is satisfactory as it is. Yet the work of the Commission is something which needs to be done. There are too many aspects of our society which we just take for granted without ever questioning. We rarely stop to think if certain traditions and methods of administration are out-dated and no longer necessary or in need of change to fit a changing world. Many changes are forced on us as we adapt to that changing world but other changes which might be made are ignored simply because we have not stopped to think about the necessity of those traditions or their relevance to the present world. It is important that the Law Reform Commission continues to question the current system.

corporate law reform

It is only the innate gentility of the average company director, the natural sweetness of your natures, which generally restrains many of you from expressing the feeling that the law is unnecessarily obscure and that lawyers intentionally speak in riddles, disguising meaning in a mass of verbiage so as the better to mystify the unsuspecting layman.

Sir Ninian Stephen, National Conference, Institute of Directors, March 1984

ingenious device. Ambrose Bierce in his famous Dictionary defined a corporation as 'an ingenious device for obtaining individual profit without individual responsibility'. Other commentators have been more generous. Lord Wilberforce, for example, once described the corporation as one of the most brilliant legal contributions to economic advancement.

To ensure the ongoing improvement of Australia's companies and securities law, a five-member Companies and Securities Law Review Committee (CSLRC) has been established. A note on the membership of this committee was contained in [1984] *Reform* 45. Professor Harold Ford of the Melbourne University Law School is the Chairman of the committee, which is assisted by a full-time Research Director, Mr John Kluver. The committee is established in Sydney, sharing resources with the Secretariat of the Ministerial Council for Companies and Securities and the Accountants Standards Review Board.

Australia's legislation on corporations and securities was developed between 1979 and 1981. As a result, the National Companies and Securities Commission was set up and new take-over legislation, securities and companies legislation was enacted by Federal Parliament to be law in the ACT. That legislation was then made applicable in the States of Australia by a series of Acts passed in each State. Uniform legislation and administration have been enacted in this round-about way. The role of the CSLRC is to keep the uniform code under review and to formulate proposals for new legislation and regulations. The actual establishment of the committee was foreshadowed in clause 21(2) of the Interstate Corporate Affairs Agreement. The review committee is to assist the Ministerial Council to carry out research and advise on law reform in relation to the legislation and regulations. It has no initiating power, being limited to matters referred to it by the Ministerial Council of Federal and State Ministers.

practical reform. According to Professor Harold Ford, in carrying out its functions, the CSLRC aims to develop proposals for law in its special field which:

- are practical;
- facilitate the activities of people operating or investing in companies or dealing with them or with securities;
- do not increase regulation beyond the level needed for proper protection of the community.

So far, the Ministerial Council has referred a number of matters to the committee for inquiry and review. It has given the committee a complete discretion to arrange the priorities of its program. Amongst the items on the current program are:

- use of the corporate form, including the forms of the legal organisation of businesses and circumstances in which courts should be empowered to 'lift the corporate veil';
- legal regimes available for small enterprises;
- mechanisms for regulating take-overs;
- prescribed interests;

- corporate insolvency : a matter upon which the CSLRC is to work closely with the ALRC. See [1984] *Reform* 58.

The committee is developing a discussion paper to be published later in 1984 dealing with forms of organisation for small enterprises in Australia. Professor Ford again:

> The committee's work on forms of organisation for small enterprises will entail examination of the close corporation laws in force in many American States which permit small corporations to operate without a Board of Directors, Scottish partnership law which treats the firm as a quasi-corporation and proposals for a partnership-type of company which have been developed in England and Australia. Critical issues include questions as to the eligibility to be formed as a small business corporate organisation; protection of creditors; under-capitalisation; and ensuring the effectiveness of post-failure investigations. It is beyond the scope of the committee's function to make recommendations about taxation matters.

communicating business. In 1983 the Commercial Law Association of Australia issued a discussion document on the regulation of company electronic cellular meetings. The paper provided an outline of possible legislation which would acknowledge the 'virtual inevitability' of equipment breakdown and the need to provide for and facilitate company meetings utilising electronic means.

This theme was taken up by the ALRC Chairman on 19 April 1984 in an address to the Society of Business Communicators in Sydney. Amongst changes which he said would be needed to adapt to the presentation of corporate records in electronic form were:

- modification of legal provisions in the Companies Code which contemplate or require reports in printed form to be laid before annual meetings;
- provision for the permanent retention of video presentations providing statutory data;
- requirement of printed information, particularly of financial records to supplement video material;
- determination of whether simultaneous teleconference hookups constitute a 'meeting' for the purpose of company law.

commercial list. The same speaker, addressing the New Zealand Law Conference in Rotorua, suggested that the courts had failed adequately to service the disputes of the business community. He claimed that the 'twin problems' of delay and cost were a special burden in the case of business disputes because of the need to provide urgent solutions to large and complex disputes. He said that if Australia and New Zealand hoped to benefit from the 'haemorrhage of commercial activities from Hong Kong' they would have to significantly improve the provision of solutions for business disputes. In particular, he urged:

- establishment of special commercial lists controlled by judges with special expertise in business law;
- provision of circuits by specialist commercial judges to take courts to the places of business disputes;
- substitution of more written argument instead of open-ended oral argument by lawyers in court;
- increasing use of arbitration, including by the appointment of court experts;
- greater use of professional associations and non-lawyers in resolting business disputes;
- greater use of experts and assessors having access to the judge on legal questions but with power to decide practical business and technological questions.

Justice Kirby was supported in his description of the NSW Commercial List by Justice Michael Foster of the NSW Supreme Court, also attending the conference in Rotorua. The doyen of the NSW Commercial List, Justice Andrew Rogers, was highly praised by many Australian participants, including practitioners, for the efficient disposition of commercial business in his court and the innovatory procedures adopted by him to dispose of complex and technical issues arising in the course of

business disputes. In recent cases Justice Rogers has appointed court experts and in a statement out of court even raised the question of whether lawyers should be made personally liable for costs of unnecessary breaches of pre-trial orders designed to move commercial litigation quickly through the lists. In late May 1984 Justice Rogers was invited to deliver a leading paper on resolving commercial disputes, arbitration and litigation in Australia to the conference in New York on Legal Aspects of Doing Business with Australia. Amongst matters dealt with in Justice Rogers' paper are:

- arbitration and litigation in Australia;
- fast-track 'commercial causes' procedures;
- factors affecting the choice of United States v Australian forum;
- enforcement of foreign judgments in Australia.

copyright reform

I walked up the Kahlenberg, and when it got hot and I got hungry, I sat down by a little brook and unpacked my Swiss cheese. And just as I opened the greasy paper, that darn tune pops into my head!

Anton Bruckner on his Ninth Symphony, c 1890

it's apples. On 29 May 1984 the Full Federal Court handed down its decision in the litigation popularly known as *Apple v Wombat.* The court reversed an earlier decision by Justice Beaumont noted [1984] *Reform* 9. As a result of a win by Apple Computer Inc, a major step has been taken towards copyright of computer programs in Australia. Apple won against the Taiwan-made Computer Edge Company's Wombat Personal Computer. In a 2:1 decision on this matter (Justices Fox and Lockhart, Justice Sheppard dissenting) the Full Federal Court held that Australian law recognised copyright in computer chips in the circumstances of the Apple case. In essence, the Appeal Bench majority decided that the computer microchip, containing programs, was no longer a mechanical device but was entitled to copyright in the same way as the written source programs from which the microchip was evolved. On proceedings brought under the Trade Practice Act for misleading and deceptive marketing by Wombat, the Apple Corporation was also successful, in this case by a unanimous decision of all judges of the Full Federal Court. Apparently the chief reason leading the Court to that conclusion was the supply by the Wombat distributor of the Apple manuals.

The result of the Federal Court decision means that the Wombat can no longer be marketed as a personal computer containing the program used at present. All judges agreed that that program had been copied from the Apple II program. On the copyright issue, the majority found that the object codes contained in the Apple memory chips were a 'straightforward electronic translation into a material form of the source code'. On this basis they were held to be 'within ordinary understanding' as 'straightforward electronic translations into a material form of the source codes'. The making of such an adaptation was 'one of the exclusive rights comprised in copyright'. The majority judges did not agree with Justice Beaumont that the Australian copyright legislation had deliberately omitted relevant protective provisions from the Copyright Act. Justice Fox pointed out:

> It is certainly true that no special provision was made for them but this is a different matter. Apart from the history of the matter, it can be borne in mind that at the time the 1968 Act was in the course of preparation, going back to the time of the Spicer Report in 1959, computers were not widely used, and micro computers were almost unknown.

out of woods. The Apple Corporation and the computer industry generally is not, however, yet out of the legal woods. This was pointed out by a leading article, 'Computer Copyright', in the *Australian Financial Review* (1 June 1984). Declaring that the decision of the Full Federal Court had come as a 'great relief to the Australian computer industry and to foreign suppliers of software to Australia', the editor pointed out that an appeal to the High Court of Australia was likely. Indeed, the marketers of Wombat soon announced that they would seek leave to appeal to reverse the Full Court judgment and