Extract from **A History of the Askin Government 1965-1975**

by Dr. Paul Loughnan

Law Reform

Askin listed law reform as one of the major achievements of the Coalition government.[1] Clune and Griffith, who claimed that Askin "had little interest in policy or reform", conceded that members of the Askin Government such as Attorney General, McCaw, and Maddison, the Minister for Justice, were "capable Ministers and had a number of achievements to [their credit]".[2] (However no others were mentioned.) In accordance with the election policy speech, these reforms included the establishment of a full-time law reform commission, compensation for victims of crime, funds for payment of costs for acquitted persons in legal proceedings, a legal practitioners bill, a miscellaneous provisions bill, a stamp duties act, an obscene and indecent publications act and the constitution of a permanent court of appeal. The pre 1863 Old Land Titles system was to be converted into the modern Torrens Title system, while the issue of married women's property rights was held over until the second term of government. This was to include savings by a wife from a husband's allowance, which were to become the wife's property unless there was an agreement between the two parties.

The concept of the Law Reform Commission was to ensure that the integrity of the rule of law and the judiciary was maintained. The Commission's role was to be a non-partisan advisory body which would initiate legislation, thus providing a bridge between recommendation and reform.[3] The decision to establish a full-time Law Reform Commission was considered by Professor David G. Benjafield of the Law

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[1] Interview (Pratt): Sir Robert Askin, 2:2/14.

[2] Clune and Griffith, *Decision and Deliberation*, p.441.

[3] *Cabinet Papers*, 15 November 1966. SUBJECT: Law Reform Commission. DECISION: Approval was given to the preparation of legislation to establish the Law Reform Commission as a statutory body along the lines indicated by the Attorney General in his Cabinet Minute Dated 10 November 1966; *Cabinet Papers*, 6 December 1966, SUBJECT: Law reform Commission Bill: 1966. DECISION: Approval was given to the provisions of the law Reform Commission Bill, as drafted and as summarised in the Cabinet Minute of the Attorney General dated 5 December 1966.

Faculty of Sydney University, a member of the commission, as “the most important landmark in law reform in NSW”. The law was considered as a “tangled web” and no longer a satisfactory apparatus by which to regulate order and freedom in a modern society.[4]

Under the Law Reform Commission Bill, the commission was to consist of six commissioners appointed by the Public Service Board. The Chairman was to be a judge or retired judge. The other commissioners would hold suitable qualifications such as a solicitor or barrister at law or be someone holding an academic appointment in a university law faculty. [5] The Commission regarded the law to a certain extent as a manifestation of the will of the community. Therefore, the input and feedback from the community was essential for it to succeed. The Commission was open to the public and encouraged law reform proposals.[6]

The immediate task of the Commission was to ensure that the law was understood by the community. This was initiated through a review whose aim was to update *Defamation Act*, modernise the *Interpretation Act* and better define the powers of the office. They also appointed an ombudsman and examined lowering the voting age from 21 years. Numerous antiquated Imperial acts which had originated from English law and applied to NSW in 1828 were to be revised. The extensive agenda also included legal aid and compensation for personal injuries that had resulted from a criminal offence.

McCaw passionately advocated the case for the lowering of the age of legal privilege. He predicated his argument on the fact that young people between the ages of 18 and 21 could be called upon to participate in military service. They could be made to take responsibility for criminal acts or enter into a marriage contract, but they needed a guarantor if they wanted to enter into a mortgage or hire purchase

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[4] *SMH*, 31 August 1965, p.8.

[5] *Cabinet Papers*, 6 December 1966, SUBJECT: Law reform Commission Bill: 1966. DECISION: Approval was given to the provisions of the law Reform Commission Bill, as drafted and as summarised in the Cabinet Minute of the Attorney General dated 5 December 1966.

[6] *SMH*, 29 April 1966, p.5.

agreement.[7] The state voting age was also a matter for state legislation. McCaw stated that the existing law was “a mockery when it keeps a youth, a legal infant until 21”.[8]

The idea of referring the legal privilege issue to the Law Reform Commission had been mentioned in the policy speech, but when Askin realised the political advantage, he quickly embraced the reform. Askin was also well aware that lowering the voting age to eighteen would translate into 200,000 eligible voters and new voters in 1967 were likely to support the Liberal Party. Askin endorsed McCaw’s reasoning and stated that he was in favour of “giving greater responsibility to young people in the 18 to 21 age group”.[9] John O’Hara, the political correspondent for the *SMH*, suggested that “any decision to reduce the voting age, would give electoral advantage to the Liberal Party”. He expressed the opinion that the ALP’s inability to appeal to young people had contributed to its failure at both a state and federal level.[10]

According to Don Aitkin this was due in part to the intensification effect; whereby new voters will be attracted to a party when it is at the height of its popularity. In his analysis Aitkin concluded that Generation two, whom he identified as Labor supporters during the 1930s and 1940s, had abandoned the Labor Party by a ratio of one in three by 1966.These were the parents of what he identified as generation five; those who reached the voting by 1955.[11] After 1955 the ALP failed to appeal to the new voters and the immigrants. Considering that generation five and the immigrants totalled 44% of the electorate, Aitkin concluded: “that Labor’s electoral problems were of some magnitude”.[12]

The Law Reform Commission’s report, which was touted by McCaw as the most comprehensive in Australia’s legal history, was handed down in November

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[7] *ibid*, 31 October 1965, p.3.

[8] *SMH*, 22 March 1966, p.1.

[9] *ibid*, 22 July 1967, p.1.

[10] *ibid*, 22 March 1966, p.1.

[11] Don Aitken, *Stability and Change in Australian Politics*, Canberra, 1977, p.98.

[12] ibid, p.102.

1967. After two years, the Commission had completely reviewed NSW laws which were derived from Imperial statutes and had recommended the repeal of more than 300. The recommendations were to be legislated after the 1968 election. The next task for the Commission was to examine the statutes which had originated in the NSW Parliament since sovereignty was granted in 1856.[13]

In 1965 growing concern had been expressed by leading barristers and judges, the Law Council of Australia, the NSW Bar Association, the Council for Civil Liberties and the general public, that justice in NSW had become excessively expensive and outside the reach of the ordinary citizen. The existing Legal Assistance Act was limited to civil matters and provided aid for poor people with a means tested income limit of £921. This limit included middle-class as well as working-class people. This prompted the Government to investigate the possibility of a more equitable scheme.[14]

The legal profession was opposed to the extension of the existing state funded scheme. They claimed that it was a form of "creeping socialism" with the potential to impair the independence of the legal profession.[15] After consultation with the legal profession and the Law Reform Commission, it was decided that funding of legal aid could be achieved by amending the Legal Practitioners Act. With the cooperation of the Law Society and the Bar Association, a statutory interest account was established. All solicitors were required in the month of June to deposit no less than 1/3 of the lowest aggregate balance of their trust account which was calculated annually at the end of March.[16] The interest earned from this fund was used to finance the Legal Assistance Scheme which came into operation on 1 January 1968. Legal aid was to be provided where reasonable grounds for litigation occurred, for amounts over and above the limit of the Legal Assistance Act, and the assisted

[13] *SMH*, 17 November 1967, p.1.

[14] *ibid,* 5 June 1965, p.2.

[15] *ibid,* 5 June 1965, p.2.

[16] *Cabinet Papers*, 31 January 1967, SUBJECT: Legal Practitioners (Amendment) Bill, 1967. DECISION: Approval was given to the preparation of a Bill to amend the Legal Practitioners Act to give elect to the proposals of the Attorney General…as set out for his Minute for Cabinet dated 26 January, 1967.

person was to make a contribution to the costs according to their income and capital.[17]

The fund was also used to supplement the State Fidelity Fund. This raised the limit for claims against solicitors in the case of fraudulent behaviour from $30,000 to $60,000 and accelerated the payment process. The amendment provided for this limit to be raised in accordance with the accrual of the fund. With the increase in the State Fidelity Fund, the amendment negated the necessity to exhaust all legal avenues before a claim could be made on the Fund. The Fund also provided finance to the Law Foundation which funded law education, maintenance of legal libraries, legal research and reform.[18]

Other amendments which deleted obsolete and archaic provisions and modernised the Act were included. Penalties for offences under the Act were increased; loop holes which allowed unqualified persons who charged for legal work to avoid prosecution were removed; provisions for transparency in the operation of trust accounts were strengthened. Solicitors who did not operate client trust funds were exempted from contributing to the Fidelity Guarantee Fund. [19]

The NSW Criminal Injuries Compensation Act 1967 became operational in 1 January 1968. On the eve of the election, Askin and McCaw relished the opportunity to announce that the Government had honoured another election undertaking. This was the first Act of its kind in Australia and McCaw claimed that only Cuba and New Zealand had similar legislation.[20]

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[17] *Cabinet Papers*, 9 August 1966. SUBJECT: Legal Practitioners (Amendment) Bill. DECISION: Approval was given to the Attorney General undertaking further discussions with the Law Society on the basis of the proposals outlined in the Cabinet dated the 15 July 1966; *Cabinet Papers*, 31 January 1967, SUBJECT: Legal Practitioners (Amendment) Bill, 1967. DECISION: Approval was given to the preparation of a Bill to amend the Legal Practitioners Act to give elect to the proposals of the Attorney General…as set out for his Minute for Cabinet dated 26 January, 1967.

[18] *Cabinet Papers,* 31 January 1967. SUBJECT: Legal Practitioners (Amendment) Bill, 1967. DECISION: Approval was given to the preparation of a Bill to amend the Legal Practitioners Act to give elect to the proposals of the Attorney General…as set out for his Minute for Cabinet dated 26 January, 1967.

[19] *ibid.*

[20] *SMH,* 2 December 1966, p.1; *Cabinet Papers*, 1 December 1966.

This Act applied to all cases where a person suffered bodily harm by “reason of the commission of any felony, misdemeanour or any other offence”. Compensation was to be paid by the Crown, with the same limit of $2000 under the existing Crimes Act. Under the Crimes Act, compensation could be imposed on the offender but it was usually unsuccessful due to the lack of means or imprisonment of the perpetrator. Under the Criminal Injuries Compensation Act, the Crown could pay compensation when the offender was unidentified, or when the accused was found not guilty. In such a case, the Crown would issue a certificate specifying the amount of compensation that would have been awarded if a guilty verdict had been handed down. The Crown had full rights to claim against a guilty offender for the reimbursement of the compensation paid to the victim. Legislation was also introduced for the first time providing compensation for those persons who were injured while assisting police.[21] When the $2000 limit was criticised, McCaw showed little surprise. He acknowledged that he did not expect people to be satisfied but that a larger limit could be set when more government funds were available. He explained that this legislation broke new ground and that the Askin Government was the first government to take such an initiative.[22]

The three relevant components of criminal law consisted of the offender, the victim and the wrongly- accused person. When the *Costs for Criminal Cases Bill*, along with the *Criminal Injuries Compensation Bill* were enacted, the state was provided with the machinery to effectively deal with criminal law. The *Costs for Criminal Cases Act* provided for the payment of costs of an acquitted person. Under the Criminal Injuries Compensation Act, in addition to the existing notion of state retribution for the criminal act, the offender was made aware of the responsibility to the victim and the victim was assured of compensation.[23]

The payment of costs for an unjustly accused citizen relieved that person from the burden of indirect retribution by the state.[24] The basic discretionary guidelines for

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[21] *SMH,* 6 January 1968, p.7.

[22] *ibid,* 4 September 1967, p.7.

[23] *SMH,* 1 March 1967, p.14.

[24] ‘Australian Political Chronicle January-April 1967', *AJPH*, Vol.13,No.2, p.259.

the courts were set down by the examination of each case on its merits, in relation to the cumulative assessment of the following questions. Firstly, would the prosecutor have had reasonable grounds to initiate the trial if the facts presented in the court were known at the time that proceedings were initiated? And secondly, did the conduct of the accused "bring the procedures or their continuation upon himself ?"[25]

The principal aim of the Government's law reform agenda was to streamline the administration of justice. The recognised inadequacies in 1965 were the growing backlog of Supreme Court cases, the high costs of litigation and the excessive waste of time. These problems were addressed by the Government through the constitution of an Appellate Court and the Law Reform (Miscellaneous Provisions) Bill which proposed the abolition of juries in motor accident cases, referred to as "running down" cases.[26]

In 1965 there was no permanent Appellate Court in NSW. Supreme Court judges, who were entrusted with the appeal jurisdiction, sometimes heard appeals from single judgements. Appeals from verdicts of juries and criminal appeals were heard by the Supreme Court sitting in banco which was the full court with full judicial appellate authority, consisting of the Chief Justice and two or more judges. This was not a true Appellate Court in the sense that it did not deal exclusively with appeals. The judges, apart from the Chief Justice, were appointed via a periodic roster system which sometimes led to delays and inconsistent judgements.[27]

When the full-time Appellate Division of the Supreme Court was established it consisted of at least six judges, including the Chief Justice, who were considered experts and most suited to being entrusted with appellate duties. The idea was to create a permanent "combined judicial operation" which would deliver more

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[25] *Cabinet Papers*, 3 August 1965. SUBJECT: Payment of costs of Acquitted Persons. DECISION: Approval was given to the preparation of a bill to give effect to the proposals in relation to this matter as outlined in the Attorney General's Cabinet Dated 23 July 1965.

[26] 'Australian Political Chronicle September-December 1965', *AJPH*, Vol.12,No.1, p.81.

[27] *Cabinet Papers*, 4 June 1965. SUBJECT: Constitution of a permanent Appellate Court. DECISION: Approval was given to the preparation of a Bill to give effect to the recommendation outlined in the Minute of the Attorney General dated 18 May 1965.

consistent verdicts and ease the court congestion.[28] In July 1965 there were still 265 civil matters outstanding despite the 289 cases that had been heard in the previous 12 months. With the establishment of the new court, it was expected that the delay for a new hearing would be reduced from 12 months to 3 months.[29] Criminal appeals and appeals that dealt with the liberty of a citizen were left to the Supreme Court sitting in banco, where members of the bench were experienced in the criminal jurisdiction of the Supreme Court.[30]

The Australian Section of the International Commission of Jurists was concerned that the central amendments to the *Law Reform (Miscellaneous) Act* might prevent a single judge of the Supreme Court from issuing a writ of habeas corpus. McCaw guaranteed that this right would be preserved.[31] The concern by the jurists that "the effectiveness of the writ of habeas corpus as an essential bastion of personal liberty, should not be diminished" was put to rest when an amendment was agreed to by the Cabinet on 24 June 1967. It provided that a writ of habeas corpus could only be submitted to one Supreme Court judge with the right of appeal to the Court of Appeal. It also deleted the anomaly that allowed a person seeking such a writ to move from one judge to another until they found the required sympathetic judgement.[32]

Great Britain and all other Australian states except NSW and Victoria had abandoned the use of juries in "running down" cases where the victim had allegedly been run over by a vehicle. In NSW, these cases accounted for up to 60% of Supreme Court cases. They were deemed responsible for delays, inconsistencies in compensation awarded by a jury, inefficient use of the Court's time and expensive for both the state and the citizen. For example, a hearing before a jury took two to

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[28] *ibid.*

[29] *SMH*, 5 November 1965, p.1.

[30] *Cabinet Papers*, 4 June 1965. SUBJECT: Constitution of a permanent Appellate Court. DECISION: Approval was given to the preparation of a Bill to give effect to the recommendation outlined in the Minute of the Attorney General dated 18 May 1965.

[31] *SMH*, 17 December 1965, p.8.

[32] *Cabinet Papers*, 24 January 1967. SUBJECT: Procedures relating to Writs of Habeas Corpus. DECISION: Approval was given to the preparation of a Bill to amend the law relating to Writs of Habeas Corpus as proposed by the Attorney General in his Cabinet dated 18 January 1967.

three times longer than one heard before a judge. The Chief Justices of the Australian states, at their 1965 conference, concurred that such cases heard before a single judge were “satisfactory and without criticism”. However, the NSW Bar Association opposed the bill arguing that a jury was more representative of the community views than a single judge. McCaw countered this and suggested that their opposition was out of self-interest due to the “lucrative practices” that some members had built up out of “running down” cases. [33]

The rationale behind this reform was that it would deliver shorter hearings, less litigation, less court congestion, consistency in damage assessment, a reduction in legal costs and a more impartial administration of the law of negligence. The reform bill supplanted the archaic law which awarded the plaintiff nothing in the case of contributing negligence. Instead the plaintiff received a scaled down amount in accordance with the fault. The new reform deemed “running down” cases as congruent with other forms of Common Law action. This had been revoked by Section 38A of the *Third Party Insurance Act 1951*. The status quo was restored, whereby a payment made into a court by the defendant was considered adequate for the damage and accepted by the plaintiff. The plaintiff was entitled to the payment of certain costs. If the plaintiff’s claim was considered unreasonable by the court, then there was no entitlement for these costs. This remedied the excessive claims made against the Government Insurance Office; these claims were seen as responsible for the court congestion and the excessive fees charged by legal practitioners.[34]

The previous ALP government had introduced the original legislation and the new bill received intense opposition from the ALP which resulted in its amendment in the Legislative Council. These amendments included the requirement that a judge was obliged to order a jury trial if so requested by either party and that both parties had to agree before making an application to the Court of Appeal.[35] When delays in court proceedings became a public issue, McCaw swiftly laid the blame squarely at

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[33] *SMH*, 1 June 1965, p.2.

[34] *Cabinet Papers,* 25 May 1965. SUBJECT: Law reform (Miscellaneous Provisions) Bill. DECISION: Approval was given to the preparation of a Bill to give effect to the proposals set out in the Attorney General’s Minute to the Cabinet dated 20 May 1965.

[35] Australian Political Chronicle September-December 1965', *AJPH*, Vol.12,No.1, p.82.

the ALP's feet. He claimed that they had obstructed an attempt by the Government to abolish juries in motor vehicle cases which were clearly causing congestion in the courts.[36]

The Old Land Title system was another cause of court congestion. Since 1863, all freehold titles granted by the Crown had been registered under Torrens Title. The Old Land Title system used before 1863 was relevant centuries earlier under English law but by 1965 was a burden to the land owners and the state. Conveyancing was cumbersome, time consuming and expensive for the landowner, while the state was burdened with the extra expense of maintaining a separate Deeds of Registration system.[37] The Old Land Title system incorporated the concept of 'good root of title' whereby title to land relied on a series of documents dating back at least 30 years. Torrens Title uses only a single document that is guaranteed by the state government, to record all the details affecting the land. The *Real Property (Amendment) Act* modernised the act by updating "old English" terminology and rectifying anomalies. It recognised the use of electronic technology for recording and storing titles.[38] It also made a provision for the automatic conversion from "old system" title to Torrens title. There were only about 5% of properties registered under the "old system" title. However, the subdivision of large parcels of land had created a multiplier effect on these titles, thus creating a pool of titles that were inferior to Torrens title. The amendment relieved the economic burden on the state and provided the landowner with a superior tenure of title.[39]

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[36] *SMH*, 22 March 1966, p.16.

[37] *Cabinet Papers,* 13 September 1966. SUBJECT: Real Property (amendment) Act, 1966 (Automatic conversion of title). DECISION: Approval was given to the preparation of a Bill to give effect to the proposals of the Attorney-General in relation to the Automatic conversion to Torrens Title of existing old systems titles, as set out in his Cabinet Minute, dated 26 August 1966.

[38] *Cabinet Papers,* 20 September 1966. SUBJECT: Real Property (Amendment) Act, 1966. DECISION: Approval was given to the preparation of a Bill to amend the Real Property Act as proposed by the Attorney General in his Cabinet Minute 5 September, 1966.

[39] *Cabinet Papers,* 13 September 1966. SUBJECT: Real Property (amendment) Act, 1966 (Automatic conversion of title). DECISION: Approval was given to the preparation of a Bill to give effect to the proposals of the Attorney-General in relation to the Automatic conversion to Torrens Title of existing old systems titles, as set out in his Cabinet Minute, dated 26 August 1966.

Overhauling the land title system was a straightforward task in comparison to censorship legislation. This was undertaken by the Askin Government during the period of dramatic change in community mores between 1966 and 1972. The 'old morality' underpinned by wowserism and puritanism was endorsed by the churches and enshrined in the censorship legislation. The legislation upheld the suppression of ideas which were considered sacrilegious, seditious, obscene or a danger to society. As a result, Australia was a very censored society.[40]

The sexual revolution of the 1960s was the catalyst for the dramatic change in community mores. The invention of the contraceptive pill in the early 1960s helped transform heterosexual culture in Australia. Sexuality and procreation were separated more completely than before. This liberated women from the fear of unwanted pregnancy which allowed them to claim their sexual rights in the form of sexual pleasure within and outside marriage.

The sexual revolution ushered in "the permissive society", which became part of the vernacular at the time. By 1971, nudity and homosexual themes had appeared in the television serial *Number 96* . The use of four-letter words was almost essential in modern theatre, "go go'' girls danced topless at discotheques and the first tampon commercial was shown on television in 1972.[41]

However, when the Askin Government began tampering with the censorship laws in its first term, it induced a vigorous campaign by intellectuals, liberals, socialists, academics, anarchists and students for the liberalisation of the laws.[42] This was countered by the puritans and the churches. The censorship controversy was a manifestation of the declining authority of the churches and a collapse in any consensus about community standards. The Morgan Gallup polls from the late 1940s to the late 1960s showed that the interviewees who believed in God had declined from 95 to 87%, those who believed in life after death decreased from 63 to 47%, and those who had been to church in the previous fortnight had diminished

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[40] Frank Bongiorno, *The Sex Lives of Australian: A History,* Collingwood, 2012, p.252-253*;* Nicole Moore, *The Censor's Library*, St Lucia, 2012, p.253.

[41]Horne, *Time of Hope*, p.13.

[42] Bongiorno, *The Sex Lives of Australians,* p.252.

from 35 to 25%.[43] Dr Gough, the Archbishop of Sydney, claimed that atheism, 'self-expression' and 'free love' engendered communism.[44] The Catholic Church attempted to obstruct 'the permissive society' with the 1968 papal encyclical against birth control. Some Catholics protested, some defected but mostly they were indifferent.[45]

The Government's first chore was to address the lack of uniformity between the States' and Commonwealth's censorship legislation which was illuminated when the Federal Minister for Excise and Customs released *The Trial of Lady Chatterley, Lady Chatterley's Lover, Lolita, Borstal Boy* and *Confessions of a Spent Youth*. This occurred despite the fact that these publications were prohibited by some of the States. On the advice of the Commonwealth, the States convened a conference in order to resolved this dilemma.[46] As a result, the National Literature Review Board which dealt with publications that claimed literary, scientific or artistic merit was established. Other publications which were known as "trash literature" were left to the states. The publications that were approved by the Board were free to be published and distributed in all the states.[47]

The original idea behind the Askin Government's amendments to the Obscene and Indecent Publications Act was to establish a more balanced and fair legal framework for the publishers and book sellers. The amendment ensured that the defendant had the right for such a case to be held before a jury. A jury was considered able to provide a broader balance of the accepted mores of the community compared with a magistrate. A State Advisory Committee was established and included: a woman; a recognised expert in literature, art and

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[43] Horne, *Time of Hope*, p.9.

[44] Gerster and Bassett, *Seizures of Youth,* p.52.

[45] Horne, *Time of Hope*, p.26.

[46] *Cabinet Papers,* 14 September 1965. SUBJECT: Censorship of Literature. DECISION Approval was given to the proposals in relation to this matter as set out in the Cabinet Minute of the Chief Secretary dated 10 September, 1965.

[47] Moore, *The Censor's Library, p.265; Cabinet Papers*, 17 January 1967, SUBJECT: Obscene and Indecent Publications Act and Censorship of Literature. DECISISION: Approval was given to the preparation of a Bill to give effect to the recommendations of the Chief Secretary in relation to the matter as set out in his Cabinet Minute dated 20 December 1966; *SMH,* 21 September 1967, p.1;

science; and a lawyer. The function of the committee was to adjudicate on the status of “trash” publications, which made no claim to literary, scientific or artistic merit, at the request of publishers and booksellers. The role of the National Literature Review Board was also written into the Act.

However, when the Act was reviewed and it came to public attention, the Government discovered that it had opened a “Pandora’s box”. Interest groups including the various religious denominations lobbied for the implementation of more stringent legislation regarding the censorship of publications. This was based on the grounds that youth were being corrupted by the sale of salacious publications such as the *Kings Cross Whisperer, Oz*, and “girly” magazines which were being sold in public places. The intention of a fairer deal for the publishers and booksellers appeared that it might lead instead to the introduction of more stringent censorship legislation and stricter penalties.[48]

The issue of “trash” literature was brought to the attention of Willis via means of a petition signed by 70,000 persons which was lodged by the Welfare and Decency League. Willis responded by adding to the list of amendments a new “Adult Classification” which restricted the sale of such publications to persons over 16 years. The churches, sensing that their stewardship of the morals of the community was being hijacked, nailed their banner to the censorship bandwagon. In their wisdom, a deputation of the Council of Churches proposed to Willis that the term “Adult classification” should be replaced with “Restricted”. Willis appeased the Council by accepting their inane proposition which suggested that “Adult” would arouse curiosity and encourage juveniles to seek out such publications.[49]

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[48] *Cabinet Papers*, 17 January 1967. SUBJECT: Obscene and Indecent Publications Act and Censorship of Literature. DECISION: Approval was given to the preparation of a Bill to give effect to the recommendations of the Chief Secretary in relation to the matter as set out in his Cabinet Minute dated 20 December 1966.

[49] *Cabinet Papers*, 22 August 1967. SUBJECT: Obscene and Indecent Publications (Amendment) Bill, 1967. DECISION: Approval was given to the provisions of this Bill as outlined in the Cabinet Minute of the Chief Secretary dated 17 August, 1967. Cabinet Also approved of the proposal in the Chief Secretary’s Supplementary dated 21 August 1967.

Under the Obscene and Indecent Publications (Amendment) Bill 1967, the Government's original undertakings were enacted along with more stringent amendments. The role of the Advisory Committee was to consider, and recommend to the Chief Secretary, whether a publication should be classified as "Restricted". The Chief Secretary was invested with the power to prevent restricted literature from being promoted or sold, except through bookshops. These amendments replaced the role of the courts in the determination of what constituted obscenity because the Chief Secretary's department had limited success in prosecuting such cases. Willis claimed that the low success rate was due to the difficulty of proving obscenity.[50] The only avenue for an appeal against a restricted classification was through the application to a court for a writ of mandamus which restrained or corrected the abuse of the executive function of a minister. This classification remained in force, pending the outcome of any appeal. The Chief Secretary was also empowered, on the recommendation of the Advisory Board, to declare a publication immune from prosecution under the act.[51]

During a fiery debate, the male-dominated Legislative Assembly was probably entertained when the Opposition whip, Brian Bannon, brandished a double-paged picture of a naked woman from a "girlie" magazine. He claimed that the legislation failed to ban such publications which were produced by newspaper interests and sold in shops. The Liberal Member for Hurstville, Thomas Mead, suggested the legislation should have included the banning of "brothel beauties from film advertisements". He also criticised the Sydney University Student Union newspaper *Honi Soit* for displaying obscene material stating that it could be more aptly called Hanoi Soit.[52] During the Vietnam War, Hanoi, the capital of North Vietnam, was seen as the manifestation of the communist threat to the free world.[53] By juxtaposing

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[50] *Cabinet Papers*, 17 January 1967. SUBJECT: Obscene and Indecent Publications Act and Censorship of Literature. DECISION: Approval was given to the preparation of a Bill to give effect to the recommendations of the Chief Secretary in relation to the matter as set out in his Cabinet Minute dated 20 December 1966.

[51] *Cabinet Papers,* 22 August 1967, SUBJECT: Obscene and Indecent Publications (Amendment) Bill, 1967. DECISION: Approval was given to the provisions of this Bill as outlined in the Cabinet Minute of the Chief Secretary dated 17 August, 1967. Cabinet Also approved of the proposal in the Chief Secretary's Supplementary dated 21 August 1967; *SMH*, 21 September 1967, p.1.

[52] *SMH*, 4 October 1967, p.11.

[53] *The Bulletin*, 21 March 1970, p.20.

"obscene literature" with Hanoi, Mead expressed the anxieties of the "sexual revolution" of the 1960s in terms of the anxieties of the cold war. In his view both were a serious threat to the free world.

Jack Renshaw, the Leader of the Opposition, objected to what he termed the autocratic powers invested in the minister and argued that these powers should be in the hands of the judiciary.[54] Sid Einfeld, the ALP MLA for Bondi, objected to the *Australian International News Review,* a journal edited by "extreme Right" Liberal, Henry Fischer.[55] Einfeld claimed that the journal was obscene and indecent on the grounds that it incited disaffection between people based on race and religion and in this case, fostered hatred of the Jewish community.[56] Censorship as a means to prevent the perversion of the minds of young was a prevalent argument in its favour. Ken Booth, the ALP MLA for Kurri Kurri, suggested that evidence was required to ascertain the effectiveness of censorship.[57]Peter Cox, the ALP MLA for Auburn, intimated that in a declining Christian society, censorship was necessary while Clarrie Earl, the ALP MLA for Bass Hill, feared censorship, claiming that the churches and governments in the past had been responsible for retarding the expression of progressive ideas.[58] John Mason, the Liberal MLA for Dubbo, concurred when he stated that "I see nothing but extreme danger in any emotionally charged attack upon the freedom of speech and the dissemination of ideas that are contrary to our own".[59]

There was a broad range of views expressed in the parliament that echoed some of those expressed in the community. The churches generally welcomed the legislation as a move in the right direction.[60] James Manson, the Chief Secretary for Victoria, which had the most stringent laws of all the states, claimed that the legislation would highlight and attract the attention of young people to "trash"

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[54] *NSW LA PD*, 27 Sept 1967, p.2049.

[55] R. W. Connell and Florence Gould, 'Politics of the extreme right : Warringah, 1966', *Sydney Studies in Politics, Series 7*, R.N. Spann and Henry Mayer (eds), Sydney, 1967, p.58.

[56] *NSW LA PD*, 27 Sept 1967, p.1693.

[57] *ibid*, 27 Sept 1967, p.1694.

[58] *ibid*, 27 Sept 1967, p.1696.

[59] *ibid*, 27 Sept 1967. p. 2047.

[60] *SMH*, 30 September 1967, p.11.

publications. The founding president of the Council for Civil Liberties, Professor Alan Ker Stout, believed that the intelligence of young people was underrated by the Government and that the legislation would be inconsequential. Perhaps, in the light of Askin's modus operandi, the view expressed by Frederick May, the Professor of Italian at the University of Sydney, was plausible. May described it as "a clumsy, silly, unnecessary, repressive proposal. I don't think it has any possibility of working ... I think this represents a rather sinister move when an organisation can lobby to such effect that the Government adopts what appears to be a policy of expediency".[61]

The law reform legislation typified Askin's leadership which was essential to the electoral success and the longevity of the coalition government. It required no abstract concept or ideology. This rang true with Askin's self-assessment as a middle of the road man which was in line with his temperament. The law reform dealt with concepts that were acceptable to a Liberal or Labor Government. Nonetheless, the legislation was long overdue and that it had been neglected by previous ALP Governments.

Askin also demonstrated his adherence to proven political tactics. He focused on the needs of the voters by honouring his election promises. He recognised the needs of his peers by harnessing the ability of McCaw and Maddison which was demonstrated by the appointment to their respective Ministries. The Government's prosecution of the law reform legislation demonstrated Askin's leadership authority and this augured well for him at the 1968 election.

[61] *SMH*, 19 January 1967, p.5.