

deemed inappropriate to discuss such a contentious matter in Senate during the dying days of the Autumn session, so the matter has been postponed to the Budget session, when there will be time for a thorough debate. In the meantime, presumably, the Fairfax organisation is 'free' to behave as well or as badly as it chooses.

occupiers' liability

Forgive us our trespasses

As we forgive those who trespass against us.

Matthew 6, 12

a flaw in the floor. A recent advertisement inserted in *The Age* by the Legal Aid Commission of Victoria shows a burglar meeting with a horrible accident caused by a faulty floor board. Victoria is the only State in Australia to reform occupiers' liability law, and the reform no doubt proved the advertisement. It was to inform the public of what the law is and what precautions occupiers ought to take. In doing so, the advertisement pointed out, 'It is possible that even a trespasser or a thief could successfully claim compensation'.

a shot in the dark. In fact, the common law is also rapidly softening its draconian appearance. Occupiers' liability law defines the rights and liabilities of the *occupiers* of land to people who are on the property in one capacity or another. The subject does not generally arouse the passions of the lay public, though it has been the subject of much debate amongst lawyers. Recently however, some members of the public have been aroused by the High Court's decision in *Hackshaw v Shaw* in which a farmer was ordered to pay compensation to a trespasser. The case was determined according to the common law as it applied in Victoria prior to the statutory overhaul. A young man had trespassed on the farmer's land and was stealing the farmer's petrol. Unbeknown to the farmer he was accompanied by a young woman who, in the dark, was crouching on the front passenger seat. The young woman was injured when the farmer shot at the car in attempting to immo-

bilise it. The High Court held that the farmer had acted negligently and should pay compensation.

One person from Victoria wrote to the Commission following the decision:

Reasonable people have no wish to import into this country the 'right to bear arms' mentality of the US National Rifle Association, but surely the decision in this case points to the urgent need to amend, and amend radically, the law of negligence in relation to trespass, especially trespassers with criminal intent.

reform by the high court. The editorial writers of *The Canberra Times* (8 January 1985) were also moved to write about the case. They did not express disagreement with the decision. But rather they highlighted the High Court's decision to determine the case by using the ordinary rules of negligence rather than the complicated and (some would say) archaic rules applying to occupiers' liability. The traditional multi-level analysis involves categorising people entering on land either as invitees, licensees or trespassers with the liability of the occupier depending not only on the circumstances of the injury but also on this categorisation. The editorial, under the banner 'Legislation in Court', claimed that the High Court has achieved in this case what many parliaments had taken very much longer to achieve in a single stroke, namely, the reform of the law of occupiers' liability.

The editor's view of the case was commented on in a joint letter by Professor David Hamblay and Mr Nicholas Seddon, both of the Australian Law Reform Commission. They did not agree that the case had achieved what was claimed for it. They said that the 'simplification has not been achieved by the High Court's decision. Only one of the judges (Mr Justice Deane) was in favour of taking that bold step. The other judges who decided for the injured plaintiff did so, not on the basis that the special rules affecting occupiers were no longer the law, but that they were not applicable in that case (*Canberra Times*, 18

January 1985). Another letter responding to the editorial was not pleased with either the alleged judicial legislation nor the result of the case. '... the electorate wants libertarian law reform in favour of burglars like it wants a hole in the head'. (B Osborne, *Canberra Times*, 23 January 1985) The Australian Law Reform Commission has been asked to enquire into the law of occupiers' liability in the Australian Capital Territory. Work is in its early stages.

plain english

Mr Peacock: In answer to a question, he [Mr Hawke] said:

What I'm saying is that if certain things weren't done if certain protective measures weren't able to be taken and you were confident they could be taken if you couldn't take those if you weren't certain about them then there could be a price and so we want to expose to the community that it would be ideal in our belief to get to that position but we want to expose to them the sorts of things that we think would need to be done in terms of protecting those who would otherwise be hurt and its going to be a question for judgment by us and by the community as to whether we can all be sure that those protective mechanisms can be put in place.'

... I ask the Prime Minister, will he explain to the House whether this is his preferred position on taxation?

Question Time, House of Representatives, 16 May 1985

short Acts, bad jokes. Brevity may be the soul of wit, but it was clear that wit was in short supply when the Victorian Government recently announced a government drive for 'plain English' statutory drafting. The Victorian Attorney-General, Mr Jim Kennan, announced on 3 April that the language and structure of Victorian legislation would be radically simplified. He said:

The format will be Kennanized. As the name implies, the changes mean the legislation will be easy to understand, free of pomposity and verbiage, lean and hungry in approach and full of informed commonsense.

Referring to the well-known Flesch reading ease test, Mr Kennan said, 'Unfortunately, it is my view that Flesch fails his own test. Why

spell it with a "c". I therefore propose early legislation to rename him "Flesh"'.

changes. The changes to be introduced include:

- no long titles on Bills and no short title clause;
- the title will simply be written at the top of the Bill;
- the first clause of each Bill will usually be a short statement of the purpose of the Bill;
- repetitions of superfluous phrases such as 'subject to this Act' will be removed.

All draft legislation is apparently to be submitted to the Flesch reading ease test by Parliamentary Counsel. Mr Kennan said:

What needs to happen now is to have a process whereby Parliamentary Counsel draft bills and legislation officers draft subordinate legislation from the outset in plain English. This requires a radical departure from tradition and a break with thinking of the past. It requires imagination, a spirit of adventure and a boldness not normally associated with the drafting of legislation.

Apparently the Coroners Act is being used as a suitable case for Kennanization.

praise for parliamentary counsel. However, the Attorney-General was full of praise for Parliamentary Counsel saying, 'I am confident ... that under the leadership of Chief Parliamentary Counsel (Ms Rowena Armstrong) we have cause for optimism in Victoria'.

nz efforts. Across the Tasman, similar moves are afoot. Speaking to the Hamilton Rotary Club on 13 May, the New Zealand Attorney-General Mr Geoffrey Palmer pointed out that language 'is a weapon of power' and that those who use that power:

often demonstrate their unwillingness to share that power by using jargon, florid and meaningless phrases and long words and long sentences.