

(with reactions like Keats' first looking into Chapman's Homer) when he took up his appointment as an ALRC Commissioner.

An important paper. And made more so by the companion piece by Mr G. Nazareth, Q.C., Law Draftsman of Hong Kong on the training and retention of legislative draftsmen. One suspects Messrs. Nazareth and Ewens would only agree with the comments by First Parliamentary Counsel Mr Geoffrey Kolts, QC, at the Canberra symposium that governments in Australia set impossible timetables for legislation. The results were that legislation often contained a mere outline and this 'allowed the courts to go off on a frolic, often deciding cases in a way contrary to the parliamentary legislation with the result that more, corrective legislation was needed'.

The key to simpler legislation is a new approach to legislative drafting and judicial interpretation. This is recognised by comments at the top level of politics and the judiciary. It is reflected in legal and popular texts. The point is made, for example, in the fourth edition of *An Introduction to Law* by D.P. Derham, F.K. Maher and P.L. Waller (Law Book, 1983), 128. The change of Federal Attorney-General in Australia will not, apparently, diminish the search for reform here. It is clear that Senator Evans intends to continue Senator Durack's important initiatives. As a hint of things to come, another quote from the law and justice policy of the ALP is in order:

'The complexity of Federal legislation means that most members of the public are unable to understand their rights and obligations even if they can obtain copies of the legislation itself. Labor will explore means of simplifying drafting techniques, and making summaries of the law and of legal rights under Federal law readily available to the public...The question of what materials should be available to the courts and the public in interpreting statutes is the subject of continuing debate. Committee reports, explanatory memoranda and second reading speeches can all be of assistance in appropriate cases in ascertaining the purpose of statutory provisions.

Labor will seek to formally widen the range of aids that may be employed in interpretation of Commonwealth statutes, at the same time ensuring that they are equally available to all who need them'.

## reform in the west

'Now I know what a statesman is; he is a dead politician. We need more statesmen'.

Bob Edwards c 1951

*the other change.* February 1983 saw the election of a new State Government in Western Australia under Premier Brian Burke. The Labor Party claimed a swing of well over 8% and in some areas up to 17% giving it a clear majority in the biggest landslide in the State's electoral history. A number of State Ministers lost their seats and as it transpired, the election on 19 February 1983 predicted the national change that was to follow exactly a fortnight later.

The incoming government was elected on a platform including numerous promises of law reform. Among the items included in the new State Government's program are:

- abolition of capital punishment and flogging;
- review of sentences of imprisonment in WA;
- prohibition of entrapment by officials;
- reduction of penalties for marijuana for personal use;
- review of laws on credit reporting agencies and listening devices;
- decriminalisation of laws on adult consenting homosexual conduct;
- community law reform
- provision of a new procedure for processing reports of the WALRC. The Government promises to provide within 12 months of their tabling in Parliament, a statement as to its intentions in respect of WALRC reports.

**lawyers' reluctance?** The incoming Attorney-General is Mr Joe Berinson, formerly Federal Minister for the Environment in the Whitlam Government in 1975. Mr Berinson is a graduate of the University of WA Law School and is a qualified pharmacist as well as 'a legal practitioner (see below p. 90). Before the election, commenting on 'Lawyers as Lawmakers' Mr Berinson drew attention to the way in which lawyers can influence the lawmaking process in Australia:

'In the normal course of events, they dominate agencies such as the Law Reform Commission and the Legislative Review and Advisory Committee and they are also members, out of all proportion to their number, in a whole range of other agencies, enquiries and commissions. The effect of these can be very significant. But this does not exhaust the field either, as there remains an area of informal advice, opinion and pressure which lawyers are well placed and trained to provide. Surprisingly, they are not nearly as active as one might expect'.

Mr Berinson recorded how surprised he was when he became Shadow Attorney-General to discover the reluctance of the WA Law Society to offer opinions to the Opposition in respect of proposed legislation:

'That approach seemed to be based on the view that the Society would maintain a special relationship with the Government of the day (of whichever party) and that this objective would best be served by providing opinions in confidence to the Government alone. The flaw of that argument is that no such special relationship exists'.

Mr Berinson suggested that a means of getting better input from the legal profession would be 'a greater willingness by Government to circulate its draft Bills well in advance of their presentation to Parliament'. He then turned to the growing concern with 'community law reform' which has been pioneered by the ALRC and the NSWLRC:

'There is one other important role which is open to lawyers in their individual capacities. There must be many problems emerging in practice

which suggest a need for legislative reform but very few are brought to the attention of MPs. Perhaps this is because they are thought to involve too few affected persons but, whatever the reason, this inaction is a pity and many such cases would be non-contentious (at least in the party political sense) and would therefore have reasonable prospects of leading to reform...Whether the profession, for its part, has the interest and energy to expand itself in this respect is a matter which readers will be better qualified than I to judge'.

J Berinson *Brief* (WA Law Society) 1982

**wa strata titles.** Meanwhile the WALRC continues its output of high quality reports on a variety of topics given to it by the outgoing Liberal Government. In 1982 it completed a major review of the WA Strata Titles Act 1966-78. That Act was originally based on the NSW legislation 1961. By 1982 more than 95,000 people in WA were living in strata title home units. Numerous defects had been disclosed in the WA Act and the NSW model was completely revised in 1973 and has been amended subsequently. In Queensland the Building Units and Group Titles Act 1980 had also introduced a number of innovations. Other States continue to operate under legislation broadly similar to the NSW law. One factor, as disclosed in the WALRC report, differentiating the position of WA from NSW and Qld, was that although the Act had originally been designed for high-rise residential developments, it was mainly being used in WA for single developments such as duplexes. About 10% of strata developments in WA are small factories, office buildings or commercial premises. The WALRC examined strata title legislation in New Zealand and model uniform bills produced in the United States as well as other Australian legislation, in developing its proposals. The bulk of the WA report concentrates on matters of title, including Town Planning Board and Local Authority requirements. The rules which govern the management of strata schemes and the most appropriate means of resolving disputes amongst participants as well as matters such as the enactment of appropriate safeguards to protect purchasers and the creation of a

system of cluster title as distinct from strata title, are all reviewed in the report. The report is the longest produced by the WALRC running to some 380 pages. Major recommendations are offered:

- to speed Town Planning Board and Local Authority approvals for development;
- to permit the boundaries of lots to extend outside a building;
- as to unit entitlement;
- to cover the enforcement of by-laws against persons other than owners; and
- to propose the introduction of a Strata Titles Referee Scheme similar to that operating in Queensland for the resolution of disputes.

The outgoing State Attorney-General, Mr Ian Medcalf, Q.C., said before the State election that the Government intended to introduce pending legislation into Parliament after there had been a reasonable opportunity for study and comment on the WALRC report. Now it is over to Mr Berinson.

*latent injury.* Another report recently issued by the WALRC deals with limitation and notice of actions in the case of latent injury and disease. The WALRC recommends that the limitation period for personal injury claims should be continue to be six years. However, this period should not apply where a court determines that it is just that it not apply in accordance with certainly statutory criteria recommended by the Commission. Those criteria include reference to the failure of the plaintiff to commence proceedings within the limited period where the plaintiff neither knew nor reasonably ought to have known that he had suffered an injury.

Other suggested criteria included reference to:

- the steps if any taken by the plaintiff to obtain medical, legal or other expert opinion;
- the nature of any such advice he received;
- the extent to which the plaintiff acted promptly and reasonably once he knew that an act or omission might have been capable of giving rise to an action for damages;
- the conduct of the defendant after the cause of action occurred;
- the extent to which the defendant may be prejudiced in defending the action;
- other remedies available to the plaintiff; and
- the duration of any disability of the plaintiff whether arising before or after the cause of action accrued.

The WALRC report also deals with questions such as retrospective operation of reform, procedures for dealing with determination of the issue, renewal of writs, joinder of parties, amendments, contribution between tortfeasors and consequential amendments to legislation dealing with actions against the Crown and public authorities. Shortly after receiving the report, the outgoing WA State Government announced that it was considering establishment of a fund to help people suffering from asbestosis arising out of mining operations in Wittenoom in Western Australia. The outgoing Government said, however, that there could be problems in implementing the WALRC recommendations as some defendants 'could be prejudiced after many years'. It was also said that the proposals might introduce uncertainties into the law. At the stage of writing, it is not known what reaction will be follow the change of Government and the election of a Labor administration.

*other wa developments.* Meanwhile a selection of other WA developments:

- The annual report of the WALRC for the year ended 30 June 1982 includes the terms of a new reference received by the Commission dealing with prescribed interests under the Companies (WA) Code. The WALRC has been asked to give particular attention to the need to facilitate fund-raising schemes which benefit the community but at the same time to provide adequate safeguards for investors having regard to the nature and size of the investment. Some of the matters which will need to be considered under this new reference include time sharing, film and horse racing syndicates and franchising agreements as well as unit trusts of the more traditional type.
- The prospectus for the 53rd Congress of the Australia and New Zealand Association for the Advancement of Science is now available. The Congress is to be held in Perth from 16 to 20 May 1983. Section 42, Law, appears for the second time in an ANZAAS Congress and a major program of great interest has been prepared under the direction of the Chairman, Professor Richard Harding, Dean of Law at the University of WA Law School. President of the Section is Dr Michael Crommelin, Reader in Law at the University of Adelaide. Amongst items being dealt with in the Law Section are papers on mining law, the law and solar energy, Aboriginal law and energy resources, and judges and scientific evidence. Joint sessions are being planned on Aborigines and the law with Section 27 (Criminology) and communication technology and the law with Section 33 (Communications). The organiser of the Section for ANZAAS is Mr W. S. Cooper, WA Institute of Technology, Perth.
- One of the established features of the WA legal scene is the Law Summer

School which attracts leading legal speakers from all parts of Australia. The School held in February 1983 was no exception. Devoted, aptly enough for the economic times, to insolvency and debt recovery law, it included a lead paper by Mr Justice B.H. McPherson, Chairman of the QLRC. The paper reviews options for debtor and creditor insolvency. In the course of his paper, the judge referred to the still unimplemented report of the ALRC *Insolvency: The Regular Payment of Debts* (ALRC 6, 1976). As pointed out, this report was confined by its terms of reference to the 'small or consumer debtor'. According to the QLRC Chairman, it represented a 'thoughtful attempt to find a solution to some of the social and economic problems besetting poorer members of the community and the solution suggested is one with which perhaps not many would disagree'. It is pointed out that the proposals in ALRC 6 do not set out to 'suggest a novel alternative for creditors and debtors in circumstances in which insolvency is most frequently encountered i.e. corporations and individuals who engage in trade'. Work on the ALRC project on debt recovery continues in the ALRC with a report expected late '83 or early '84.

A time of action and change in the west.

## **courts' reform**

'The people can change Congress, but only God can change the Supreme Court'.

George W Norris

*national court?* In response to criticism about the developing dichotomy of the Federal and State court systems in Australia (see [1982] *Reform* 144) the outgoing Federal Government indicated in February 1983 its strong support for a major plan to create an integrated court system for Australia. Senator Peter Durack, Q.C., in an announcement coinciding with the