

these transactions were illegal in any case, and that those involved could be prosecuted. Had the High Court not twisted the clear meaning of the original anti-tax avoidance section of the Income Tax Assessment Act beyond recognition, this argument would be beyond doubt. The bottom-of-the-harbour schemes were certainly immoral, possibly illegal, and to date have cost the Government a vast amount of revenue. In these circumstances the Government's decision to require the beneficiaries of the schemes to pay the taxes owing — without penalties, and without criminal charges — represents a fair compromise between the two important principles.

According to the N.S.W. Attorney-General, Mr Frank Walker QC, the investigation of bottom-of-the-harbour companies in New South Wales alone could take ten years and involve tens of millions of dollars. He asserted that the schemes were 'just the tip of the iceberg — just an extreme end of the tax evasion racket'. He added that the names of people uncovered by inquiries were 'very recognisable'.

Two prominent Melbourne barristers have gone on the offensive, alleging the recent criticism of tax avoidance was 'McCarthyist'. Mr S.E.K. Hulme QC said on 7 June 1982 that treatment of individuals named in a State report on tax avoidance was similar to the witchhunt by Senator McCarthy in the United States in the 1950s. The Chairman of the Bar Council, Mr Brian Shaw QC said that attacks against lawyers who advise tax avoiders could end by undermining a fundamental pillar of democracy:

People have rights and our system depends on people being able to discover what their rights are and to exercise them. This applies to people in all walks of life — the protestor against the visit of a nuclear-powered submarine, a demonstrator against a Springbok tour, a petty criminal accused of trafficking drugs and members of organisations regarded by the community as criminal when they are accused of criminal offences. It also applies to people interested in tax law. The unpopularity of the last class cannot be allowed to imperil the other classes.

Mr Shaw's comments followed moves by the Bar Council to limit the circumstances in which 'artificial tax avoidance schemes' could be devised and advised by barristers. Meanwhile important developments have been happening in the professions:

- The Law Council of Australia has

suggested the establishment of a special Task Force to combat tax avoidance and evasion. The Council suggested such a force, including lawyers, accountants, investigators and taxation officers as an alternative to the retrospective legislation offered by the Government (*Adelaide Advertiser*, 17 August 1982).

- Australia's largest professional accounting body is devising rules binding on its members who give tax advice or prepare tax returns. The rules will limit involvement by accountants in schemes which significantly understate tax liability.
- The Australian Society of Accountants called in mid July for the Senate Select Committee to study tax reform generally. The Leader of the Opposition in the Senate, Senator John Button was reported as being 'not unsympathetic to the proposal'.

The law, like society, has moods. There is a mood now afoot strongly unfavourable to tax evasion and tax avoidance. The days of the avoiding Robin Hood seem numbered. But will the law and its institutions prove adequate to catch the rebel and recoup his haul?

odds and ends

■ *teachers in court*. The liability of teachers for injury to pupils has been clarified by the decision of the High Court of Australia in the *Commonwealth v. Introvigne* (1982) 41 ALR 577. It was pointed out that a direct duty was owed by the Government for breach of the duty of care — it was not a case of vicarious liability for the omissions of staff. Merely appointing competent teaching staff could not relieve the Crown of its obligations for student safety in government schools. A good new review of *'The Law of Education'* by Ben Boer and Victor Gleeson is published by Butterworths (1982). It looks at children, the law and school from the point of view of the pupils, parents, teachers and educational administration. The wider question of the possible development of the common law to impose duties upon educators beyond 'child-

'minding' was explored by the ALRC Chairman in an address to the A.C.T. Institute of Education in Canberra on 5 August 1982. Pointing to the expanding duty in negligence and to the fact that the primary social obligation of teaching is to teach — not simply look after children during school hours — Mr Justice Kirby questioned whether legal actions could occasionally provide a useful stimulus to what he termed the 'juggernaut' of the educational bureaucracy. Needless to say the idea provoked an outcry from teacher unions — amongst others.

new reports

Australia

- ALRC : ✓ *DP 18* : Aboriginal Customary Law — Marriage, Children and the Distribution of Property, 1982. See above p. 126
- ✓ *Evid* : Hearsay Law Reform — Which Approach? 1982
- RP 9* : *Evid* : The Judge — Adducing Evidence and Judicial Notice, 1982
- RP 10* : *Evid* : Character and Conduct, 1982 (Odlgers)
- ✓ *RP 11*

- NSWLRC : 30 : Report on Incorporation of Associations, 1982
- : 33 : Report on the Legal Profession: Vol. 3 — Advertising and Specialisation, 1982. See above p. 128
- QLRC : *WP 25* : Writs of Execution, Bills of Mortgage/Bills of Encumbrance Distinction, and Caveats, 1982
- SALRC : 67 : Report relating to Non-party Interventions, 1982
- : 70 : Report relating to Prisoners' Rights, 1982
- TasLRC : 28 : Report and Recommendations Relating to Consumer Claims and Small Debts, 1982
- Tasmania : : Report of the Royal Commission into the Constitution Act, 1934, 1982

Canada

- CLRC : 16 : Report on the Jury, 1982
- : *WP 28* : Euthanasia, Aiding Suicide and Cessation of Treatment, 1982
- Alberta
- ILRR : : Annual Report 1981-82, 1982
- BCLRC : *WP 34* : Interspousal Immunity in Tort 1982
- Manitoba
- LRC : : Eleventh Annual Report, 1982
- Ontario
- LRC : : Fifteenth Annual Report 1981-82, 1982
- : : Report on Class Actions, 3 vols 1982
- Saskatchewan
- LRC : : Proposals for an Equality of Status of Married Persons Act, 1982
- Canada : : The Criminal Law in Canadian Society (and 'Highlights'). See above p. 143

New Zealand

- NZ
- PALRC : 16 : Appeals on Questions of Law from Administrative Tribunals, 1982

United Kingdom

- Law Com : 114 : Classification of Limitation in Private International Law, 1982
- : *WP 81* : Minors' Contractors, 1982
- : *WP 82* : Offences Against Public Order, 1982

■ action on reports. During the last quarter two pieces of legislation have enacted parts of ALRC reports. In August 1982 the Child Welfare (Amendment) Ordinance 1982 came into operation changing the law governing the use of a place for child-care in the A.C.T., to comply with recommendations made in the ALRC report *Child Welfare* (ALRC 18, 1981). In the meantime, the ALRC Chairman and the former Commissioner in charge of the reference (Dr John Seymour) have had discussions with the Minister for the Capital Territory (Mr Michael Hodgman) and Mr Jim Wall of his department concerning the implementation of a general child welfare reform package. A useful article analysing the ALRC proposals on children in need of care is offered by Father Brian Lucas in (1982) 6 *Crim LJ* 119. Father Lucas, describing the Commission's report as a 'valuable document', expresses the hope that adequate resources will be provided for the services that are needed to make the clearer and more modern legislation operate effectively. The Crimes Amendment Act 1982 (Cwlth) dealing with a number of reforms proposed in the ALRC report *Sentencing of Federal Offenders* (ALRC 15, 1980) has passed Federal Parliament. The Act imposes restrictions on the imposition of sentences of imprisonment, controls the enforcement and recovery of fines, provides for the availability of State alternatives to imprisonment and in other important ways implements the ALRC report. In the meantime, it seems the earlier announced decision to proceed with a Sentencing Council, as proposed by the ALRC, is not now intended by the Government.