Reform went to press. It is clear that Professor Hambly and his team will have to prepare their proposals for matrimonial property law reform with a clear-sighted appreciation of the interaction of property provisions of the Family Law Act with the complex web of State laws, institutions and procedures governing real and personal property.

one-year rule. Meanwhile, in England the House of Lords has approved the Matrimonial and Family Proceedings Bill, based on a report of the Law Commission of England and Wales. The Bill proposed the reduction from three years to one year of the minimum duration of a marriage before a divorce can be sought.

Lord Denning, the former Master of the Rolls, speaking in the Debate, urged that there should be no time limit at all before married couples were able to seek a divorce. He pointed out that a divorce petition could be launched at any time in Scotland if there was an irretrievable breakdown of marriage. He argued for uniformity between the laws of Scotland and England on such a matter. The Bishop of London (Dr Graham Leonard) supported this amendment. He said it would avoid giving the impression that one year was an adequate time in which a couple could and should judge if their marriage was a success. Lord Hailsham, the Lord Chancellor, agreed that not a single marriage had been saved by the imposition of a time bar. However, he said that the House of Lords would be making a 'grievous error' if it failed to 'back the Law Commission' in the relatively small change that it was recommending. He said that those members of the Church who had opposed the change had 'every right to legislate' for the Church's own communicants. However, they did not have the right to impose their views about marriage on the other kinds of marriage which the State had to celebrate. In the result, Lord Denning's amendment was rejected by 63 votes to 40 and other amendments were withdrawn. The Bill then passed through the committee stages. In Australia, a new and more flexible response to the problem of precipitate marriage and divorce was provided in the 1983 amendments to the Family Law Act. An application for divorce within the first two years of marriage must be accompanied by a certificate that the parties have considered a reconciliation with the aid of a marriage counsellor or an officer of the Family Court. A judge may dispense with this requirement in special circumstances.

passions and violence. Where marriage and the law are concerned, whether it is Elton John or the unknown citizen, passions tend to be aroused. The most shocking reminder of this truism in the last quarter occurred on 6 March 1984 in a bomb attack on the Sydney suburban home of respected Family Court judge Richard Gee. Justice Gee is President of the Lawyers Christian Fellowship. By an irony of history, Justice Gee was appointed in 1980 to replace Justice David Opas of the Family Court who was gunned down at the door of his home in Sydney by an assailant still at large. The special risks of Family Court judges doing their duty were remarked by many shocked commentators following this terrible incident.

lawyers' conveyancing

There is no doubt that there will be plenty of work for all lawyers in the future.

Mr JH Kennan, Victorian Attorney-General, Address, 7 December 1983

christmas bounty. On 28 December 1983 the NSW Attorney-General, Mr Landa, sent a letter to the Chairman of the NSWLRC requesting advice from that Commission on 'a number of policy options' concerning the fee-fixing process employed to determine changes that might be applied to different aspects of legal work. Specifically, he asked the NSWLRC:

- whether the present apparatus for determining fees should be maintained;
- whether the factors considered were appropriate;
- whether non-lawyers should be per-

mitted to undertake conveyances of property;
- whether fees charged by solicitors should be advertised.

The Attorney-General's letter was not strictly a reference to the NSWLRC. But it did activate certain matters within that Commission's pre-existing general reference on reform of the legal profession.

In February 1984, less than two months after the Attorney-General's letter, the NSWLRC issued an options paper on *Solicitors' Costs and Conveyancing.*

The train of events arose following the decision of a committee, chaired by the Chief Justice of NSW (Sir Laurence Street) to approve increases in general non-court fees payable to lawyers in New South Wales of 20% and up to 48% for property conveyancing. Mr Landa, in originally announcing the NSWLRC review, said that he doubted that the 48% increase in conveyancing fees would go ahead 'as it was likely that the government would reject them outright':

> The basis of recommending these changes is open to question and certainly the Law Society's claim that solicitors have not had a rise since 1977 is incorrect. Their costs are fixed to the value of land and houses. Since 1977, the rise in real estate in NSW has been between 80 and 140% – solicitors have automatic, inbuilt protection through these factors ... I think they are over the realm of the economic constraints which have been imposed on the rest of the community and there is no reason why lawyers should not exercise this restraint as well.

At the same time, the President of the Australian Council of Trade Unions, Mr Cliff Dolan, said that the awarded increases gained by lawyers 'were not in the spirit of the prices and incomes accord'. He pointed out that they were 'way in excess' of the 4.3% national wage rise.

Commenting on the reference of the matter to the NSWLRC, the *Sydney Morning Herald* declared that the increase had 'struck at the heart' of Mr Landa's 'somewhat schizoid collection of ministerial responsibilities'. Specifically, it referred to Mr Landa's duties as Attorney-General and also Minister for Consumer Affairs, and the fact that an officer of Mr Landa's former department was actually a member of the committee which recommended the increases a month earlier. But the *Herald* went on:

> Nor is it clear just what Mr Landa is expecting from the Law Reform Commission, which is the body he has nominated to undertake the inquiry. It is not one equipped to review the reasoning behind the recommendations made by the committee. Presumably its role will be to examine the whole matter of conveyancing and the near monopoly bestowed upon solicitors in this area by the Legal Practitioners Act ... Conveyancing has become so refined that it is now mainly a clerical transaction – and is treated as such in most solicitors' offices. Developments such as computerised registers of land and titles will accentuate this trend. The experience of other States such as Western Australia and South Australia has demonstrated that conveyancing can be done just as efficiently, and more cheaply, without requiring the solicitor to handle all aspects of the transaction.

monopoly ends? The NSWLRC options paper identifies the various possibilities open in respect of the statutory monopoly in paid title conveyancing:

- abolishing the monopoly;
- relaxing the monopoly, to permit a limited number of groups to offer competition to solicitors, including a Government Conveyancing Office, financial institution or land brokers, such as exist in South Australia; and
- preserving the monopoly.

Even if the monopoly is preserved, the NSWLRC suggests merit in considering a number of changes. These include:

- simplification and improvement of conveyancing law and practice, especially by the establishment of a central register of restrictions relating to land;
- facilitation of fee competition and fee advertising by lawyers;

- clarification of the solicitors' right to co-operate with para-legals, such as the so-called 'cut price conveyancing companies';
- abolition or modification of the present power of the Law Society to prosecute persons for breaches of a monopoly.

In addition the NSWLRC proposes a number of possible changes to the composition of the committee that fixes lawyers' fees. These will include membership by:

- fewer judicial members;
- legal practitioners demonstrably independent of the Law Society;
- experts in economics, statistics and the fixing of salaries, wages and prices; and
- representatives of legal consumers.

what now? Responding to the NSWLRC options paper, the President of the NSW Law Society, Mr Rod McGeoch, said that the Commission's document was 'a worthwhile summary of the options available, but what now?' As for the monopoly on conveyancing, Mr McGeoch said:

> Competition does exist among solicitors as to their fees. Again, if the government is of the view that there is not enough competition, then the Society is happy to consider the advertising of fees, provided proper safeguards for the public exist. None of these options suggested by the Law Reform Commission are new, but they will take time to bring into operation. It is hoped that the Attorney-General will act promptly and not leave the public and the profession waiting months for the implementation of any options.

It was this issue of the conveyancing monopoly that led Richard Ackland to write in the *National Times* (6 January 1984) that the 'Conveyancing monopoly' is 'set to end'. It was, he declared, a 'comfortable and hugely profitable' monopoly enjoyed by solicitors in New South Wales and Victoria. It was 'in the process of crumbling'.

The *Sydney Morning Herald* (6 February 1984) commented, under the banner 'The law's pound of flesh', that the decision on whether or not to allow the fee increase voted at Christmas 1983 still remains unanswered:

> The 80-page report prepared by the Law Reform Commission specifically avoids addressing this issue. However, reading the arguments put forward, it is not difficult to form the belief that the Commission finds the present system of the legal profession itself deciding what its pound of flesh should be, a relic of the 19th century.

In a thinly veiled call for an end to the solicitors' monopoly in conveyancing the *Herald* urged:

> The policy behind the options for change, that competition, including price competition, is crucial, makes sense. The present system of conveyancing is archaic and imposes unnecessary restrictions on solicitors and their clients. If Mr Landa chances his arm and acts to drag the system into the 20th century, he will be able to parade as the home buyers' friend.

buccaneer professions?

It is, it is a glorious thing
To be a Pirate King

WS Gilbert, Pirates of Penzance, 1879

professional debate. The debate about the legal monopolies enjoyed by professions, in Australia and elsewhere, mentioned in the last item, has hotted up in the last quarter. Indeed, on the subject of conveyancing of title itself, the legal monopolies and professional fees, the debates have been heated.

- In an address to the Northern Suburbs Law Association in Melbourne on 7 December 1983, the Victorian Attorney-General, Mr JH Kennan, ruled out any immediate removal of the solicitors' monopoly in conveyancing work. 'I can understand your concern', he said, 'as to the future of the legal profession. Some people are concerned that solicitors will lose the conveyancing monopoly. Let me say that I do not propose to amend the law to take away