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Guest Editorial

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EDITORIAL

Seven *Tax Laws Amendment* bills have been introduced into the House of Representatives so far this year. A range of other bills modifying or enhancing the revenue collection process have also been introduced and passed – part of a torrent of legislation coursing from the nation's parliaments.

Politicians are an ambitious lot, and not just for their own careers: governments at all levels are called upon to assume an ever-greater role in our lives. The Commonwealth government has been particularly keen to meet the challenge of talk-back radio hosts and others to *Do Something* about a range of matters that were previously left to the states, or to individual members of society. Voters appear to favour 'Can Do' governments, but what can – or should - governments do? The question is not a new one.

Judges of the NSW Supreme and District Courts gathered to farewell retiring Chief Justice Sir Laurence Street on 28 June 1933. Sir Laurence served the Court with distinction during uncertain and difficult times. The words delivered on behalf of the acting chief justice, Sir John Harvey, are worth recalling:

> In 1926, when [Sir Laurence] was appointed Chief Justice, the State had passed through the disappointments and disillusionments of peace and was rapidly falling into that period of financial depression and economic chaos which frayed the tempers and soured the hearts of men and tried one to the uttermost. The complex problems which from time to time arose before the Courts were rendered more difficult of solution by the remedies which Parliament, in its wisdom, has from time to time adopted to cope with the more obvious hardships which arose to the surface. I would describe those measures as a headlong rush of legislation striking athwart the higher maxims and moralities of law and commerce, aiming its indiscriminate blows to right and left, careless of who fell beneath its flail. I think all judicial officers who have sat during the last seven or eight years have felt the immensity of the task with which they were faced to find a sure path through the wordy labyrinth and to reduce to some sort of incoherence the generalisations and too-frequent inconsistencies of these laws. Nor was the task of the Courts made any easier by the published utterances of men who deliberately set themselves to undermine the confidence of the public in the administration of justice.

Strong stuff, but they were desperate times. The rancorous peace which followed the Great War had been overshadowed by the Great Depression. Fascism and communism took hold abroad while revolutionaries and crackpots (remember Captain DeGroot cutting the ribbon at the official opening of the Sydney Harbour

bridge?) emerged at home. Unemployment reached 30%. New South Wales had only recently experienced a constitutional crisis: Jack Lang's government was removed from office by the governor after he instructed public servants to defy Commonwealth legislation that imposed new restrictions on state finances.

Lang's government was the principal author of the 'headlong rush of legislation' referred to in Sir John Harvey's remarks. Lang remains a controversial figure, even (or perhaps especially) in the Labor Party. His legislative program included workers' compensation laws, a 44-hour working week and pensions for widows. He gave relief to tenants by restricting evictions and the sale of tenants' furniture. He tried to stack the Legislative Council; he later sought its abolition. He called for the states and the Commonwealth to suspend interest payments on overseas (ie, British) loans. He had an energetic and confrontational style that rankled the establishment.

The perceived excesses of Lang's government and of other activist governments contributed in due course to the decision to form the Liberal party. Its founder, Robert Menzies, conceded we could expect 'more law, not less; more control, not less' but warned against a state of affairs 'where the Government, that almost deity, will nurse us and rear us and maintain us and pension us and bury us…'.

The warning has fallen on deaf ears. Our parliaments produce legislation on a vast scale compared to Lang's day. The individual laws are themselves vast: compare the size of Australia's company and taxation statutes with the equivalent legislation in other common law jurisdictions. But the problem is not simply the product of ill-disciplined drafting. Parliaments are taking the law – detailed, demanding and wordy – into every corner of our lives. The current federal government has grabbed control over industrial relations from the states. Workers compensation, education and health may yet succumb to the same ambitions. And the federal government is not just grabbing power at the expense of the states: parliaments are also encroaching on parental responsibility and individual choice. The current prime minister, speaking to a conference at the Centre for Independent Studies, defended 'policies that appeared paternalistic' which helped 'reinforce social norms and values that are under assault…'. There it is: when the prime minister speaks of small government - one of the cornerstones of Menzian liberalism – he appears to mean a government that is small enough to fit into the bedroom, the kitchen, the TV room and the school-room. It appears we are indeed destined for a government that 'will nurse us and rear us and maintain us and pension us and bury us'. On this approach, the core concept of federalism becomes little more than an obstacle to be negotiated, while other fundamental rights and liberties – the right to silence, the right to be taken before a court immediately upon arrest, freedom of speech – are whittled away in the name of

'community rights'. The states have exhibited similar recklessness in the remaining areas of their control. Witness the extraordinary powers granted to police in New South Wales in the wake of the Cronulla fracas, or the move-on powers provided to police in Queensland and other states. Now we have a proposal to junk the ancient concept of double jeopardy.

Sir John Harvey would be aghast. But this Langean state of affairs is not simply the product of politicians' ambitions. Lawmakers are reacting to voters' demands that governments *Do Something* about everything from corporate collapses to fat children. Commerce strains under the weight of ill-judged regulation supposedly designed to eliminate risk - yet each new manifestation of risk leads to calls for still more regulation. The complex financial services provisions in the Corporations Act provide a good example of the problem. At the same time, the travails of families residing on 'struggle street' (an address apparently found in every marginal seat) result in contorted policy making as governments contrive to return tax dollars to favoured groups, albeit with conditions attached and complete with reporting requirements and a supporting bureaucracy. The taxation system remains a burdensome mess because the federal government insists on using tax as a tool for this sort of social engineering.

The community expects too much of its governments. Politicians – egged on by the media, academics and other commentators - are only too willing to indulge the misapprehension. Jack Lange claimed he had The Answers. The voters believed him for a time. He was wrong, but that did not stop him energetically pursuing wrong-headed solutions. Our own politicians display a similar lack of humility in the face of a vastly more complex global economy. Menzies knew better, but the warning he issued in his 1942 speech 'The Forgotten People' appears to have been lost.