E.E.C.-wide insurance law. In Australia, fortunately, s.51(xiv) of the Constitution gives the Federal Parliament substantial powers over insurance. But the road to signficant insurance law reform is slow on both continents.

compo and the handicapped

Prosperity makes friends, adversity tries them.

Publilius Syrus, *Moral Sayings*,
1st Century B.C.

In [1981] *Reform* 25 reference was made to law reform in New Zealand. Undoubtedly the most stunning of all recent reforms in that country is the introduction of the national compensation scheme. Introduced by the bipartisan Accident Compensation Act 1972 (N.Z.) the scheme, in a bold stroke, did away with centuries of tort law in favour of a social security approach to compensating victims of accidents. Gone are the subtle distinctions between misfortunes suffered at work, in a car and those previously uncompensated accidents which occur at home or at leisure.

Now two books have been published with analysis of the NZ scheme:

- Dr. Geoffrey Palmer, '*Compensation for Incapacity: A Study of Law and Social Change in New Zealand and Australia*', O.U.P., 1979.
- Professor T.G. Ison, '*Accident Compensation*', Croom Helm, 1980.

Palmer, who helped Sir Owen Woodhouse with research towards the NZ scheme and later took a leading research role in the Woodhouse-Meares National Committee of Inquiry into Compensation and Rehabilitation in Australia, recounts the political history behind the NZ and Australian reforms. He points to the added difficulties of securing reform in the Australian federation. So far, the Woodhouse reform has not been adopted in Australia. Ison examines the terms of the NZ Act. But he includes a chapter on the political background and consequences of the scheme. He concludes that its principle is one with which:

> the majority of people and certainly the majority of disabled people, would readily agree. ... While precise measurement is not possible, the new system of accident compensation in New Zealand certainly appears to be a success. In terms of output per unit of cost, it is better than the previous systems operating there and better than any other system known to the writer that is operating elsewhere. For several reasons ... the achievements and success of the system tend to be under-estimated. (p.187)

n z woodhouse scheme. Interest in the NZ Act is now spreading throughout the world, as concern about the cost of the inefficient use of legal talent becomes more urgent. For example, in his paper 'Too Much Law: Too Little Justice' recorded above, Professor Laurence Tribe suggested:

> One of the most dispensible judicial tasks is the determination of fault in personal injury cases. The legal expenses inflate insurance premiums for everyone. Insured claimants wait endlessly for compensation, whilst unpaid medical bills accumulate. Hundreds of cases clog court dockets and delay justice in disputes where the adversary process is essential.

In a recent edition of the *Osgoode Hall Law Journal* (August 1980) , Assistant Professor Richard Gaskin analyses the NZ Accident Compensation Act in terms of 'tort reform in the welfare state'. Describing the NZ solution to tort law as 'imaginative', Gaskin points out that it takes a completely different shift: looking at the problem from a welfare point of view, in a way that simply has not occurred in the debate in the United States and Canada. There, legislative reform action has been largely limited (as in Australia) to specific classes of accidents, notably automobile accidents. The suspension of common law remedies has been partial only. But Gaskin is not without criticism of the failure of the NZ Act to extend coverage to previously uncompensated types of disabilities such as illness and congenital incapacity.

no fault developments. Meanwhile, short of the comprehensive approach of Woodhouse, developments are occurring in particular no-fault areas:

- *Tasmania.* The Tasmanian LRC has issued a discussion paper and working paper on 'compensation for personal injuries arising out of tort'. Written by Mr. R.W. Baker, Q.C., it deals with such matters as deferred assessment of damages, interim payments, relevance of remarriage in fatal accident compensation cases and like questions. In his working paper, Mr. Baker recommends that 'in cases of serious or lasting injury or disability, the Tasmanian Supreme Court should be empowered to make a preliminary damages award and an order for periodic payment'. It should cease after seven years or before if special circumstances are shown. An interesting suggestion is the need to adjust for rates of inflation and average earnings; something the common law has so far resisted.

- *Northern Territory.* The Pearson Royal Commission, in its January 1978 report, recommended that in cases of death or serious and lasting injury, the English courts should be required to make awards of period payments for future pecuniary loss unless the plaintiff showed that a lump sum would be more appropriate. The 1969 WP of the NSWLRC urged a power in the courts to order periodic payments. Now the Chief Justice of the Northern Territory, Mr. Justice Forster, has voiced his concern about the lump sum once-and-for-all damages verdict. In *Jabanardi* v. *A.M.P. Fire & General Insurance Co.* (19 November 1980) he had to deal with a grossly injured Aboriginal full-blood aged nine and a half years who suffered 'devastating' head injuries with consequent serious brain damage. Forced to assess lump sum compensation in money terms, Forster CJ was moved to a plea:

> I am usually disinclined to give unsought advice to the legislature but this case constitutes in itself a strong plea for some system of awarding damages on a period basis similar to that which exists in South Australia. Because of the numerous uncertainties which exist here, the amount of damages which I ultimately assess, is very likely to be proved wrong and therefore unjust either to the plaintiff or the defendants and this will be shown as the plaintiff's life unfolds.

Another interesting NT development is the introduction of a Crimes Compensation Bill 1981 based on the ALRC report *Sentencing of Federal Offenders.* The Leader of the Opposition, Mr. Jon Isaacs, introduced the Bill and it is to be debated in August.

- *Canada.* No fault insurance for automobile accidents was introduced in Quebec in 1977. A news report from Canada indicates that the system is being considered in other Provinces, although strongly opposed by insurers and the legal profession. So far Quebec is the only Province to have introduced no-fault insurance legislation. Such legislation exists throughout Australia in workers' compensation cases and in several States as an alternative to damages actions in motor car cases.

law for disabled. In [1981] *Reform* 32, mention was made of the International Year of Disabled Persons and of proposals for mental health law reform. Inquiries are now looking into mental health laws in several jurisdictions of Australia. Major reforms in New South Wales were announced in March 1981. Meanwhile, outside the mental health area, new attention is being given to the legal handicaps of disabled persons. In an important address on 6 January 1981 at the opening of the IYDP in Adelaide, South Australia's Attorney-General, Mr. Trevor Griffin, speaking symbolically from a wheelchair, foreshadowed a Handicapped Persons Equal Opportunities Bill 1981, which has now been distributed for comment. The legislation was recommended in the first report of the committee chaired by Sir Charles Bright on 'The Rights of Persons with Physical Handicaps'. A second report of the Bright Committee, dealing with the rights of intellectually handicapped persons, should be completed soon.

Mr. Griffin pointed to the goals of IYDP:

> One of the aims of 1981 is to ensure that disabled people are able to lead normal lives in our community. That means mixing freely in the community — disabled and not disabled persons in schools, the work force, on transport and in shopping centres. Disabled people have the right to live amongst others without being treated as strange or second class citizens because they may look different. One of the ways of achieving the goal of equality and full participation is to allow disabled persons to do things for themselves; to try things for themselves and to act for themselves. Disabled people don't want our pity or sympathy. They want our encouragement and assurance that they have an equal place in the community with everyone else.

Commenting on the Attorney-General's address, the *Adelaide Advertiser* (7 January 1981) pointed out that:

> the ultimate success or failure of the IYDP will turn on whether other people's attitudes towards the disabled can be changed. It is a simple enough matter to assert that they need and deserve help and encouragement, but it is the quality and spirit of that help that is important. Too many of us are apt to shun the handicapped or pity them or convey the hurtful impression that they are somehow abnormal.

Quite apart from the Bill which proposes a Board to inquire into unjustified discrimination against disabled persons, in employment and elsewhere, the Attorney-General mentioned other initiatives that could be adopted at an administrative level. They include:

- modification of public telephones for the disabled;
- changes to the steps of public transport;
- provision of better access to public buildings
- the right to access, 'not just to buildings but to opportunities and to joys and pleasures and to participate in every way in community life.

On 2 January 1981, the *Sydney Morning Herald,* in a leading editorial on 'Aid for Disabled' urged similar anti-discrimination laws in N.S.W.

> An obvious first move available ... is to legislate to outlaw discrimination against the physically handicapped in employment, education and accommodation. The NSW Anti-Discrimination Board pointed the way in recommendations it made to the government in 1979 — recommendations which the NSW Cabinet is using as the basis for legislation now being drawn up. Mr. Justice Kirby ... has drawn attention to the growth in the United States of a new body of law called 'handicapped law', devoted to protecting and defining the civil rights of handicapped people who have been disadvantaged in such fields as housing, employment, education and access to public facilities. ... In Australia the cause of the disabled is still well down the list of political and public priorities. The time has come to lift its rating.

f o i: the debate continues

> The three ends which a statesman ought to propose to himself in the government of a nation, are — (1) security to possessors; (2) facility to acquirers; and (3) hope to all.
>
> S.T. Coleridge, c 1818

a brace of proposals. Whilst the final shape of the Australian Government's promised Freedom of Information Bill was not available when *Reform* went to press, there was no shortage of competing proposals on FOI:

- In Victoria, the Opposition has foreshadowed a draft FOI Bill, incorporating the features urged by the Australian Senate Committee report, *Freedom of Information,* some of which were not accepted by the Federal Government.
- In N.S.W., Professor Wilenski's Second Report on Government Administration is expected mid year with proposals for a NSW FOI Bill.
- In Britain, Private Member's Bills have been introduced for an FOI Act, but received a cool response from the Government.
- In Canada, a major measure is before the Canadian Parliament for an Access to Information Act for that country. So far, only New Brunswick and Nova Scotia, two Canadian Provinces, have introduced FOI legislation. They remain the only Westminster-style jurisdictions with such legislation.