SPEECH BY THE PRIME MINISTER,

THE HON. E.G. WHITLAM, Q.C., M.P.,

AT THE OPENING OF THE 1975 AUSTRALIAN LEGAL CONVENTION

CANBERRA, 2 JULY 1975

Many of the matters proposed at earlier conventions have been debated in the Parliament in this city since the last convention. Many of the matters I myself mentioned at that convention have been discussed here. Some have come to fruition; others have not done so, at least not yet.

At the 10th Australian Legal Convention in 1957, Sir Owen Dixon suggested a federal Law Reform Committee to prepare and promulgate draft reforms for adoption by the Parliaments of Australia and the States. He pointed out that in all or nearly all matters of private law there is no geographical reason why the law should be different in any part of Australia. Is it not unworthy of Australia as a nation, he asked, that we have varying laws affecting the relations between man and man?

If I may quote Tacitus corruptissima republica plurimae leges: The Commonwealth is most marred when it has most laws.

At long last, that suggestion by Sir Owen Dixon has borne fruit. An Act of the Australian Parliament has established a Law Reform Commission. The Commission has been charged with the task of preparing proposals for the reform of laws, not only on matters within the direct competence of the Australian Parliament, but on matters on which it is desirable that there should be uniformity of law in the States and Territories. The Commission has a full-time Chairman, Mr Justice Michael Kirby, and five part-time members. We have sought, by advertisement, indications of interest from lawyers throughout Australia in being appointed as full-time members of the Commission.

Without waiting to be fully established, the Commission has embarked on its first reference, the difficult and delicate task of reconciling the protection of civil liberties with the requirement for strong and effective police action at the national level to combat the growth in sophisticated crime.

A paper entitled 'The Necessity for a New Federal Court' was delivered at the 13th Legal Convention in Hobart in January 1963 by Mr Maurice Byers, Q.C., and Mr Paul Toose, Q.C., now respectively the Solicitor-General of Australia and judge of the Supreme Court of New South Wales. In the discussions on the paper the Solicitor-General Sir Kenneth Bailey, Q.C., announced on behalf of the Attorney-General, Sir Garfield Barwick, that the Cabinet had authorised him to design a new federal superior court. Sir Kenneth went on to say that the

paper would be of material assistance to Sir Garfield whose congratulations be extended to the learned authors.

Attorney-General Bowen delivered a paper on the proposal for the 15th Legal Convention on 17 July 1967. He declared that there was a broad concensus that such a court should be established. He stated categorically that 'a decision has been taken to establish the court' and that arguments advanced against the idea are now 'academic'.

He presented a Commonwealth Superior Court Bill on 21 November 1968. My Government's bill, although promised at both the 1972 and 1974 elections, has been twice rejected by the Senate. There has in fact been much lobbying by State Supreme Court judges.

Following the report of the Senate Committee on Securities and Exchange, the Government has introduced the Corporations and Securities Industry Bill to establish a Securities and Exchange Commission to provide where regulation is necessary,a proper regulation of the securities industry on a nationl basis.

Finally, work is well advanced on the preparation of a National Companies Bill. When this is enacted it will end the frustration suffered by companies who wish to operate on a national basis but find themselves confronted with eight sets of company laws. The high hopes that were entertained with the enactment in each State and Territory of the uniform Companies Act in the early 1960's have not been realised. Mr John Young, Q.C., and Mr Rodd delivered a paper to the 13th Convention in 1963. The late Mr Justice Hardie said then it would have to be a federal act.

Debate on the National Compensation legislation, to supplant the litigation based on compulsory workers' compensation insurance and compulsory third party insurance, awaits a report from a Senate committee.

I hasten to add that lawyers will be amply compensated by new fields of jurisprudence arising from legislation on consumer affairs and the environment and family law and on international conventions dealing with matters of commerce and liability and human rights. And although this gathering would have a smaller percentage of women present in their own right as distinct from their being consorts, we can point out in International Women's Year that the Government has appointed four women to the Arbitration Commission, two of them presidential members.

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In the past the development of a proper system of administrative law in Australia has been sadly lacking. The independence of the judiciary has been largely an irrelevant safeguard in the face of increasing areas of government regulation that have not been subject to review by the ordinary courts. The reports of the Commonwealth Administrative Review Committee, more commonly known as the Kerr Committee, and of the Committee on Administrative Discretions, more commonly known as the Bland Committee, have highlighted the need to enable administrative decisions affecting individuals to be reviewed on their merits. They have also shown the need for an independent body to ensure that an individual has been dealt with fairly by the Public Service and by statutory bodies. To satisfy these needs, the Government has introduced into the Parliament the Administrative Appeals Tribunal Bill and the Ombudsman Bill.

They have received strong support on both sides of the Parliament. The Administrative Appeals Tribunal Bill places emphasis on expedition and informality in the hearing of appeals. It will not be confined to the traditional role of umpire in an adversary dispute. Nevertheless, it will provide an opportunity for lawyers to bring their particular skills to bear in ensuring that statutory discretions are justly and properly exercised.

When I spoke at the last Convention I stressed that not only must the courts always be accessible to the people but that the profession must also be accessible to the people. Perfect laws and well-organised courts are of little use if those who most need the protection of the law cannot afford access to the courts. An essential part of the Government's program of law reform is its development of systematic and comprehensive legal aid in Australia. A great deal has been done by the legal profession itself, but the provision of legal aid to all those who require it is a task beyond the scope of the legal profession. It requires the resources of government. The Australian Government has done three things. We have had a committee of inquiry into the provision of legal aid in Australia, the report of which has highlighted the areas of need. We have provided funds for existing legal aid schemes. We have established the Australian Legal Aid Office as a salaried service to provide legal aid in areas where the Australian Government has particular concerns and responsibilities. The Government introduced the Legal Aid Bill in the last week of the Autumn Sittings of the Parliament, so that it may be open to suggestions for improvement. I hope the legal profession will use the opportunity that has been given to them to comment on the Legal Aid Bill.

I want to see the continued development of a vigorous and independent legal profession. The maintenance of much of our democratic tradition depends on the strength and integrity of an independent profession in representing the citizen, whether against another citizen, a large corporation or the Executive Government itself. There is, I know, a real fear that this independence and

traditions may become lost in a salaried legal aid service. Any lawyer, whether a private practitioner or an employee of a salaried legal aid service, has a duty to uphold these traditions. We have sought to embody this in the Legal Aid Bill.

There are many in the community today who doubt the capacity of the courts and the legal system to play a useful role in new areas of social and economic concern. It is not only those with money and property or those who are engaged in commerce who need lawyers.

Lawyers in the past have been in the forefront in urging reform of the law. They are in a position to identify and expose the shortcomings of the law. The legal profession must be careful to maintain this tradition in the face of the changing expectations of the people. Otherwise they will be seen as conservative defenders of a system that will become irrelevant if it does not respond to the demand for change. Indeed I go further. Lawyers applying their talents and skills, should continue to lead the demand for change and not wait to be pushed by public opinion.

I believe we want a world in which the rights of citizens, rich or poor, are effectively protected by a vigorous legal profession; in which the mechanism of the law remains a primary and effective instrument. It is easy for the public to feel alienated from the law and the lawyers. I suggest that it is up to the Government and the lawyers to see that this feeling of alienation is replaced by a recognition of the law as a relevant, accessible and useful instrument for social and economic adjustment and for protecting the legitimate expectations of the individual in an increasingly complex, domestic and international society.