centralised control and centralised administration. Even if some general standards are desirable, it requires local control and local experimentation. Anybody with any experience of the actual working of courts should know that specialist courts are an unfortunate creation. Judges of such courts tend to develop routine approaches to matters and what is more important, they become bored.

Ten years have almost passed since the Family Court came into existence and it is time for its work to be genuinely assessed. Its relation to the State courts has led to most difficult jurisdictional problems, each amendment generating further and more difficult jurisdictional problems.

Because of the pervasive nature of family problems no extension of jurisdiction can avoid the creation of jurisdictional problems as between the State courts and the Family Court. In fact, every increase in jurisdiction makes the matter worse particularly as there is an obsession to make the Family Court jurisdiction exclusive. For example in matters relating to enforcement of rights against and administration of estates of deceased persons I can find no justification for exclusivity except the determination of the Federal authorities in this and other fields to make the effective operation of State courts impossible.

To the obsessive centralisers amongst whom the editors of reform must be classed, this presents no problem. The history of English law presents a clear analogy. In the 17th Century as part of the struggle between the Puritans and the Anglicans the effective ecclesiastical and admiralty courts, efficient in the field of administration of the estates also in commercial law, admiralty law being based upon the law, were destroyed to the great harm of the English people in these fields in the interests and satisfaction of common lawyers.

The creation of the Family Court and above all the extension of its exclusive jurisdiction can largely be explained upon the same basis. Real reform would take the form of reaction, that is, the ending of the centralising tendency, conferring of jurisdiction in all Family Law matters upon preferably District courts or their equivalent. This would be a reversion in part to the system which existed in New South Wales prior to the Barwick reform under which contested issues could be tried by District Court Judges in the course of their ordinary functions.

Where, as in the case of the Family Law Act, there is almost universal agreement that the structure created is fundamentally flawed, reform does not consist of covering the cracks. It consists of rooting it out even though this may involve backtracking and properly characterised as reactionary.

For a similar parallel criticism in the industrial field, I would refer you to the article on Page 8., of The Financial Review of February 19, 1985 and in the fields of education to the remarks of one of Australia's profoundest thinkers, Professor PH Partridge in 'Society, Schools and Progress in Australia' pp 70-71. I even referred to my own writing on the matter in my submission to the Enquiry into the Legal Profession. It was too busy recommending another Sydney based structure to face the problem despite the fact it was within the terms of reference.

I have gone to the trouble of setting these two issues out, at some length. The matter could be repeated almost indefinitely from your magazine. There is an equation of reform with centralised change. That, in my opinion, is a cardinal error. A very large number of Australian citizens as shown by the way they vote in referenda where the Commonwealth sets out to acquire extended power, regularly demonstrate what they do not want even though it is undoubtedly what the centralised bureaucracy and a large number of intellectuals and social workers turned out of universities whose only opportunity for obtaining a living is involved in the expansion of these centralised activities want.

If, in your magazine you described what is taking place as simply as 'change' other than 'reform', it would contribute greatly to the understanding of the various tinkerings to the legal system which are

being carried out by what is now a new and major form of service industry, namely, the so called Law Reform industry. It would be making a real contribution to the understanding of the issues by the Australian people if less tendentious language were used but as the use of reform carries with it to the ordinary citizen, the connotation that things are getting better by calling any and every change 'reform', you are engaged as hiding the deep issues which are often involved. Not only is the term reactionary, a smoke-screen, but the terms 'progressive' and 'reform' have become smoke-screens in current discussion. Where a major step like the creation of the Family Court of Australia has generated a large number of judges and a huge attendant bureaucracy, the reconsideration of what has been done becomes particularly difficult but it becomes more difficult every day the task is deferred as every day the solution to the recognised difficulties takes the form of expanding jurisdiction. It is indeed ironic that it is so intent in expanding its jurisdiction at the time when its delays are notorious and the judges and officers are loud in their complaints for the need for further expenditure and increase of its facilities.

One sign of the reform of 'Reform' is that some criticisms, namely those of myself and Professor Chipman have seeped into it even though only for the purpose of criticism. It would, however, be a great improvement if the editorial board of 'Reform' contained some people who are prepared to look with a critical eye at the things which pass for reform in Australia at the present time.

Yours faithfully,
F C Hutley

PS You may publish this letter or excerpts from it in 'Reform' if you wish to.

Dr Jocelynne Scutt, a Commissioner of the Law Reform Commission of Victoria, has pointed out the editors of *Reform* were incorrect in stating in the last issue that the NSWLRC started a trend when Dr Bettina Cass, a non-lawyer, was appointed a memeber. She writes

> It is in error to state that Dr Bettina Cass was the first non-lawyer appointed to a Law Reform Agency in Australia. For a number of years prior to that, two members of the Tasmanian Law Reform Commission were lay members. Two of these were Ms Fran Bladell and Ms Jo Carruthers. Both were extremely effective members of that Commission, and Jo Carruthers in particular was a very good back-up in the organisation in the National Conference on Rape Law Reform which was co-hosted and co-organised by the Australian Institute of Criminology, the Tasmanian Law Reform Commission, and the University of Tasmania Law School.

In the same letter Dr Scutt also points out that Professor Louis Waller has been appointed 'Chairperson' of the Victorian Law Reform Commission not 'Chairman' as stated in the previous issue of *Reform.*

new reports

Australia

ALRC	: Issues Paper on General Insolvency Inquiry. IP6.
NSWLRC	: Accident Compensation: Consultants Paper on the Aftermath – Caring for Accident Victims in New South Wales (by J Dewdney & I Irwin) 1984. CP3.
	: Community Law Reform Program Sixth Report Conscientious Objection to Jury Service 1984. CLRP6.
QLRC	: Working Paper on Legislation to Review the Role of Juries in Criminal Trials 1984. WP28.
SALRC	: Report of the Dealing with the Inherited Imperial Law Between 1801 and 1820, 1984. SALRC89.
TasLRC	: Report on Variations of Charitable Trusts. 1984, No38.
	: Research Paper on Occupiers' Liability Law, 1984 (by M Atkinson).
	: Research Paper on Minor's Contracts. 1984 (by D Chalmers).
VLCC	: Report on the Subordinate Legislation (Deregulation) Bill 1983). 1984.*
	: Report on the Statute Law Revision Bill 1984.*
	: Report on Delays in Courts: Overseas Delays and Remedies, 1984 (2nd Report on this topic).
	(*Not VLRC as report in last issue.)
WALRC	: Report on Recognition of Interstate and Foreign Grants of Probate and Administration. 1984, Proj34, Part IV.
	: Proposals paper on Review of Pawnbrokers Act 1860. 1985, Proj81.