rely on the English rules of 1883. The terms of reference suggest that there should be uniform rules of court concerning admiralty jurisdiction throughout Australia. Clearly, an important and sensitive question will be the extent to which, if at all, the Federal Court of Australia should be charged with admiralty jurisdiction either concurrently with or exclusive of the jurisdiction presently exercised by the State supreme courts. A reformed admiralty jurisdiction is an essential attribute of a maritime trading nation such as Australia. One consideration will clearly be the extent to which maritime claims can be readily enforced through arrest of ships (including 'sister' ships) wherever they may be found within Australian jurisdiction. Factors such as this provide an urgent need for a comprehensive and accessible statement of admiralty jurisdiction and a substitution of local for outdated Imperial legislation. It is interesting to reflect upon the reasons for the delay in the repeal of the 1890 Act in Australia. The Act has been repealed in Canada and in New Zealand was repealed and replaced by the Admiralty Act 1973 (N.Z.).

sea law. Meanwhile, another development of note in relation to sea law was the signature at Montego Bay, Jamaica in December 1982 of the Law of the Sea Convention. After 13 years of negotiations, the Convention was signed into law. It deals with 70% of the world's surface. Some 61 countries, including Australia, signed the treaty which adopts a concept originally put forward by Malta that resources of copper, nickel, cobalt and manganese in the sea are a 'heritage for humanity'. To administer this 'heritage', an International Seabed Authority is to be set up. Other important provisions:

- the maritime territorial limit is set at 12 nautical miles;
- a continental shelf is defined;
- an exclusive economic zone of 200 miles is established but subject to transit zones in straits;
- traditional freedoms of navigation, overflight, scientific research and fishing on the high sea are confirmed and defined.

Australia's chief delegate to the Law of the Sea Conference, Mr Keith Brennan pointed in the *Sydney Morning Herald*, 9 December 1982, to the serious political and legal consequences that would arise from attempts to exploit the resources of the seabed beyond national jurisdiction. Disappointing to the signatories was the United States rejection of the treaty and the decision of some other major maritime powers, particularly the United Kingdom, the Federal Republic of Germany and Japan, not to sign the treaty for the time being. President Reagan repudiated the United States involvement on ideological grounds that no nation 'should be asked to restrict private enterprise' in the exploration of the resources of the sea.

Another illustration of the difficulty of securing international agreement on sea law is the flagging interest in an international convention on liability for goods lost, damaged or delayed at sea. Known as the Hamburg Rules, because designed by a United Nations sponsored conference on martime trade law convened in Hamburg in March 1978, five years have passed since 78 participating countries resolved without dissent to replace the Hague Rules of 1924 with an up-to-date treaty. So far only 7 countries have signed and none of them is a major force in world shipping and trade. See *Australian Financial Review*, 2 December 1982, 22.

Law reform nationally and internationally has set sail. Dangers lie in doldrums as well as storms.

work laws in recession

The first decision I was ever a party to was attacked, officially, by Sir Robert Menzies. It was the end of the arbitration system. And that's 23 years ago!

Sir John Moore, President, Australian Conciliation

and Arbitration Commission,
Canberra Times, 19 October 1982

storming parliament. The growing number of the unemployed in Australia, the drop in domestic investment and economic optimism and the general gloom of the Western world's economic scene have implications for law reform. In a parliamentary democracy, where the consent of the governed is so important, widespread economic dislocation in a community well aware of majority wealth and prosperity, is a formula for discontent and disruption. A possible signal to the nation was given by an unprecedented event on 26 October 1982 when angry miners, stirred by loss of jobs, a long march from Wollongong and not a little rhetoric, pushed and shoved their way into King's Hall in the Australian Parliament – a very direct breach of parliamentary privilege.

'Is it a revolt?' Louis XVI asked one of his dukes. 'No Sire, it's a revolution' he answered. Were the events in King's Hall a rustic Australian equivalent of the march on the Bastille or the assault on the Winter Palace? Generally speaking, the editors thought not. The *Australian Financial Review*, 28 October 1982 declared:

> It would be a mistake to take too seriously the demonstration in Canberra...which involved a small amount of violence and a momentary invasion of Parliament House. It is a not a sign of a new stage in political action in this country, nor can it be expected that it will be followed by similar such efforts...However, it would be a mistake to dismiss the demonstration too easily. For it represents the possibility of a disturbing political development. First of all because there was a genuine element of desperation in the affair, reflecting anger and puzzlement...second, because this kind of action represents an important tendency in society, which is confined to neither the political Left or the political Right, to opt for aggressive and irrational political solutions.

The same point was made by the Melbourne *Age*, 28 October 1982:

> No revolution; hardly a revolt. More a stunt. Entry by force into King's Hall is to be strongly deplored, not least because it will inevitably lead to measures which further inhibit those who seek to go there peaceably...The action of the miners was shallow, careless, foolhardy and dangerous. True, the damage to free representative Government was slight. But the slightness of the damage must be weighed against the preciousness of the thing damaged.

The daily news of more workers out of their jobs and the steady rise of the band of the unemployed has produced a little legislation and many comments and suggestions, including some for law reform. The concentration of the national attention on employment and industrial relations seems likely to produce more attention to the industrial relations laws of Australia in the months ahead.

work sharing? Two judges involved in the taxing daily business of industrial relations law have, during the last quarter, offered law reform comments.

- Mr. Justice J.T. Ludeke, addressing a seminar held by the Newcastle Branch of the New South Wales Industrial Relations Society, pointed out that employers had no legal protection under proliferating unofficial agreements for work sharing. Such arrangements are apparently already widespread in the metal, clothing, textile, footwear and rubber industries. The Judge, a senior Deputy President of the Australian Conciliation and Arbitration Commission, suggested that Australia's industrial tribunals should take steps to legitimise what was happening and, possibly, to 'offer their assistance to employers and unions by calling on parties to show cause why an award should not be varied on a case-by-case basis to make provision for the arrangements that are in fact being negotiated. Moves towards job sharing were, he said, an attempt to

save jobs. So far no action on that front.

- A member of the New South Wales Industrial Commission, Mr. Justice J.J. Macken on 3 December 1982 told an industrial relations seminar organised by the University of New England that the union movement would have to accept the realities of the economic moves towards part-time or casual employment and job sharing. He said that if, following the recession, Australia were to become a high technology resource based economy, the trade union movement of the future would be radically different. Worker co-operatives, independent contractors and similar arrangements would provide the bulk of union membership.

Commenting on Mr. Justice Ludeke's revelation of the 'best kept secret of the recession' (work sharing arrangements) the *Australian* (11 October 1982) declared:

> The attitude of the work force appears in stark contrast to the attitude of its union leaders, who want to maintain their claims for real wage maintenance on the grounds that wage rises will stimulate the economy out of the recession. This line also has its adherents outside the union movement...But while the 'surreptitious' arrangements are a welcome sign of flexibility, their illegality is a cause for concern. The judge's suggestion seems to be a sound one. It is unpalatable to have to accept the arrangements which have crept into existence, but if they save jobs, they will have served a useful purpose. Any move to protect the parties involved can only improve their chances for success.

legislative front. Meanwhile, legislatures and governments endeavour to tackle the problems of chronic unemployment in a time of inflation.

- November 1982 was dominated throughout Australia by discussion of a national wages pause. A Premiers' Conference in early December 1982 secured only limited agreement and the precise scope and operation of the pause is not yet clear. Mr. Justice Ludeke has again warned politicians and administrators that the concurrence of Australia's industrial tribunals, acting independently and within their constitutional and statutory requirements, could not be automatically assumed. At the time *Reform* goes to press, the Federal and State Governments, employers organisations and the Australian Council of Trade Unions are in the midst of submissions to a Full Bench of the Australian Conciliation and Arbitration Commission concerning extending a wage 'pause' in the private sector regulated by Federal industrial awards. Federal legislation designed to 'freeze' Federal public service salaries in Australia for 12 months passed through the Australian Parliament before it rose for the Christmas recess. Similar laws are expected in at least some States.
- In Western Australia, controversial amendments to the Industrial Act have been passed including provisions for automatic stand downs, removal of the State jurisdiction to administer union dues deductions and fines of up to $10,000 for unions or individuals who refuse to work with non-unionists.
- The Federal Government also has before Federal Parliament at the time this issue goes to press, legislation proposing automatic stand downs during strikes and a ban on compulsory unionism. Earlier proposals for industry based unions, now apparently strongly opposed within the Government Parties, seem unlikely to proceed.
- Just before it rose for the Christmas break, legislation was rushed through the New South Wales Parliament requiring companies to notify the State

Industrial Registrar of proposed retrenchments in certain cases. The Employees' Employment Protection Act 1982 (N.S.W.) imposes on companies which employ 15 or more workers an obligation to notify sackings seven days before they take place. Employers are obliged to supply details of redundancy payments and provision is made for a fine of $5,000 for each breach. As well, retrenchments not notified may be declared illegal. Mr. Alan Jones, speaking for the N.S.W. Employers' Federation described the new requirements as an 'attack on employers'. The *Sydney Morning Herald* (2 December 1982) in an editorial described the measure as 'a panic induced measure – a cross between the unrealistic demands of the Labor Council and the Government's desire to be seen to be doing something'. But another newspaper in Sydney on 1 December described it as a plan 'to save Christmas jobs'.

- On 29 November 1982 the Full Court of the Supreme Court of Victoria held that the Industrial Relations Commission of Victoria did not have jurisdiction to make reinstatement orders in cases of unfair dismissal. It held that a dispute as to whether a particular employer should employ a particular worker did not come within the general concept of 'an industrial dispute'. The Victorian Minister for Labour and Industry, Mr. Rob Jolly, promised early action by the Victorian Government to change the legislation giving rise to the decision.

ramshackled laws. Accordingly to Michael Stutchbury, writing in the *Australian Financial Review* (26 October 1982), the national wave of retrenchments, which shows no sign of breaking, has led unions to look increasingly to the arbitral tribunals throughout Australia rather than to industrial action for protection against redundancies. With workers in a weaker bargaining position in the market place, the role of arbitral tribunals, as protectors of workers' rights, has suddenly become more important.

However, the rules within which Australia's industrial relations tribunals, particularly the Federal Arbitration Commission, must work, have come in for criticism in the last quarter. On 12 December 1982 the ALRC Chairman, Mr. Justice Kirby addressed reform of industrial relations laws at the annual luncheon of the Employers' Federation of New South Wales. In the course of his address, amongst other things, he criticised:

- the reliance of the national industrial relations system because of constitutional requirement, on 'disputes' and the adversary process which, he said, often promoted 'the psychology of difference';
- the procedural requirement also arising from interpretations of the Constitution of 'logs of claim' which created 'artificial paper disputes' making 'unreality and extravagance institutionally assured';
- numerous artificial legal decisions on what was an 'industrial matter', which he claimed 'leave economists laughing and the community perplexed';
- the separation of the functions of the Federal Arbitration Commission from the Federal Court, which deprived the Commission of the power to give binding interpretations of its awards and to enforce awards in the manner intended by it;
- the dual establishment of Federal and State tribunals with the consequence of hundreds of unions, whereas in Germany 'you can count the number of unions on the fingers of your hands';
- the ability to manipulate the Federal and State industrial systems to take advantage of disparaties achieved in one part of the country and to secure

a 'ripple effect' of claims throughout the nation.

Mr. Justice Kirby reminded the audience that Sir John Latham, when he retired as Chief Justice of Australia in 1952, had said that he was 'ashamed' to refer to the law on conciliation and arbitration which he had described as 'legalistic in the extreme despite its importance to modern life and political and economic questions':

> The essential question I want to ask is how much longer we can continue with this ramshackled arrangement of the 1890's? As times get harder and as the economic and social problems proliferate and bite, is it reasonable to force the solutions to today's problems through machinery designed for very different economic and political circumstances nearly a century ago. This is no academic concern of a professional law reformer. It is a practical problem that arises from industrial dislocation, promoted or aggravated, by inter-union disputes and by inter-jurisdictional differences'.

Detailing the problems of what he termed 'the dispute syndrome', the 'ambit exaggeration', artificial interpretations, the 'bifurcated institution' and the dangers of the 'leap frog' and the 'demarcation dispute', the ALRC Chairman came back to the principle:

> Ultimately it comes back to democracy and responsibility. All too often in Australia responsibility is shirked. All too often we are ready to pass our problems over to unelected judges and other officials, absolving the responsive and elected arms of government from answerability, even for major social and economic decisions. Australia is one of the few countries where the national government does not have direct substantial power and responsibility to so vital a facet of economic policy as industrial relations. It is the only country – including the only Federal country – where the power is constitutionally forfeited from politically responsible officials to an elected independent tribunal, whose decisions can be castigated by all with the sweet knowledge that electoral accountability is not required.

getting perspectives. The economic recession shows no sign of abatement. The Federal Minister for Employment and Industrial Relations, Mr. Ian Macphee declared on 30 September 1982 that the difficulties inherent in the operation of a Federal system of industrial relations were 'generally recognised'. But he pointed out that a number of 'useful short term measures' had already been agreed upon including legislative provision for members of Federal and State industrial tribunals to sit together or to exchange relevant jurisdiction. Let the last words, like the first, be had by Sir John Moore, President of the Australian Conciliation and Arbitration Commission for the past 9 years and for 23 years a member of the Federal industrial tribunal. In a thoughtful article by Gaye Davidson 'Philosophy of Balance Guides Sir John Moore' published in the *Canberra Times* (19 October 1982) he is reported as saying that change in this area is not something that will happen easily in Australia. Comparing the German system he said:

> It could not happen in this country with the present institutional framework. I don't see how it could possibly happen, given our background and beliefs. I am not talking about it as a question of principle – I am talking about it as a pragmatic situation...The institution itself is changing, perhaps imperceptibly, but if you have been on it as long as I have, which is 23 years, there is quite a change in the way matters are dealt with.

For those who want to see the past, a useful monograph by Chris Fisher 'Innovations and Industrial Relations: Aspects of the Australian Experience 1945-1980' has just been published by the Research School of Social Sciences of the Australian National University. For those who want to see the future, keep reading.

foreign state immunity

> We are handicapped by foreign policies based on old myths rather than current realities.
>
> James William Fulbright, U.S. Senator, 1964

new reference. A further new reference has been given to the ALRC. It relates to the law of foreign State immunity. This is the first time that a national Law Reform Commission has been asked to examine this topic. Dr. James Crawford, full-time Member of the