scribing introspection. But there was an edge to his remark : 'And the Attorney-General is the first sinner'. Sir Walter Campbell lined up with the Brisbane organisers of the convention – declaring that the legal profession had been 'too self-reproachful and too conscience-stricken for too long'. But the Attorney-General was not the only one to resist the instructions from on high:

- According to Mr Slee, there were far more papers (68, with 48 commentaries) than in previous conventions. But these papers were not predistributed or always available and most time was taken up by the sheer presentation of the paper-writer and commentators, in default of written pre-distributed documents.

- The redoubtable Justice Sir Reginald Smithers (Federal Court) ultimately had enough when one session he attended, and upon which he wished to speak, ran out of time before the audience was called on. 'I must register a protest', he said – according to John Slee echoing the muttering and dissention in the audience.

- The ALRC Chairman, in a speech mid week outside the convention, suggested that the 'end to introspection' had gone too far. 'Gone are the studies of law reform, the organisation of the professions, community justice, legal aid and so on. These are banished, nowhere to be found in the program. Instead, the emphasis is on lawyerly things'. However, Justice Kirby conceded that when Senator Evans spoke of costs and income, he was certainly getting down to 'basics' – though not necessarily of the kind intended by Mr Murphy.

President Murphy commented in *Law News* that there had been discussion of law reform, citing the session led by Justice Hunt (NSW Supreme Court) on defamation reform. However, he did not say that that session had excluded commentators from the ALRC, although its report (ALRC 11) was the focus of discussion. Indeed, for the first convention since its establishment, the ALRC Commissioners were excluded as paper writers or commentators even though many current ALRC projects would certainly qualify as 'basics' in any view. Other Australian law reform agencies fared no better. Introspection and self-criticism were clearly out of vogue.

other critics. Other critics reacted to the 'complacent' and 'anti-intellectual' moves sometimes apparent in the Brisbane Legal Convention. As reported in the Rotorua *Daily Post* (27 August 1983) one of the organisers for the 1984 New Zealand Law Conference at Rotorua, Mrs C J Rushton, said that New Zealand observers had been 'disappointed with the "back to basics" theme'. Singled out for criticism was the lack of time for commentators to speak on papers or for participation from the floor. 'We want to look at where the law is going and how the law and lawyers can best cater for the needs of society. We want to examine the interaction of the law and politics', said Mrs Rushton. Commented the *Post:* 'All of which was very much in contrast to the Australian conference in Brisbane'. The NZ Law Society Conference will be held in Rotorua, NZ, 24-29 April 1984.

lawyers' reform

Even lawyers are partly human.

A M Honore, *Gaius.*

critique continues. The Brisbane Conference of the Law Council of Australia may have disdained self-criticism but criticism has continued to be addressed at the legal profession in Australia. And there are hints of reform.

- In an article in the *Australian* (4 July 1983) coinciding with the convention, NSWLRC Commissioner Julian Disney took to the pages outside the Brisbane conference to urge substantial changes in the organisation and methods of the legal profession in

Australia. In a reference to a telling statistic, he claimed that although supervision of solicitors' trust accounts had been intensified, the levels of lawyerly misappropriation in New South Wales and Victoria 'remain the highest in the English-speaking world'. He asserted that law societies and bar associations had been unduly affected by a narrow 'trade union' perspective of their role and had failed to provide the necessary impetus for reform.

- Mr Max Burgess of the Law Consumers' Association joined the debate in the *Australian* (22 July 1983) castigating the Law Society for its opposition to self-help systems such as cheap land title conveyancing. Specifically mentioned for criticism was the 'sliding scales of costs' which have 'permitted lawyers to do very well out of the effect of inflation'.

- Shortly prior to the Legal Convention, the Chief Judge of the Family Court of Australia, Justice Elizabeth Evatt, declared that some lawyers were guilty of promoting a 'hostile and adversary' approach to disputes over custody and access to children (see *SMH,* 13 June 1983, 3). In an article in the latest issue of the *Australian Journal of Social Issues,* Justice Evatt acknowledged that the court's counselling services were understaffed and sometimes slow in producing their reports. However, she said that she believed some lawyers deliberately ignored practice directions issued by the court. They did this in an effort to speed up their client's case. However, in doing so they were disregarding the policy of the court to promote reconciliation or improvement of the relationship of parties to each other and to children.

defence case. The legal profession did not just accept the criticisms mentioned above and in the previous item:

- Law Council President Murphy criticised the Federal Attorney-General's suggested moves into fee cutting. He said that such moves would be superfluous because 85-90% of all fees were already controlled by government or statute. He claimed that the legal profession had a freeze on fees since the middle of 1982 and that Australian lawyers were 'not free to charge what they liked'.

- Mr Muphy also claimed that it was wrong to assume that lawyers enjoyed high incomes. He said that recent investigations had shown that the average income for a suburban or country solicitor, regardless of length of practice, was between $18,000 and $30,000 per year. Less than 1% of the members of the Law Council's constituents enjoyed huge incomes. 'A recent survey of the Young Lawyers' Committee of the NSW Law Society showed that 45% of the younger members of the profession, after four years at university, a further six months at a legal training course and then four years in the work force, earned an average income of $18,200.

- Mr Jack Harty, President of the Law Institute of Victoria, wrote to the *Age* (6 July 1983) asserting that the real income of lawyers in Victoria in the ten years before June 1981 had dropped 'by nearly one quarter' while the average real income of wage and salary earners had risen over 70%. He claimed that use of government employed lawyers could actually increase costs because of the high wages they could command.

- Mr Don McLachlan, President of the NSW Law Society, responding to Julian Disney (above), contended that ten major reforms had been introduced in the NSW legal profession over the past few years. These included in-

troduction of compulsory professional indemnity insurance; appointment of laymen to ethics and other committees; establishment of a community assistance department to inform people of their legal rights; adoption of extensive programs of continuing legal education and so forth.

- As a practical assistance to the community, the New South Wales Law Foundation has produced a Victorian edition of its *'Pocket Guide to the Law'*. The previously published Guide sells at less than $3. According to its editor, Mrs Jan Bowen, it is selling well. Great care has been taken to use plain English instead of legal jargon. The NSW version is a 'best seller'. In the first six months it notched up 130,000 sales – more than most legal texts!

- Now, the Law Council is actually fighting back. At the end of June 1983, it was announced that a lobbying body, 'National Action Group' (with the somewhat unfortunate acronym NAG), has been established to identify all lawyers in Australia who know key people in government. The aim is to make the voice of the legal profession heard more clearly in decision-making quarters – with politicians and senior public servants.

reform moves. August 1983 saw announcements about proposals for reform of the legal profession on both sides of the Australian continent:

- On 6 August 1983, the West Australian Government released the Clarkson Report on the Legal Profession in Western Australia. The report rejected a proposal that a legal distinction between barristers and solicitors should be introduced in the West, claiming that such a distinction would have the 'potential for fuelling pointless and destructive friction and conflict both publicly and within the legal profession'. Instead, the committee concluded that the voluntary Bar in Western Australia worked well enough and that formal division was neither desirable nor necessary. It also recommended increases in public participation in the discipline of lawyers and controlling of their fees. Disciplinary powers should be transferred to three new bodies – the Legal Practice Board, the Legal Disciplinary Tribunal and the Complaints Committee, all of which should include members of the public as well as lawyers. Commenting on the report, WA Attorney-General Berinson said that he agreed that the public should play a more significant role in the regulation of the legal profession. The government would allow three months for public comment. It would introduce changes in the law of Western Australia in 1984.

- In New South Wales on 29 August 1983 it was reported that State Attorney-General Paul Landa was proposing to State Cabinet the abolition of the formal distinction between barristers and solicitors. He was also proposing legislation to give the public a role in regulating and disciplining lawyers, along the lines broadly suggested in April 1982 by the NSWLRC. Commenting on the prospect of legislation, the President of the NSW Bar Association, Mr Michael McHugh QC (*Sydney Morning Herald*, 29 August 1983) said that his Association was strongly opposed to amalgamation of barristers and solicitors. He believed that it would reduce the pool of talent available to the public in the present independent Bar. Mr McHugh put forward his own proposals which included the suggestion that people should only be admitted to the Bar after further training and qualification.

- In Victoria, in late June 1983, the change in Supreme Court Rules has meant that since 1 July solicitors will no longer be obliged to charge a fixed fee for land title conveyancing. Instead, fees in accordance with itemised work done will be required. A Law Institute spokesman, reported in the *Age* (27 June 1983), suggested that the abolition of fixed charges on property sales would 'increase competition among solicitors and lead to reduced fees now that there is a direct relationship between the amount of legal work done and the fee charged'. Commenting on the moves, the *Age* (28 June 1983) pointed out that the long-promised investigation into conveyancing charges 'has not materialised'. Instead, 'a committee of the Supreme Court presided over by one of its judges has made the determination. The matter of deciding about conveyancing charges has, in a sense, been kept in the "club" '. Nonetheless it is interesting to note an advertisement in the *Age* (9 July 1983), Under the heading 'low cost conveyancing'. It advertises a telephone number for solicitors to do 'all legal work' and urges 'ring for a free quote'.

reform overdue. Spurred on by the various moves for reform of the legal profession, the editorial in the *Australian* (8 August 1983) got down to its 'basics'. It referred to the recent report in Western Australia:

> In practice, the closed shop mentality is alive and well. In Queensland and the two States in which lucrative litigation thrives – NSW and Victoria – rigid division [of barristers and solicitors] is enforced. The result is a system which is artificial, costly and time-consuming ... The law grinds slowly, indeed. But when the more influential members of the profession earn more than $1,500 a day, who needs change?

Australian lawyers can take comfort from the fact that they are not the only branch of the legal profession to be under the microscope. Recent reports from Britain suggest that things are happening in the English legal profession – the origin of our legal professional traditions:

- According to a report in the *Times* (8 June 1983) entry to the Bar in England and Wales is to be restricted for the first time in its history by means of a ceiling placed on the numbers starting in training. Students admitted to the one-year vocational course, which all intending barristers must undertake before obtaining pupillage, are to be limited to 950 a year. Numbers are to be annually reviewed. Previously, market forces such as the availability of work and chambers had been the only determining factors. The decision by the Senate of the Inns of Court is published in its annual statement. It avowedly marks 'the end to the unrestricted open-door policy of the profession'. No indication is given as to how the 950 slots are to be allocated. Will they be by some uniform criterion of intellectual and personal qualities? Might there be a risk of social, economic or other stereotyping of future barristers and, therefore, judges?

- According to a later report in the *Times* (29 June 1983) Lord Benson, former Chairman of the Royal Commission on Legal Services in Britain, suggested at a London solicitors' conference that solicitors in the future will lose their conveyancing monopoly unless they succeed in 'meeting the challenge of new technology to make conveyancing cheaper and more efficient'. The Benson Commission recommended that the solicitors' monopoly be retained for the time being. But according to His Lordship, the profession has 'three years, probably less, in which to achieve maximum efficiency in the computerisation of land conveyancing'. There was, he declared, a public

clamour for removal of the monopoly. It could only be repelled if solicitors 'are able to demonstrate superior professional skill, independent advice and reasonable charges'. A member of the Council of the Law Society, Mr Anthony Holland, said that if solicitors offered cut-price work, they would have to 'cut corners'. It would then be left to solicitors who had not cut corners to 'pick up the pieces'.

- A major series of items in the English *Economist* in September 1983 presents a detailed examination of English justice. Anyone interested in reading an economic analysis of the legal profession should examine these items. For example, the *Economist* (3 September 1983) concludes that 'despite the growth of legal aid, the law is still an expensive luxury'. It asks 'What can be done to bring justice within the reach of all?' It suggests that 'huge improvements in efficiency' will be introduced by electronic adjuncts to lawyerly work, including litigation. Ominously, it concludes that 'conveyancing is mainly an administrative job', hinting that computers will soon gobble it up. Yet, in Australia, conveyancing is 50% of the fee income of lawyers and therefore vitally important for the viability of a profession. Will it last?

constitutional waters

Perhaps the letterheads had better be changed back to 'Australian Government'.

Professor P H Lane, *SMH*, 2 July 1983

dam case. On 1 July 1983, the seven Justices of the High Court of Australia handed down their decision in one of the most important cases brought before the Australian Federal supreme court since the establishment of the Australian Commonwealth in 1901. In closely reasoned decisions venturing over 300 pages, the judges by a majority of 4-3 upheld the constitutional power of the Commonwealth to prohibit the building of the Gordon-below-Franklin Dam in Tasmania. If built, the dam would have resulted in the flooding of a major section of Tasmania's south-west, which is included in a listing under the UNESCO World Heritage Convention, to which Australia is a party. The Chief Justice of Australia, Sir Harry Gibbs, was at pains to stress that the decision of the court was purely concerned with legal questions and was not addressed to the desirability or otherwise of the building of the dam or preservation of the site. However, this protestation, and the inherently political role of the High Court in the Australian Federation, did not prevent numerous commentators, scholarly and otherwise, from delving into the policy issues determined by the court.

- Professor Pat Lane of the Sydney Law School (*SMH*, 2 July 1983) referred to the fact that the issue of the Federal authority under the 'external affairs' power in the Australian Constitution had been around for a long time – indeed for 41 years since Justice H V Evatt had hinted at the enormous charter which the power provided to increase the functions and responsibilities of the central government. Yet, according to Lane, it was not until the early 1970s that Federal Ministers went 'tripping abroad signing Labour Conventions' and then came back home to use these as a means to 'get into general labour areas where the States normally rule'. The decision of the High Court in May 1982 in *Koowarta* (1982) 56 ALJR 625 showed a 4-3 majority in favour of the validity of the use of the external affairs power to proscribe racial discrimination in the States. Although the court composition had changed since that decision, Professor Lane was not surprised with the outcome. 'Where do the States stand now? Conventions on labour relations, local development, forest preservation, dams – not to