

mendation, the decision, the ground for it and (except in cases of national security) the source and purport of any advice on which it was based, are all to be published in the *Gazette*.

Progress continues to be made on laws governing access to information. The ALRC report on privacy is well advanced. Professor Hayes hopes to have it completed by the end of 1981 or early in 1982. Developments overseas and the public opinion poll at home suggest that Federal legislation on privacy before 1984 will be well timed.

odds and ends

■ **accident compensation.** The present system of compensating victims of injury and accident in Australia came under critical review in the last quarter:

- At the Australian Legal Convention Mr. J.L. Sher QC of Melbourne said that the advent of accident awards of more than \$1 million should lead to pressure for annual awards more accurately assessed, to take the place of the 'sophisticated guesswork' which goes into current calculations;
- Professor Harold Luntz of the Melbourne Law School, commenting on Mr. Sher's remarks, called for an even more radical solution, namely the introduction of a national compensation scheme. Professor Luntz said that the present system of fault compensation, supplemented by statutory schemes, left many seriously injured people completely uncompensated. In England the Pearson Commission had found that only 25% of seriously injured people ever received compensation.
- Writing in the *Sydney Morning*

Herald (18 May 1981) Mr. Alan Tyree, Lecturer in Law at the University of New South Wales, pointed to the New Zealand Woodhouse scheme as a more comprehensive and acceptable means of caring for accident victims. Amongst the chief arguments cited by Mr. Tyree is the fact that studies have shown that only 45% of overall costs of the existing compensation system go to the victim. Large percentages must be paid to lawyers and administrators.

- In an address to a jury after it brought in a verdict of \$2.6 million, Mr. Justice Lee in *Skow v. Public Transport Commission* in the Supreme Court of New South Wales, had his say:

There is, I believe, grave disquiet in the community in regard to verdicts in favour of severely disabled persons arrived at by the application of Common Law principles. ... Many people think that [the calculation required] goes dangerously close to playing God. But whether it may be viewed in that way or not it can, at the best, only be regarded as an exercise in sheer fantasy. ... Many people believe that it is not in the interests of the community to continue with the present system and it may be seriously doubted whether even a large verdict is in the plaintiff's interest either. Only Parliament can alter the present system but the need for a system which, whilst attending to the injured person's requirements arising from his injuries, avoids placing huge sums of money in his hands, is pressing.

Both the *Sydney Morning Herald* (10 July 1981) and the *Age* (14 July 1981) agreed with Mr. Sher's proposal for annual awards. But each asserted that such a reform would not remove the need for a comprehensive national compensation scheme. Critics of the Woodhouse proposal have not, however, been silent:

- Mr. P.S.M. Phillips MLC, in a recent address in Parliament, criticis-

ed the burden which the Woodhouse proposal would place upon employers to fund general compensation for injuries outside work circumstances.

- .. At a symposium at the Princess Alexandra Hospital at the end of July 1981, Mr. G.A. Murphy, Past President of the Queensland Law Society, listed what he saw as the faults in the New Zealand Woodhouse system. Singled out for greatest criticism were:

- ... the inadequacy of the benefits;
- ... the financial difficulties of funding the scheme;
- ... the susceptibility of any government scheme of this kind to reduction or modification in times of restraint.

The debate continues.

■ **de facto problems.** An important new reference to the NSW Law Reform Commission contemplates co-operation with the Commonwealth's Family Law Council. The reference requires the Commission to report on the law relating to family and domestic relationships. Particular attention is to be given to the rights and obligations of persons living in a *de facto* relationship. The rights and welfare of children of such persons are to be considered. The NSWLRC has been instructed to take into account the work of the NSW Anti-Discrimination Board and also the proposed reference of family law powers to the Commonwealth. It has been instructed to maintain a 'close liaison with the Family Law Council'. Professor Ronald Sackville, NSWLRC Chairman, has indicated that Mrs. Bettina Cass of the Social Welfare Research Centre in the University of New South Wales, the first non-lawyer and first woman appointed to the NSW Commission, will take a leading part in the project.

Reports in the press in July 1981 recorded three cases in the NSW Supreme Court where

judges had called for laws governing *de facto* relationships to be changed especially as they apply to property claims. In one case Mr. Justice Waddell urged the need for a statutory power in the courts so that they could alter the rights on properties of couples living together but not married. Similarly, Mr. Justice Powell and Mr. Justice Wootten, in other cases, concluded 'regretfully' that a *de facto* wife who had lived with a man for many years could have no legal claim on his estate when he died without a will.

According to Professor Sackville:

Australian law is geared for married people. Existing law is causing grave injustices to people who have been in a *de facto* relationship. When such a relationship ends, women usually suffer more than men, especially in the division of property and maintenance. It is clear that something should be done.

(*Daily Telegraph*, 31 July 1981, 8.)

Professor Sackville and the NSWLRC team will now have the chance to bring the law into line with this aspect of personal relationships in modern Australian society.

■ **teaching law reform.** The Faculty of Law of Monash University has implemented a series of honours seminars on 'fashions and methods of law reform'. The seminars are led by Professor Enid Campbell and Professor Louis Waller. Professor Waller was at one time attached to the Canada LRC in Ottawa. Dr. T.W. Smith QC, formerly Mr. Justice Smith and at one time the Victorian Law Reform Commissioner, also takes an active part in the course. Eleven sessions are devoted to general topics including the nature and objects of law reform, factors giving rise to law reform, the history of law reform, agents and instruments of law reform, the operations of law reform agencies, techniques of law reform, implementation and monitoring of law reform proposals and, finally (as if that were not enough) reform of law reform! Associated with the course a Guide has been prepared with reading matter reviewing the whole range of burgeoning material on law reform. Students have to prepare a research

paper of about 6,000 words analysing a case study on the machinery and processes of law reform. Perhaps the Australian LRCs could do well to consider the opinions and criticisms of the fresh minds in the Monash Law School. Included in the distributed material is an article by Donald B. King, 'Law Reform Challenge', 13 *St. Louis Uni. LJ* 403 (1969) in which he predicts the expansion of law reform teaching in law schools:

Law reform considerations are so extensive and involved that it could be considered a subject or field of law to which attention must increasingly be turned. It is quite possible that in the future law schools may routinely offer courses in law reform. The skills and techniques utilised in law reform are sufficiently unique to warrant the teaching of a separate course on that subject. ... There is a possibility, too, that a few schools may shape their curriculum around reform and change.

Most law schools include some consideration of law reform in particular topics. Now Monash has begun a special honours course in the study of law reform as such.

■ **pacific law.** The PNGLRC has just published a working paper on Consumer Protection (WP 17). The paper stresses the need for the development of a co-ordinated policy and highlights price control and food quality control as the two most urgent practical problems. Other problems noted are the difficulties PNG consumers face in getting remedies or even knowing of their rights, the absence of an agency with power to investigate complaints and the lack of effective enforcement machinery. Among suggestions made are the establishment of a government body with power to investigate complaints and publicise findings and also power to publish tests of comparative consumer goods and services. The implementation of codes of ethics and the possible introduction of class actions are noted as possible long-term priorities. The subject of consumer law was mentioned in a paper by the ALRC Chairman for the 1981 Fiji Law Society Convention held in Fiji 18-20 September 1981. Other

Australian participants included Mr. Gerald Murphy, past President, Queensland Law Society, who dealt with accident compensation, Miss Mahla Pearlman, incoming President of the NSW Law Society, who dealt with the profession and the citizen, and Mr. Peter Cranswick, outgoing President of the Law Council of Australia. The Convention was opened by the Prime Minister of Fiji (Sir Kamisese Mara). The Prime Minister suggested a closer scrutiny of indigenous customs as a basis for law reform. The Chief Justice of Fiji, Sir Timoci Tuivaga, urged the Fiji Law Society to draw up and implement an effective, modern code of ethics. He said this should seek to strike a proper balance between lawyers' being too remote from their clients and too close or emotionally involved in their cases.

new reports

Australia

- | | | | | |
|--------|---|-----|---|--|
| ALRC | : | RP1 | : | <i>Evidence. Comparison of Evidence Legislation Applying in Federal Courts and Courts of the Territories, 1981.</i> See above, p. 114. |
| | : | RP3 | : | <i>Evidence. Hearsay Evidence Proposal, 1981,</i> see above, p. 114. |
| NSWLRC | : | | : | Outline of DP 4(1), <i>Structure of the Profession, Part 1, 1981.</i> See above, p. 110. |
| SALRC | : | 47 | : | <i>Relating to Powers of Attorney, 1981.</i> |
| | : | 56 | : | <i>Relating to the Fatal Accidents Provisions of the Wrongs Act 1936, 1981.</i> |
| TasLRC | : | WP | : | <i>Reform in the Law of Wills. The Making and Revocation of Wills</i> (by G.M. Bates), 1981. |
| VCJC | : | | : | <i>Report on Pecuniary Interests of Councillors, 1981.</i> |
| | : | | : | <i>Report on Prior Conviction Procedures, 1981.</i> |
| | : | | : | <i>Report on Limitations of Actions in Personal Injury Claims, 1981.</i> |
| | : | | : | <i>Report on Oaths and Affirmations.</i> |