:ourt of New South Wales by cademics Brendan Edgeworth nd Michael, D. According to this tudy, politicians do significantly /orse, both financially and in /inning the case, than other laintiffs. Apart from media or-anisations they are the biggest ategory of people being sued. In his regard, the Attorneys are in greement with the ALRC, which uled out a public figure test on he grounds that it was impos-ible to specify who would fall nto the category.

The Attorneys are taking court ecommended correction state-nents a step further than the ALRC report envisaged. The Co-mmission's position was that corrections should be an addition-al remedy to damages. The three Attorneys favour a system of court recommended correction statements as an intermediate proceeding. After a writ of defa-mation, any party can apply to a Supreme Court Judge in Chambers for a Court-recom-mended Statement. The advantage of making this available to both parties will ensure that a defend-ant willing to correct an error will not be penalised by a 'fast bucks merchant'. Other favoured op-tions, such as alternative dispute resolution using trained mediators and greater involvement by the Press Council, have their limita-tions. In the case of the former, many defamation lawyers have argued that no matter how amen-able the defendant, some plaintiffs are not interested in dispute reso-lution, all they see is a way to pay off a mortgage. In the case of the latter, many journalists would view an increased role for the Press Council with some disquiet because the Australian Journalists Association is no longer repre-sented on the Council. □

Contempt

In the course of proposing uniform defamation laws the Attorneys-General of Queensland, New South Wales and Victoria have noted increasing incidence of publishers breaching the subjudice rules by publishing prejudicial material. All three are to examine the option of a new tort for action that delays or aborts a trial. In their second Discussion Paper on Defamation the Attorneys cite the ALRC's various discussion papers on contempt as needing further careful consideration.

Queensland and Victoria are looking at the possibility of a tort action, while New South Wales is consider-ing a compensatory sanction for the offence of contempt so that, on conviction, the accused and the Crown can apply to the Court to recover additional costs caused by the contempt.

Premier State scores a first

by Evelyn McWilliams

Changes to evidence law in NSW are in line with the ALRC's recommendations - putting Attorney-General John Dowd in the vanguard of evidence law reform.

New South Wales Attorney-General Mr John Dowd has led the field in implementing key law reform proposals for the law of evidence with the introduction of the Evidence Bill 1991 into State Parliament on 20 March 1991. The Attorney tabled the Bill for public exposure, inviting submissions on its provisions up until 30 June 1991. It is due to be debated during the Budget session later this year.

The Bill's provisions follow closely the ALRC's recommendations in its Evidence Report (ALRC 38) which was published in 1987. The NSWLRC later endorsed the major recommendations in its report Evidence, LRC 56, 1988.

The Bill breaks new ground in a number of ways. It is the first modern, comprehensive and wholly Australian statement of the law of evidence. In this respect it means that New South Wales will no longer lag behind jurisdictions such as Christmas Island which has had its own Evidence Code since 1860.

It covers the manner of taking evidence from witnesses, such as allowing a witness to give evidence in narrative form or in the form of charts, summaries or other explanatory material and to use notes to revive memory about a fact or opinion. Rules for the admissibility of evidence include a new standard for the relevance test and allowing a court to admit evidence provisionally even if its relevance is not immediately apparent.

Significant reforms following on from the ALRC

The Bill makes significant reforms in line with the ALRC's and NSWLRC's recommendations. It largely adopts the ALRC's recommendation to retain the right to make an unsworn statement; modifying it by applying the rules of evidence. It rationalises the law relating to hearsay. It proposes major reforms to the law governing admissibility of confessions and admissions. The Bill abolishes the 'voluntariness' test for admissions and confessions but requires a two-stage test for the admission of a confession in criminal cases. First, the confession must not have been obtained by violence and, secondly, it must not have been obtained in circumstances likely to make it untrue. The court will have to consider circumstances such as the age and nationality of the suspect, and mode of questioning. The Bill adopts another ALRC recommendation, that a record of interview be inadmissible unless signed by the suspect.

There are also major changes to the law relating to admissibility of documents. The way courts treat documents, and the way they treat information created by machines is anachronistic and has created many problems for evidence law. The common law about tendering documents, particularly the best evidence rule, betrays an underlying attitude of mistrust. This is the rule that a party relying on the words used in a document must as a general rule give primary evidence of its content. Copies of a document are generally not acceptable. The same mistrust extends to authenticating documents. In its 1987 report, the ALRC presented a coherent, principled approach to solving these problems. It suggested a wider definition of 'document' to cover all forms of stor-