

The main problem identified by the Commission is that the present Act encourages neighbours to litigate their differences. The report's recommendations are designed to put responsibility for deciding what type of fence should be built back into the hands of the people concerned. The Commission has prepared a 'Plain English' pamphlet which would assist neighbouring landowners to settle any disagreements before they get out of control.

Among the changes recommended by the Commission:

- Owners would only be liable for half the cost of providing a 'sufficient fence'. The standard of fence would depend on a number of factors, including the kind of fence usual in the neighbourhood, the uses to which the affected properties are put, the privacy of the occupiers, and the standards set by local councils and other government agencies.
- The current distinction between construction and repair would be abolished. Instead, all types of 'fencing work' would be subject to the same rules and procedures.
- Disagreements could be settled by alternative dispute resolution, including Community Justice Centres and Court-appointed arbitrators. If the neighbours were unable to agree after mediation, Local courts and local land boards would still have the power to decide disputes by ordering a particular type of fencing work to be done and the neighbouring owners to pay for its cost.
- In built-up areas, and in other areas declared by the government, local councils and government departments should be treated like private owners. At present, government bolides are not generally bound to

pay for fences between their land and privately-owned land.

The Commission has also proposed several technical changes to make the Act more rational, especially as it applies to country areas.

Copies of the report, *Dividing Fences*, are available from the New South Wales Law Reform Commission, Level 12, ADC House, 189 Kent Street, Sydney (telephone (02) 228 7213).

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### drunkenness, cannons and night-soil carts

On 7 June 1989 the Law Reform Commission of Western Australia (WALRC) issued a Discussion Paper on the offences in the Police Act 1892.

The Act deals with relatively minor offences such as disorderly conduct, trespass, public drunkenness, petty dishonesty and minor property damage.

Many offences still in the Act are no longer relevant today. These include offences such as drunkenness (which the Western Australian Government has already announced is to be abolished) and a large number of 'public nuisance' offences such as flying kites, firing cannon near dwelling houses and overturning night-soil carts.

On the other hand, many offences in the Act, such as trespass and disorderly assembly, are still important. In such cases the Commission had suggested amendments to clarify the offences, remove overlap and duplication between them, and to assist the efficient administration of the law.

Some offences raise questions above the balance of public and private interests. The Commission suggests that some offences, such as being suspected of being about to commit an offence, and being suspected of having civil designs, should be abolished.

Some offences put the burden of proof on the defendant to show innocence. The Commission says that this is inconsistent with the normal principles of criminal law adopted in the Criminal Code that the prosecution must prove every element of an offence beyond reasonable doubt.

The paper also looks at powers of arrest, entry, search and seizure found in the Police Act. Many of these provisions are duplicated by provisions in the Criminal Code and could be repealed. But the arrest powers in the Police Act are wider than those in the Criminal Code, which allows arrest only for offences carrying a prison term. The Commission suggests that where offences do not involve a possible prison sentence police power to arrest should not be invoked unless it is not possible to issue a summons and certain special conditions are fulfilled.

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### **The Hon Justice Maurice O'Loughlin**

The Hon Justice Maurice Francis O'Loughlin has been appointed a judge of the Federal Court of Australia with effect from 1 August 1989. He has been a judge of the Supreme Court of South Australia since 1984. Prior to his judicial appointment, he was President of the Taxation Institute of Australia from 1970 to 1972 and President of the Law Society of South Australia from 1975 to 1977. He was also Chairman of the Legal Services Commission of South Australia from 1980 to

1985. His major areas of practice were taxation, companies and commercial law. Justice O'Loughlin's appointment will fill the vacancy which will be caused by the retirement of the Hon Justice Fisher on 1 August 1989.

### **National Companies Scheme**

Mr Anthony Hartnell has been appointed Chairman of the Australian Securities Commission (see article on company law in this issue). Mr Hartnell, a senior Partner in the major Sydney commercial law firm of Allen Allen & Hemsley, has been appointed for a three year term from 10 July 1989. Mr Hartnell was a Senior Assistant Secretary from 1973 to 1976 in the Attorney-General's Department and Deputy Secretary, Department of Business and Consumer Affairs from 1976 to 1979. Mr Hartnell has wide experience and acknowledged ability in corporate and commercial law and business affairs and public administration. In announcing the appointment of Mr Hartnell, the Deputy Prime Minister and Attorney-General, the Hon Lionel Bowen, said 'the appointment of Mr Hartnell will enable him to begin work immediately on the establishment of the ACS, including the selection of staff and offices, so it can assume responsibility for the administration of companies and the regulation of the securities and futures industries as soon as possible'. Mr Mark Burrows has been appointed Convenor of the Advisory Committee, established by the ASC Act, to advise the Minister on the operation of the legislation and law reform issues. The government has established the Committee as a statutory body with its own secretariat and budget to ensure the business and professional community can maintain effective input and access to the Minister on policy considerations affecting the national scheme. The ASC Chairman will also serve on the Committee. Mr Burrows, Chairman of the leading corporate advisers Baring Burrows, has been Chairman of the Steering Committee which worked on the development of a new national scheme over the past two years. Other appointments to the Advisory Committee are Mr Leigh Hall,