> Part X. Secondly, there are no provisions in the Act which ensure that previous dealings between a debtor, a particular creditor or creditors and the trustee are disclosed. Thirdly there is no effective supervision of Part X arrangements'. (Senator Button, Senate, 15 September 1987).

*information to creditors.* A debtor who wishes to initiate a Part X administration will have to submit to the trustee or solicitor who the debtor has authorised to call a meeting of his or her creditors, a statement of financial affairs and how the debtor proposes his or her affairs be dealt with. At the moment a statement of affairs need only be provided at the first meeting of creditors. The trustee (but not a solicitor) must then prepare a report which summarises and comments on the debtor's financial affairs as disclosed in the debtor's statement and set out all other relevant information available to the trustee which is necessary to give a true and fair view of the debtor's affairs. The trustee must also state whether, in the trustee's opinion, it is in the best interests of the creditors to accept the debtor's proposal.

The notice informing the creditors of the meeting must be accompanied by:

- a copy of the debtor's statement of affairs and proposal,
- if a trustee has been appointed, the trustee's report,
- a statement prepared by the trustee or solicitor setting out the alternative special resolutions that may be passed by the meeting.

*declaration by trustee.* The second aim of the amendments to Part X is intended to be brought about by requiring the trustee nominated to act in a Part X administration to declare previous dealings with the debtor or the creditor(s) proposing the resolution. Also, the ability of a chairman (quite often the trustee or solicitor) to influence voting at the meeting by the holding of proxies will also be reduced by limiting proxy votes in respect of the special business of the meeting to be exercised only in the manner specified in the proxy form.

*increased supervision of Part X.* There are also new provisions in the Bill heightening supervision of those who conduct Part X administrations.

*ALRC report.* As reported in the last issue of *Reform* the Australian Law Reform Commission last year published Discussion Paper 32 in its General Insolvency Inquiry. That Discussion Paper covers many of the aspects included in the Bankruptcy Amendment Bill, some of which thereby will receive early implementation. The Discussion Paper was followed by an intensive round of public hearings in all Australian capital cities in November and December last year. The Insolvency Inquiry is now engaged in considering evidence given to the Commission at the public hearings as well as the large number of written submissions received in response to the Discussion Paper. The Commission's Report is due to be published in mid-1988.

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## class actions — continuing push

> Don't clap too hard — it's a very old building.
>
> John Osborne, *The Entertainer*

*real estate institute.* The last edition of *Reform*, ([1987] *Reform* 171),

reported business reactions to the ALRC's proposed class actions report. Since then the Real Estate Institute of Australia Limited expressed this view in the November issue of *Landline In Australia*:

> In presenting its final report to the government, the ALRC will doubtless acknowledge the many significant post-1979 developments that allow consumers to seek compensation for grievances. In particular, amendments to the Trade Practices Act which strengthen consumer protection provisions and allow the Commission to take action on behalf of a group or class of consumers are significant steps in consumer protection.
>
> In view of these and other developments, the ALRC will find it difficult to support the introduction of class actions in Australia.

The Commission is taking careful note of the comments and is considering in detail other Australian developments providing broader legislative procedures in various courts and tribunals.

*business council of australia.* The Business Council of Australia had the following to say in its recently released Annual Report 1986–87:

> The latest set of proposals before the Law Reform Commission fail to acknowledge overseas experience, particularly in the United States where class actions came into vogue in the early 1970s, that class action litigation has not lived up to the claims of its advocates and has benefited lawyers rather than consumers and other assumed beneficiaries. With more cost effective mechanisms, such as Small Claims Tribunals available to consumers and greater media involvement in identification of redress, the costs of class action procedure to business and the community generally far outweigh the benefits.
>
> Of even greater concern, however, is the further drift towards a highly litigious society that these proposals would encourage.

The Commission has acknowledged the importance of obtaining a clear understanding of North American developments and employed a consultant, Mr Andrew Roman, a Canadian practitioner, to advise it on recent Canadian class action experience.

In Quebec, the class action available by statute has not caused any remarkable increase in litigation since its passage in 1979. Despite the initial estimate that there would be 500 class actions per year, in fact, after seven years and eight months only 164 applications have been filed. Few of these have actually gone to trial.

The Annual Report of the Quebec Fund 1985/86 noted that it was too soon to draw any firm conclusions from the Quebec experience save that there has not been a flood of class actions. The Commission is also concerned to facilitate improvements in the efficiency of the court system in dealing with mass disputation.

*a different view.* The Australian Federation of Consumer Organisations (AFCO) has welcomed the introduction of class actions. It said in its Annual Report for 1986/87:

> The Australian Law Reform Commission is intending to present its report on class action by the end of the year. . . . There are many matters of detail to be addressed, especially to ensure Australia benefits from the advantages that the introduction of class actions has to offer and avoids some of the disadvantages that have been experienced in other countries.
>
> AFCO Director, Robin Brown, is an honorary consultant to the ALRC. He

presented the following arguments to them on class actions.

Essentially the advantages of providing for class actions in Australia are:

— That class actions render viable, through economies of scale, actions currently not viable because of the costs of legal action, eg if a person wishes to seek damages in the order of say $2 500 and the estimated legal costs involved in taking the action to court exceed that amount it would not be worthwhile. On the other hand if a sufficient number of persons seeking damages in the same circumstances in that amount each could join together, it would prove worthwhile.

— Class actions allow courts to deal in one go with a group of actions which are currently viable rendering possible considerable savings for plaintiffs, defendants and taxpayers to the extent that the latter fund the court system.

* * *

## the greying of australia

By the year 2021 there will be more dependent people in Australia than working people. While this figure includes children, the proportion of Australians over 65 years of age is steadily increasing. It has been called the 'greying' of Australia.

The greying of Australia may generate agitation for 'grey rights'. (The word ageism has already slipped into the vernacular.) It will generate other costs and benefits. Benefits may include the generally free services provided by older people in the community and welfare sectors. However costs will include the provision of support and helping services to old people who are no longer able to care for themselves.

A mechanism which could relieve the government of some of the burden of caring for the aged is the power of attorney. It can:

- provide privatised care and management
- allow a donor to make decisions about his or her future while still capable of planning for possible future incapacity.

There is, however, one major snag with current powers of attorney in the Australian Capital Territory. They lapse upon the donor becoming incapable. This generally unappreciated fact means that many powers of attorney are being used when they should not be. The ALRC believes the answer is to legislate for enduring powers of attorney (EPA). It is already possible to create EPAs in Victoria, New South Wales, the Northern Territory and South Australia. The ALRC is now examining the feasibility of introducing appropriate EPA legislation in the Australian Capital Territory as part of the Community Law Reform Program for the ACT.

Incidentally, the ACT has not followed national trends in the greying of Australia but is currently enjoying a distinct 'browning'. Currently, the ACT is well below the national average, having only 5.3 per cent of its citizens over 65 as compared to just over ten per cent nationally. However, this figure is rapidly changing. As if to make up for lost ground, the ACT has the fastest growing number of old people in the country. By 2011 it is expected to conform to the national average and by 2021 to exceed it.

A Discussion Paper on EPAs (DP 33) has recently been published by the ALRC and is being circulated widely