



The Law Reform
Commission

**Annual Report
1982**



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The Law
Reform
Commission

Annual Report

1982

Publications of the Law Reform Commission

Reports

- ALRC 1 Complaints Against Police, 1975
- ALRC 2 Criminal Investigation
- ALRC 3 Annual Report 1975
- ALRC 4 Alcohol, Drugs and Driving, 1976
- ALRC 5 Annual Report 1976
- ALRC 6 Insolvency: The Regular Payment of Debts, 1977
- ALRC 7 Human Tissue Transplants, 1977
- ALRC 8 Annual Report 1977
- ALRC 9 Complaints Against Police (Supplementary Report), 1978
- ALRC 10 Annual Report 1978
- ALRC 11 Unfair Publication: Defamation and Privacy, 1979
- ALRC 12 Privacy and the Census, 1979
- ALRC 13 Annual Report 1979
- ALRC 14 Lands Acquisition and Compensation, 1980
- ALRC 15 Sentencing of Federal Offenders, 1980
- ALRC 16 Insurance Agents and Brokers, 1980
- ALRC 17 Annual Report, 1980
- ALRC 18 Child Welfare, 1981
- ALRC 19 Annual Report, 1981
- ALRC 20 Insurance Contracts, 1982

Working Papers

- WP 1 Complaints Against Police, 1975
- WP 2 Alcohol, Drugs and Driving, 1976
- WP 3 Consumers in Debt, 1976
- WP 4 Defamation, 1976
- WP 5 Human Tissue Transplants 1977
- WP 6 Complaints Against Police (Supplementary Report), 1977
- WP 7 Access to Courts—I Standing: Public Interest Suits, 1977
- WP 8 Lands Acquisition Law: Reform Proposals, 1977.

Issues Papers

- IP 1 Statutory Brain Death, 1977
- IP 2 Insurance Contracts, 1977
- IP 3 Evidence, 1980

Discussion Papers

- DP 1 Defamation—Options for Reform, 1977
- DP 2 Privacy and Publication—Proposals for Protection, 1977
- DP 3 Defamation and Publication Privacy—a Draft Uniform Bill, 1977
- DP 4 Access to the Courts—I Standing: Public Interest Suits, 1978
- DP 5 Lands Acquisition Law: Reform Proposals, 1978
- DP 6 Debt Recovery and Insolvency, 1978
- DP 7 Insurance Contracts, 1978.
- DP 8 Privacy and the Census, 1979
- DP 9 Child Welfare—Children in Trouble, 1979
- DP 10 Sentencing: Reform Options, 1979
- DP 11 Access to the Courts—II Class Actions, 1979
- DP 12 Child Welfare: Child Abuse and Day Care, 1980
- DP 13 Privacy and Intrusions, 1980
- DP 14 Privacy and Personal Information, 1980
- DP 15 Sentencing of Federal Offenders, 1980.
- DP 16 Reform of Evidence Law, 1980
- DP 17 Aboriginal Customary Law—Recognition? 1980
- DP 18 Aboriginal Customary Law—Marriage, Children and the Distribution of Property, 1982

Periodicals

Reform (Quarterly)

U.S. Department of Justice
National Institute of Justice

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Australian Government
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Canberra 1982

Senator the Honourable P.D. Durack, Q.C.
Attorney-General
Parliament House
Canberra, A.C.T. 2600

Dear Attorney-General,

In accordance with s.35 of the Law Reform Commission Act 1973 we have the honour to present the sixth Annual Report of the Law Reform Commission. The report relates to the period of the Commission's work from 1 July 1981 to 30 June 1982.

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The Commission wishes to acknowledge the assistance provided by Mr J.Q. Ewens, C.M.G., C.B.E., LL.B. (Adel.) formerly First Parliamentary Counsel of the Commonwealth of Australia and former Member of the Commission, in settling draft legislation attached to the Commission's reports and the legislative drafting assistance provided on a number of the Commission's references by Mr N.T. Sexton, LL.B. (Syd), formerly Director of the Legislative Drafting Institute.

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ACQUISITIONS

Contents

The Commission

1. Reform in Australia

Law Reform and Economics—Efficiency and Equity

	Para.	Page
A Growing Debate	1	1
Economics and Law	2	1
The Campbell Report	3	1
Social Objectives	4	2
Legislative Activity and 'Regulation'	5	3
Legislation Aiding Enterprise	5	3
Legislation Upholding other Values	6	3
Market Failure	7	4
A Competitive Climate	7	4
Third Party Effects	8	4
Self-Regulation	9	5
A Range of Choices	10	5
The Insurance Reference	11	6
Processing Law Reform	12	7
Senate Report	12	7
Government Response	13	7
Senate Resolution	14	7
Achieving Reform	15	8

2. The Law Reform Commission of Australia

Functions of the Commission	16	9
Composition of the Commission	17	9
Reappointments	18	10
The Hon. Mr Justice M.D. Kirby	18	10
Mr B.M. Debelle	19	10
Mr T.H. Smith	20	10
Dr James Crawford	21	10
The Hon Mr Justice G.E. Fitzgerald	22	10
Mr T. Simos, Q.C.	23	11
Professor A. Erh-Soon Tay	24	11
Retirements	25	11
Foundation Commissioners	25	11
Professor D.St.L. Kelly	26	11
Mr Brian Shaw, Q.C.	27	11
Meetings of the Commission		
Table 1 Meetings of the Full Commission and Divisions		12
Divisions of the Commission		
Table 2 Composition of Divisions of the Commission		12
Remuneration	28	13
Staff	30	15
Consultants	32	15
Commission Publications	35	19
Clearing House Functions for Australia	36	21

Reform	37	21
The Law Reform Digest	38	22
Law Reform Suggestions	39	22
Public Consultation	40	22
Visits	42	23
Appreciation	43	23
3. Completed Projects		
Completed Projects	44	24
Completed References and Annual Reports	44	24
Table 3 Completed References and Annual Reports		
Complaints Against Police (ALRC 1 and 9)	45	27
Criminal Investigation (ALRC 2)	46	27
Alcohol, Drugs and Driving (ALRC 4)	47	27
Insolvency: The Regular Payment of Debts (ALRC 6)	48	29
Human Tissue Transplants (ALRC 7)	51	29
Unfair Publication (ALRC 11)	52	30
Privacy and the Census (ALRC 12)	55	31
Lands Acquisition and Compensation (ALRC 14)	56	31
Sentencing of Federal Offenders (ALRC 15)	57	31
Sentencing Alternatives	57	31
Prosecution Guidelines	58	32
Sentencing Council	59	32
Prison Census	60	32
Future Issues	61	32
Insurance Agents and Brokers (ALRC 16)	62	33
Child Welfare (ALRC 18)	65	34
Insurance Contracts (ALRC 20)	66	34
Background to Report	66	34
The Issues	67	34
Guiding Principles	68	35
The Commission's Proposals	69	35
Summary	70	37
Current Projects	71	37
Table 4 Current References		37
Debt Recovery and Insolvency	72	39
Privacy	74	39
Stage Reached	74	39
Consultation	75	40
Scheme for Draft proposals	76	40
Further Research	77	40
The Commission's Approach	78	40
Sentencing	80	41
Future Issues	80	41
New Research Papers	81	42
Aboriginal Customary Law	82	42
The Reference	82	42
New Personnel	85	43
Research papers	86	43
Further Discussion Papers	87	43
Further Consultation	88	44

Final Report	89	44
Access to the Courts	90	44
The Reference	90	44
Class Actions	91	44
Evidence	92	44
Scope of Reference	92	44
Progress of Initial Research Program	93	45
Consultation	94	45
Research Paper Program	96	45
The Future	97	47
A.C.T. Consultative Committee on Criminal Law Reform	98	47
A Commissioner for the A.C.T.?	100	48
Auditor General's Report		49
Financial Statements		50
Appendix A: Law Reform Suggestions		52
Appendix B: Terms of Reference		62
Index		72

1. Reform in Australia

Law Reform and Economics—Efficiency and Equity

1. *A Growing Debate.* The subject of law and economics was mentioned in the last annual report of the Commission. Its importance in a number of the Commission's projects during 1981–82 warrants a return to the same theme. During the past year there has been evidence of a growing debate in Australia about the efficacy of relying upon market forces to optimise the achievement of economic and social goals rather than upon legal regulation. This debate has contributed to a growing interest in the economics of proposed legal change, an interest fully shared within the institutions of law reform such as this Commission. Another factor which has helped to focus attention on law and economics has been the continuing restriction upon the growth of the public sector in Australia. Federal and State Government activity must either become more efficient in the use of available funds and manpower, or be reduced.

2. *Economics and Law.* Professor Posner, an American authority on this subject demonstrates in his book *Economic Analysis of Law* that considerations of the economic impact of law have long influenced judges in the development of the common law. But these considerations have been largely unarticulated until recent times. Increasingly, lawyers are now looking at the cost/benefit analysis of policy options and drawing upon the advice of economists in making judgments. During the past year, a number of useful texts have been published in Australia on the economic analysis of law.¹ In one of these, Professor Maureen Brunt and Dr Allan Fels offer comments on the proper function of economic analysis of law reform proposals:

The economic approach to proposals for law reform is . . . to analyse the contribution that a particular proposal . . . might make to an efficient and equitable legal process. Indeed, some economists (especially the Chicago line) would adopt an even narrower focus, confining the analysis largely to efficient legal processes. And certainly most economists would agree that the main contribution to be made by economics to the analysis of the law does lie in the realm of efficiency.

It will be noted that in this passage the authors, both of them distinguished Australian economists with experience in Commonwealth government institutions, acknowledge that two concerns must be weighed. These are efficiency and equity or fairness. Economists, it is sometimes said, are concerned with economic goals such as 'efficiency' and the lawyers with 'fairness'.³

3. *The Campbell Report.* During the year under review, the Committee on the Australian Financial System (the Campbell Committee) reported to the Government and the Parliament. In its Final Report it acknowledged that economic efficiency is not the only goal of public policy:

¹ They include A.J. Duggan *The Economics of Consumer Protection: A Critique of the Chicago School Case Against Intervention*, Adelaide Law Review Association, University of Adelaide, 1982; John Nieuwenhuysen and Marina Williams-Wynn *Professions in the Marketplace*, Melbourne University Press, 1982; Ross Cranston, Regulation and Deregulation: General Issues, paper presented to Regulation and Deregulation Workshop, 14 August 1981, Research School of Social Sciences, Department of Law, Australian National University 1981; and Ross Cranston and Ann Schick (eds) *Law and Economics*, Australian National University, Canberra 1982.

² Maureen Brunt and Allan Fels in *Law and Economics*, 55 'Economics of Class Action: a Research Design', 5.

³ See Professor D. Harding 'Lawyers and the Regulation of Economic Activity', in A.D. Hambly & J.L. Goldring (ed) *Australian Lawyers and Social Change*, Law Book Co. Ltd., Sydney, 1976, 219.

Clearly governments must have regard for important objectives besides economic efficiency. The growth in government intervention in the financial system over the last few decades can be explained largely in terms of these other objectives. The Committee in no way questions the social priorities of governments.⁴

The Campbell Committee explained that what it sought to do in its report on the Australian Financial System was to draw attention to the implications for efficiency of the various methods of government intervention.⁵ The Committee sought to encourage, where government intervention was thought to be necessary to achieve a defined social goal, the most cost-effective method of intervention which would achieve the desired objective (including social or equitable objectives). But it noted that:

Under its Terms of Reference, which refer to 'the importance of the efficiency of the financial system for the Government's free enterprise objectives', the Committee is expected to give the efficiency of the financial system a high ranking in its order of priorities. At the same time it recognises that a narrow focus on efficiency would be too restrictive. Therefore in evaluating the various forms of government intervention in the financial system, the Committee has tried to carefully weigh up the efficiency costs of each method of intervention against its effectiveness in achieving its principal specific objectives.⁶

Implicit in this statement is a recognition by that Committee that there is often the need for compromise or balance between efficiency and equity, and that a highly efficient use of resources will often bring redistributive equity effects which may or may not be judged desirable.

4. **Social Objectives.** In contrast to the terms of reference of the Committee on the Australian Financial System, references given to the Law Reform Commission often lay emphasis on social objectives. For example, the reference on Aboriginal Customary Laws requires the Commission to have regard to the 'welfare of the Aboriginal people of Australia', the 'need to ensure that every Aborigine enjoys basic human rights, and the need to ensure equitable, humane and fair treatment under the criminal justice system to all members of the Australian community'. In its Insurance reference the Commission was directed to have regard to the need for contracts of insurance to strike a 'fair balance between the interests of insurer and insured', to the desirability of ensuring that the manner in which insurance contracts are negotiated and entered into is 'not unfair and that there are not unfair provisions in insurance contracts and to have regard to the relative bargaining power of insurer and insured'. It was directed to report, amongst other things, on whether the practice of incorporating statements made in proposal forms into contracts of insurance provides an equitable basis of contract between the insurer and the insured. The terms of reference on Consumer Indebtedness require the Commission to have regard to the desirability of 'avoiding injustice to and oppression of debtors as well as to the community's interest in the financial rehabilitation of small but honest debtors'. So the focus of the Commission's assigned statutory tasks is rather different from that of the Committee on the Australian Financial System. The Commission is required in its reports to have regard to equity considerations. In so doing the Commission seeks to follow the general approach identified by the Committee on the Australian Financial System, namely, that the most cost effective means should be chosen to achieve the desired equity objective including in the intervention of government. As emphasised in the Annual Report 1981, the Commission in every case undertakes, as a matter of course, an examination of the costs and benefits of its recommendations for reform of the law.⁷

⁴ Committee of Inquiry on the Australian Financial System (Final Report, J.K. Campbell, Chairman) *Australian Financial System*, AGPS, Canberra, September 1981, para. 1, 7.

⁵ *ibid.*

⁶ *id.*, para. 1.70.

⁷ ALRC 19, 2.

Legislative Activity and 'Regulation'

5. **Legislation Aiding Enterprise.** Some economist critics of law reform tend to equate any legislation with 'unacceptable regulation' of economic activity. But legislation can serve a variety of functions. It can restrict freedom, and hamper enterprise (perhaps for some worthy objective, perhaps not). Equally it can facilitate enterprise. This point was illustrated by Lord Wilberforce, in his Holdsworth lecture on 'Law and Economics':

The invention of the limited company came about . . . as part of what would today no doubt be called . . . a legal breakthrough, in which institutions designed for the needs of an agrarian economy suddenly, by a process of radiation, became adapted to a commercial society. The company, the abolition of the laws of usury, the introduction of cheques, the formulation of Patent Law and Trademarks, were all part of the movement which did not merely reflect the expansion of commercial practice; but also—perhaps more truly—gave an essential impulse to it.⁸

The role of law as a facilitator of trade and commerce is beyond doubt. Another more recent and local example is strata title legislation which enabled property rights to be conferred over strata of air space. This legislation gave a great impetus to commercial and residential high rise development. The economic importance of rights is demonstrated by an example Professor Posner gives:

A farmer plants corn, fertilizes it, and erects scarecrows, but when the corn is ripe his neighbor reaps and sells it. The farmer has no legal remedy against his neighbor's conduct since he owns neither the land that he sowed nor the crop. After a few such incidents the cultivation of land will be abandoned and the society will shift to methods of subsistence (such as hunting) that involve less preparatory investment.⁹

It does not follow that business is being 'regulated' (in the pejorative sense that expression is sometimes used by economist critics of law and law reform), whenever legislation affecting business is enacted. Nor does it follow that legislation always restricts freedom. Like the creation of the limited liability company, it can sometimes dramatically expand the scope for economic action. Further it can sometimes be perfectly justifiable by reference to considerations of equity, which can not be ignored in developing a just society under the law.

6. **Legislation Upholding other Values.** In an analysis of body snatching and commerce in human bodies, in the context of a discussion of this Commission's recommendations in its report *Human Tissue Transplants*¹⁰, Professor Peter Swan¹¹ referred to a case in 1752 of a person destined for the gallows who sold his body to surgeons so that he could go to the gallows well dressed. Professor Swan observed that neither statute nor common law gives the individual legally enforceable property rights over the disposal of his body once he is dead and thus he cannot transfer title in return for a consideration while he is living. Professor Swan suggested that lack of legal title in human body parts might provide an example of ill-defined property rights hampering mutually beneficial trade.¹² On the other hand, considerations other than those of efficiency and the market, may properly influence a legislator and those who advise him on a subject such as human tissue transplantation. Concern to avoid commerce in human body parts because it is unseemly or liable to abuse is one such influence. Anxiety to

⁸ Lord Wilberforce, 'Law and Economics', address to the Holdsworth Club, University of Birmingham, 1966, reprinted in B.W. Harvey (ed), *The Lawyer and Justice*, Sweet and Maxwell, London 1978, 73.

⁹ Richard A. Posner, *Economic Analysis of Law* 2nd ed., Little, Brown and Co. Boston and Toronto, 1977, 27.

¹⁰ ALRC 7.

¹¹ Dr Swan is a Reader in the Faculty of Economics, Australian National University and Visiting Professor, Australian Graduate School of Management, University of New South Wales.

¹² P. Swan, 'Is Law Reform Too Important to be Left to the Lawyers?: A Critique of two Law Reform Commission Reports, *Human Tissue Transplants and Insurance Agents and Brokers*', in *Law and Economics*, edited by Ross Cranston and Anne Schick, 13.

avoid sale by poor, needy people to wealthy recipients of something so intimate and vital as human organs or tissues may justify the prohibition. So may a desire to encourage the generally successful donation program because it is considered more morally desirable than sale of such commodity as if it were merely another good. Professor Swan's analogy to spare motor parts would strike some as unacceptable. This difference helps to define the value and the limits of economic analysis of legal reform.

Market Failure

7. *A Competitive Climate.* Law, including legislation, has a role to play in the achievement of efficiency not only through the creation and distribution of rights but, as the Campbell Committee observed, by creating an appropriate legal framework for contractual arrangements and an economic and legal climate that encourages competition and adequate freedom of entry.¹³ Market failure can be caused by the presence of imperfect market structures (e.g. monopoly) or lack of accurate information (e.g. misleading advertising). The 'regulatory' activities of the Trade Practices Commission, for example, are directed at overcoming these imperfections and ensuring a competitive climate, so that the market can work. The Law Reform Commission said in its report on *Insurance Agents and Brokers*¹⁴ that it accepted the guiding philosophy of the Trade Practices Act 1974, namely that of encouraging freedom of competition. Any interference with that competition was required to be justified by the public benefit which would result. This statement of guiding philosophy is similar to the starting point of the Campbell Committee in its Final Report:

The Committee starts from the view that the most efficient way to organise economic activity is through a competitive market system which is subject to a minimum of regulation and government intervention.¹⁵

The Campbell Committee went on immediately to say that it was:

conscious that unregulated financial markets do not always work perfectly: they may not be sufficiently competitive and information may be costly or difficult to obtain. As well, free markets might not ensure stability and confidence—essential pre-requisites of an effective financial system.¹⁶

Legislation can be used to advance the achievement of economic efficiency, and the achievement of social or equitable objectives in a cost effective way. Or it can be counter productive to the achievement of economic efficiency, or social objectives, or both. Each case of legislation or proposed legislation needs to be looked at on its merits and tested against these objectives. That is the approach of this Commission.

8. *Third Party Effects.* Another cause of market failure is the presence of so called external effects, or externalities. These arise where an activity or a transaction affects not only parties directly concerned, but other people as well. For example, construction of a dam, may restrict the use of a river by boating enthusiasts and reduce the area available to bushwalkers. An economic cost/benefit analysis of the dam building proposal by the hydro-electric authority will probably not take account of the adverse effects of the decision on third parties such as canoeists and bushwalkers. To that extent, the cost/benefit analysis will be skewed and the market mechanism is unlikely to result in an efficient allocation of resources. Yet the individual canoeist or bushwalker who is adversely affected by the decision has little personal incentive to sue the authority even though the damage to all participants, in aggregate, may be

¹³ Campbell, *Australian Financial System*, Final Report, para. 1.81.

¹⁴ The Law Reform Commission, *Insurance Agents and Brokers* (ALRC 16) 1980, 10.

¹⁵ Campbell, *Australian Financial System*, Final Report, para. 1.1.

¹⁶ *id.*, para. 1.2.

substantial. The problem is that the private benefits for each individual of instituting legal or administrative proceedings are likely to be less than the private costs to the individual(s) involved. Similarly, the market is not usually effective in the protection of general social interests where economic activity results in external benefits which need not be paid for by the consumer of the goods being produced. There are lessons from this analysis for the Commission in the Access to the Courts Reference which is concerned with the issues of class actions and of standing to sue in the courts in public interest litigation, including environmental litigation. For example, the class action, as developed in the United States, is a procedural device for aggregating small claims for damages which otherwise might be overlooked or ignored because they are dispersed, and the costs of aggregating them in other ways are prohibitive. Proponents of class actions say that they represent the 'free enterprise answer to legal aid'. It is said that this legal procedure encourages self-help in the courts rather than bureaucratic help through bodies such as the Trade Practices Commission, consumer affairs bureau, and the Ombudsman. Legislative development would be necessary to make class actions or some other form of representative action for damages available in Australia. This issue is still under consideration by the Commission.

Self-Regulation

9. In recent years discussion of self-regulation of professions and industries has become more noticeable in Australia. It is urged as having the advantages of achieving regulation with flexibility and low cost. There is no doubt that self-regulation has its place in economic and social regulation. But it is not always appropriate. Nor is it always sufficient. Self-regulation can involve costs, just as legal regulation can. Self-regulation can involve loss of freedom, just as legal regulation can. Self regulation may, in certain environments, be ineffective in achieving its objectives.¹⁷ There are some circumstances in which self-regulation alone is appropriate to achieve identified social goals. There are some in which it is not and where legislation could usefully give consumers rights which they do not have at present. Self-regulation, on its own, does not create enforceable rights for third parties. For example, insurance companies might agree amongst themselves to allow a 'free look' at a policy for a given period. But if there was a breach of the agreement or if a dispute arose about whether a particular transaction came within the terms of the agreement, the consumer would be dependant, in default of an arrangement enforceable in contract or otherwise, on the unilateral decision of the insurance company. Were a free look period prescribed by law, in the event of a dispute, the matter would be justiciable by either party and could be determined, ultimately, by the courts. It could be negotiated and settled out of court against the background of enforceable legal rights. Self-regulation is not usually appropriate where it is necessary to affect the entitlements and duties of third parties in highly specific ways and in circumstances in which serious disputes can arise. In such cases, it is usually desirable to have some form of legal regulation, particularly where the resources of the parties are not equal.

10. *A Range of Choices.* In choosing a regulatory mechanism, where one is found to be needed, the choice is not usually a simple one between self-regulation and detailed bureaucratic intervention. Suggesting that this is the choice oversimplifies and trivialises the debate. In the Commission's *Insurance Agents and Brokers* report¹⁸ for example, the recommendation was for

¹⁷ See the analysis of self regulation in the legal profession in John Nieuwenhuysen and Marina Williams-Wynn *Professions in the Marketplace*, 24-25. See also Australian Consumers' Association *Report on Law and Self Regulation of Advertising*, March 1982.

¹⁸ ALRC 16.

a system of registration and some measure of regulation (e.g. trust account requirements, professional indemnity insurance) of insurance brokers, but not insurance agents. Since the announcement by the Treasurer that no Commonwealth legislation on regulation of insurance brokers would be introduced by the Government, the Parliament of Western Australia has enacted a much more detailed system of regulation of brokers by licenses. Different legislation is reported to be under consideration in at least two other States. The inefficiencies, especially in a national industry, of separate regulation using different machinery and applying different rules, is itself a matter that should be considered in evaluating the desirability of a single Commonwealth law, given that many insurance brokers operate in all State jurisdictions in Australia.

The Insurance Reference

11. In its examination of the Australian insurance industry, in connection with its recommendations for law reform affecting insurance intermediaries and insurance contracts, this Commission, like the Campbell Committee, identified a number of areas in which government intervention might actually encourage competition. The Commission has identified important aspects about which consumers of insurance do not have readily available the information they require to make informed decisions. It is a requirement of a properly functioning market that parties in the market should be fully informed in order to be able to exercise their market choices rationally. However, it does not necessarily follow that the information gap should be corrected by legislative action. The costs and benefits of proposed action need to be considered. After doing this in the *Insurance Contracts* report¹⁹ recommendations, designed to remedy certain information deficiencies, are made.²⁰ Other recommendations affect the rights and entitlements of consumers of insurance in their relations with insurance companies. There are also some recommendations designed to bolster the stability of and public confidence in the insurance industry as a whole. In formulating its recommendations, the Commission has made every effort to recommend the most cost effective method of intervention. Although the recommendations involve some legislative changes the Commission believes that they will avoid the pitfalls to which the Treasury drew attention in its earlier submission on the Insurance Reference, where it warned against legislation involving unreasonable cost burdens:

costs in terms of extra imposts or administrative burdens on those involved in insurance transactions; costs on the taxpayer as a result of extra government administration; costs in terms of reduction in the range of contracts that may be entered into; and . . . costs in terms of the extent to which insurance company executives and others spend time and resources in negotiations of one kind or another with governments and government authorities rather than in the business of providing insurance.²¹

The Commission modified a number of the tentative proposals contained in the discussion paper on Insurance Contracts to take full account of these considerations. This was done, not to embrace unreservedly a particular economic philosophy, but because the Commission concluded that the Treasury submission was right to call attention to the important cost implications of proposals for reform of the law on insurance contracts. Furthermore, the Commission agreed on the need to minimize costs consistent with the achievement of identified goals. To the extent that the Treasury submission was not followed in the *Insurance Contracts* report, the Commission believes that the competing value of equity to the community and particularly to insurance consumers justifies the costs of the regulation proposed. The public

¹⁹ ALRC 20.

²⁰ See below, para. 66.

²¹ Treasury submission to Law Reform Commission in relation to insurance contracts, August 1979, para. 33.

exposure of the debate about costs and benefits and the values identified in the Commission's report on *Insurance Contracts* can only improve governmental, Parliamentary, expert and public evaluations of reports delivered by this Commission. Indeed, the concern about cost effective and socially effective legal change goes far beyond the reports of this Commission.²²

Processing Law Reform

12. *Senate Report.* The Annual Report 1979 summarised the Report of the Senate Standing Committee on Constitutional and Legal Affairs entitled *Reforming the Law* concerning the processing of law reform proposals.²³ That report was tabled on 10 May 1979. Amongst its proposals was the suggestion that reports of the Law Reform Commission, following their tabling in the Parliament in accordance with the requirements of the Law Reform Commission Act 1973, should be referred to an appropriate parliamentary committee. It was further recommended that the committee should consider and report promptly to the Parliament on whether the legislation proposed by the Commission should be enacted as it stood or should be subject to specified amendments. It was recommended that the Committee should consult closely with the Commission to ensure full understanding of the Commission's proposals and an appreciation of why alternative approaches were rejected and to ensure that any proposed amendments were able to be accommodated within the framework of the Commission's draft Bill. The Senate Standing Committee on Constitutional and Legal Affairs' recommendations envisaged that the obligation borne by Ministers to respond within six months to a parliamentary committee report should also attach to committee reports on reports by the Law Reform Commission. In responding, the responsible Minister would be required to inform the Parliament of the Government's intentions regarding the Commission's proposals. It was recommended by the Senate Committee that the committee to which a Commission report was referred should retain a general 'watching brief' over the progress of the report and should take such action as it considered desirable to prompt the introduction and passage of legislation to give it effect.

13. *Government Response.* Those recommendations were not accepted by the Government. The Government's response was given by the Attorney-General on 15 May 1980. That response is summarised in the Annual Report 1980.²⁴ The Government's response noted that it was for the Parliament to refer reports to a parliamentary committee when it was of the view that that course was necessary or appropriate. The Attorney-General did, however, announce that in future, upon tabling of reports of the Commission, 'the Government will indicate the arrangements proposed for handling the Government's consideration of the report'.²⁵

14. *Senate Resolution.* On 24 September 1981 the Senate, on a motion of the Chairman of the Standing Committee on Constitutional and Legal Affairs, Senator Alan Missen (Vic.), resolved that continuing oversight of the implementation of reports of the Law Reform Commission be referred to the Standing Committee on Constitutional and Legal Affairs. In speaking to the motion Senator Missen said that the Constitutional and Legal Affairs Committee had pointed out in its report on processing law reform proposals that reference to a bipartisan parliamentary committee was 'perhaps the most frequently recurring suggestion as to the appropriate machinery for processing recommendations of the Law Reform Commission'. He noted that some of the proponents of that suggestion specified the Constitutional and Legal

²² See below, para. 69 for chief recommendations concerning insurance contracts.

²³ ALRC 13, 1.

²⁴ ALRC 17, 1.

²⁵ Australia, Senate, *Debates*, 15 May 1982, 2295, 2296.

Affairs Committee as the appropriate body to undertake the review functions. Senator Missen said of the function proposed for the Committee:

We envisage the role as a continuing one to which we will turn our attention as the need requires . . . We feel that a continuing reference of this nature would be a useful one, not only to draw the Senate's attention to the need but also to draw to the attention of other standing committees and other committees of the Parliament the reports on matters which are in their domain.²⁶

Senator Missen listed amongst possible roles for a parliamentary committee which had been suggested by the Constitutional and Legal Affairs Committee in its report *Reforming the Law*:

- to act as a stimulus to the Executive Government, producing action on those matters unlikely to be accorded high priority because of their technical nature. The Committee could periodically press relevant departments for explanations of progress being made on their consideration;
- where it decided to endorse a report of the Commission, to 'adopt' it for all intents and purposes, thus attracting the obligation of the relevant Minister to make a statement to Parliament within six months as to the Government's proposed action on its recommendations;
- to certify that particular proposals were not controversial, thereby enabling them to be passed without debate unless any member of the appropriate chamber requested such a debate and the chamber resolved to debate the proposals.

15. *Achieving Reform.* The achievement of an orderly, routine, expeditious and appropriately high level consideration of the detailed reports of the Commission remains an important next step in the establishment of efficient federal law reform machinery in Australia. The Commission realises the many pressures upon the Executive Government and Parliament. But it also realises the urgent need of law reform and the importance of achieving institutional means to ensure the prompt consideration of the Commission's reports. The Commission is charged to help Parliament and the Government in the reform of the law. Its object is law reform, not law reform reports.

²⁶ Australia, Senate, *Debates*, 24 September 1981, 1007.

2. The Law Reform Commission of Australia

Functions of the Commission

16. The Commission is established under the Law Reform Commission Act 1973. Its functions are, in pursuance of references made to the Commission by the Attorney-General, whether at the suggestion of the Commission or otherwise:

- to review Commonwealth and Territory laws with a view to the systematic development and reform of the law, including, in particular —
 - the modernisation of the law by bringing it into accord with current conditions;
 - the elimination of defects in the law;
 - the simplification of the law; and
 - the adoption of new or more effective methods for the administration of the law and the dispensation of justice;
- to consider proposals for the making of such laws;
- to consider proposals relating to —
 - the consolidation of laws; or
 - the repeal of Commonwealth and Territory laws that are obsolete or unnecessary; and
- to consider proposals for uniformity between laws of the Territories and laws of the States.

It is required to make reports (including any recommendations it thinks fit) to the Attorney-General on such reviews or considerations. The Commission is required to perform its functions with a view to ensuring:

- that Commonwealth and Territory laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
- that, as far as practicable, such laws and proposals are consistent with the Articles of the International Covenant on Civil and Political Rights.

Composition of the Commission

17. On 30 June 1982 there were 11 members of the Commission, four of whom were full-time and seven part-time. The following table sets out the composition of the Commission at the close of the year under report.

<i>Full-time Members</i>	<i>Term Expires</i>
The Honourable Mr Justice M.D. Kirby	3 February 1985
Dr James Crawford	31 December 1984
Associate Professor R. Hayes	16 March 1983
Mr T.H. Smith	16 March 1983
<i>Part-time Members</i>	
Mr G.W.P. Aarons	21 July 1983
Mr B.M. DeBelle	30 June 1983
The Honourable Mr Justice G.E. Fitzgerald	30 June 1984

Mr J.A. Mazza	22 August 1984
The Honourable Mr Justice J.M. Neasey	19 October 1982
Mr T. Simos, Q.C.	31 December 1986
Professor Alice Erh-Soon Tay	14 February 1987

Reappointments

18. *The Hon. Mr Justice M.D. Kirby.* In December 1982 the Commonwealth Attorney-General announced that the Chairman of the Commission, Mr Justice Kirby, had been reappointed for a further period of three years following the completion of his first term of seven years on 4 February 1982. During the year the Chairman has also been appointed by the Government to be a member of the Australian National Commission for UNESCO and a member of the Australian Institute of Multicultural Affairs.

19. *Mr B.M. Debelle.* Mr Debelle, a full-time member of the Commission between 7 August 1978 and 31 December 1980, was reappointed as a full-time member for the period 1 January 1981 to 30 June 1981 and as a part-time member to 30 June 1982. The Attorney-General has now appointed Mr Debelle as a part-time member for a period of 12 months commencing 1 July 1982. Mr Debelle is Commissioner-in-Charge of the Access to the Courts reference, and formerly also headed the Aboriginal Customary Laws Division.

20. *Mr T.H. Smith.* After reading in 1965 with Mr N.M. Stephen, now Sir Ninian Stephen, the Governor-General, Mr Smith practised at the Victorian Bar until he was appointed as a full-time member of the Commission for two years from 17 March 1980. His appointment has since been extended until 16 March 1983. Mr Smith heads the Commission's enquiry into Evidence Law in Federal and Territory Courts.

New Appointments

21. *Dr James Crawford.* Dr James Crawford was appointed a full-time member of the Commission for a period of three years from 1 January 1982. He is a Reader in Law in the University of Adelaide. Dr Crawford graduated with Degrees of Bachelor of Laws and Arts from the University of Adelaide in 1971 and with a Doctorate of Philosophy from Oxford University in 1977. He was admitted as a Barrister and Solicitor of the High Court of Australia in 1977. Dr Crawford, who was a Stow Scholar and an Australian Shell Scholar, has published numerous articles relating to international and constitutional law and two books, on statehood in international law and on Australian courts. In 1975 he was an advisor to the Senate Standing Committee on Foreign Affairs and Defence in connection with an inquiry into the involvement of the United Nations in the Affairs of Australian External Territories.

22. *The Hon. Mr Justice G.E. Fitzgerald.* Mr G.E. Fitzgerald, Q.C. became a part-time member of the Commission for a period of three years commencing 1 July 1981. He graduated with a degree of Bachelor of Laws from the University of Queensland in 1964 and in that year was admitted to practise at the Queensland bar. In November 1981, it was announced that Mr Fitzgerald had been appointed a judge of the Federal Court of Australia. He was the youngest member of the Federal Court and the first resident Federal Court judge in Brisbane. Mr Justice Fitzgerald re-establishes the link of the Commission to the Federal Court of Australia which last existed when Mr Justice Brennan, now a Justice of the High Court of Australia, was first appointed to the Federal Bench. Mr Justice Fitzgerald is a member of the Commission Divisions on Evidence and Consumer Indebtedness Laws.

23. *Mr T. Simos, Q.C.* In November 1981 the Attorney-General announced the appointment of Mr Theodore Simos, Q.C. as a part-time member of the Commission for a period of five years from 1 January 1982. Mr Simos, who resides in Sydney, is Queen's Counsel and a former Secretary and Treasurer of the N.S.W. Bar Association. He was admitted to practise as a barrister in 1956 and was appointed Queen's Counsel for New South Wales in 1974. He was awarded the University Medal in Law from Sydney University in 1956. He holds the degrees of Bachelor of Arts and Bachelor of Laws from Sydney University, Master of Letters from Oxford University and Master of Laws from Harvard University. He was lecturer (part-time) in Equity at the Sydney University Law School from 1967 to 1974. He has practised mainly in the fields of equity, income tax and intellectual property. He is a member of the Commission Division on Evidence.

24. *Professor A. Erh-Soon Tay.* Professor Tay is the first woman to be appointed a member of the Commission. Currently Professor of Jurisprudence of the University of Sydney, Professor Tay is also an Associate Academician of the International Academy of Comparative Law, Paris, a member of the Council of the Australian Institute of Judicial Administration, and a member of the Australian National Commission for UNESCO. In 1979 Professor Tay was visiting Professor in the Max-Planck-Institut in Hamburg. In 1965 Professor Tay was awarded a doctorate by the Australian National University in which she also lectured for some time. Other universities where she has lectured include Moscow State University, Columbia University in New York, and the East-West Centre in the University of Hawaii. She is the author of many articles on common law, jurisprudence, comparative law, Soviet law and Chinese law and is the editor and co-editor of seven books on law and social change, law making in Australia, justice and human rights and co-author of two forthcoming books on Marxism and the theory of law. Professor Tay is a member of the international executive council of the International Association for Philosophy of Law and Social Philosophy. She is a barrister-at-law of Lincoln's Inn. She is also a barrister and solicitor of the Supreme Court of the A.C.T., a barrister of the Supreme Court of N.S.W. and an advocate and solicitor of the High Court of Singapore.

Retirements

25. *Foundation Commissioners.* On 31 December 1981, two part-time members of the Commission, Professor Alex Castles and Associate Professor Gordon Hawkins completed their commission. Each had served for seven years from the foundation of the Commission on 1975. Professors Castles and Hawkins took a most active part in the early life of the Commission. Both professors took a keen and conscientious role in the early reports of the Commission, especially the reports on Complaints Against Police and Criminal Investigation, now translated or being translated into law.

26. *Professor D.St.L. Kelly.* Professor Kelly was a full-time member of the Commission between 1 August 1976 and 31 January 1980. He was appointed a part-time member from 1 February 1980 to 31 December 1980 and reappointed as a part-time member for a further period on 29 January 1981 to 30 June 1981. Professor Kelly was Commissioner in Charge of the Commission's References on Consumers in Debt and Insurance Contracts and for a time, Privacy. Since his retirement, Professor Kelly has continued to assist the Commission greatly in the two former references.

27. *Mr Brian Shaw, Q.C.* Mr Shaw, Q.C., now Chairman of the Victorian Bar Council, was a part-time member of the Commission from 6 July 1977 to 30 June 1981. Mr Shaw, was active on the Insurance Contracts, Access to the Courts, Evidence and Lands Acquisition Divisions of the Commission.

Meetings of the Commission

TABLE 1 MEETINGS OF THE FULL COMMISSION AND DIVISIONS

Meetings of the Commission	=	3
Meetings of all Divisions	=	18
Total number of meetings	=	21

	Full Commission Meetings Attended	No. of Division Meetings Eligible To Attend	Divisions Attended	Meetings Attended
M.D. Kirby (Chairman)	3	18	17	20
G.W.P. Aarons	3	6	6	9
A.C. Castles (to 31.12.81)	1	4	2	3
J.R. Crawford (from 1.1.82)	1	7	7	8
B.M. Debelle	3	15	13	16
G.E. Fitzgerald	3	4	2	5
G.J. Hawkins (to 31.12.81)	2	1	1	3
R.A. Hayes	3	3	3	6
J.A. Mazza	3	3	2	5
F.M. Neasey	2	6	6	8
T. Simos (from 1.1.82)	1	2	2	3
T.H. Smith	3	8	8	11
A.E.-S. Tay (from 15.2.82)	1	5	4	5

Divisions of the Commission

The following table sets out the composition of the Divisions of the Commission as at 30 June 1982 and their membership.

TABLE 2 COMPOSITION OF DIVISIONS OF THE COMMISSION

<i>Debt Recovery and Insolvency</i>	
Commissioner-in-Charge:	Chairmen
Members:	Mr B.M. Debelle Mr Justice G.E. Fitzgerald Assoc. Prof. R.A. Hayes Professor D.St.L. Kelly
Special Assistance	
<i>Insurance Contracts</i>	
Commissioner-in-Charge:	Chairman
Members:	Mr B.M. Debelle Dr J.R. Crawford Prof. D. St. L. Kelly
Special Assistance	
<i>Access to the Courts</i> (Class Actions and Standing)	
Commissioner-in-Charge:	Mr B.M. Debelle
Members:	Chairman Mr G.W.P. Aarons Dr J.R. Crawford Mr J.A. Mazza Mr T.H. Smith

Aboriginal Customary Law
Commissioner-in-Charge:
Members:

Dr J.R. Crawford
Chairman
Mr B.M. Debelle
Prof. A. E-S Tay
Mr T.H. Smith

Privacy
Commissioner-in-Charge:
Members:

Assoc. Prof. R.A. Hayes
Chairman
Mr G.W.P. Aarons
Mr Justice F.M. Neasey
Prof. A. E-S Tay

Evidence
Commissioner-in-Charge:
Members:

Mr. T.H. Smith
Chairman
Mr B.M. Debelle
Mr Justice G.E. Fitzgerald
Mr Justice F.M. Neasey
Mr T. Simos, Q.C.

Sentencing—Stage II
Commissioner-in-Charge:
Members:

Chairman
Vacant

Remuneration

28. In September 1981 the Commission was invited to make a submission to the Remuneration Tribunal on the principles involved in the payment of part-time members. In its submission the Commission stated that the present arrangements for remuneration of part-time members were inadequate. Remuneration is by annual fee plus a daily sitting fee. The Commission expressed the view that it was vital that part-time members continue to be appointed as this was an important way of attracting the services to the Commission of distinguished lawyers from different jurisdictions of Australia. The Commission stated that it was important that part-time members should continue to receive a retainer in acknowledgement of the acceptance by them of a commitment of time and energy to the work of the Commission. However it also pointed out that the present level of remuneration compared rather unfavourably with that received in private legal practice for comparable devotion of time. In its submission the Commission also drew attention to the fact that an examination of figures showing the number of meetings attended would be no real indication of the amount of time and effort expended by its part-time members. This was because of the large quantities of written material generated from within the Commission which had to be digested before meetings and in the preparation of commentaries on discussion papers, research papers and, draft and reports, participation in public hearings etc.

29. The submission also noted the increasing trend for part-time members on expiration of their terms of office, to continue to assist the Commission, including by remaining closely involved in references with which they have been associated during their term. In December 1981 the Commission was again invited by the Remuneration Tribunal to make a submission. The scope of this submission was intended to cover all aspects of the remuneration of full-time

and part-time members. In this submission the Commission stated that the level of remuneration of full-time and part-time members was inadequate. It recommended that the Tribunal increase the salary and allowance payable to the full-time members and that there be a proportionate increase in the annual allowance and daily fee for part-time members. One part-time member of the Commission expressed the view that the current remuneration for part-time was adequate. The following factors were put forward for the tribunal's consideration.

- Full-time member's salaries have not been evaluated in comparison to other statutory officers of the Commonwealth since they were first set. This was before the first full-time members commenced duty in 1976. The duties of full-time members, as they have evolved, are very much more demanding than what would have been envisaged at that time and they should be re-evaluated.
- Members of the Commission are responsible for its administration as well as for dealing with law reform projects *per se*.
- Since 1977 there has been significant loss of relativities when compared with comparable groups, such as:
 - senior defence officers
 - senior executives in private industry
 - lawyers in private practice.
- Salary and allowance levels of full-time members are significantly below those of comparable positions such as those payable to members of the N.S.W. Law Reform Commission, members of the National Companies and Securities Commission and judges of the Family Court.
- Burdens on members include lack of permanency, temporary residence interstate for some full-time members and short duration of full-time membership.
- Level of responsibility and work volume has increased including as a result of staff ceilings and increasingly onerous expenditure restraints, and uncertainty about future staffing and expenditure levels.

Remuneration of full-time members of the Commission is now as follows:

- Salary \$52 800 per annum
- Allowance \$825 per annum

The Commission suggested an increase to establish relativity with members of the National Companies and Securities Commission and with members of the New South Wales Law Reform Commission.

National Companies and Securities Commission members:

- Salary \$58 210 per annum
- Allowance \$2100 per annum

New South Wales Law Reform Commission members:

- Salary \$58 400 per annum
- Allowance \$844 per annum.

The report of the Remuneration Tribunal, published after the end of the year under review recommended that:

- The Chairman's salary should be increased by 7% to \$71 500, together with \$4000 allowance.
- Full-time members' salaries, which were increased in January 1982 to \$52 800, should not be further increased. However, the allowance should be increased to \$1750.
- Part-time members' fees should be increased to \$5450 per annum plus \$230 per day from \$5100 per annum plus \$215 per day.

Staff

30. Mr George Brouwer, the first Secretary and Director of Research of the Australian Law Reform Commission, left the Commission in September 1981, to become Secretary to the Defence Review Committee. Mr Brouwer joined the Commission in 1976 and made a unique and outstanding contribution to the ALRC. A major achievement of his term of office was as Chairman of the Ethnic Liaison Officer Scheme Working Group on migrants and the law, which produced a challenging report on that topic. Mr Brouwer holds the degrees of BA, LL.B. within the University of Melbourne, and a Master of Laws degree within the ANU. Before joining the ALRC Mr Brouwer was a senior officer of the Department of Prime Minister and Cabinet. Soon after the completion of the year under report it was announced that Mr Brouwer had been appointed Secretary to the Victorian Premiers Department. The new Secretary and Director of Research is Mr Ian Cunliffe. Mr Cunliffe joined the ALRC from the Department of Prime Minister and Cabinet. He holds degrees in Arts and Law within the Australian National University and was formally appointed Secretary and Director of Research on 1 November 1981.

31. The Commission considers that it does not have adequate staff numbers to deal with its references as effectively and expeditiously as it would wish. Staff numbers should be increased in all areas: research, administrative and secretarial. The staff ceiling set by the government for the Commission for 1980/81 was 18 full-time and one part-time. The Commission requested an increase of two full-time staff to bring its 1981/82 staff ceiling to 20 full-time and one part-time. However the staff ceiling for 1981/82 has not been increased. In its submission relating to its staff ceiling for 1981/82, the Commission pointed out that due to staff shortages it has been forced to defer work which will significantly delay the production of at least one report and has caused delays in all references. In addition to this, two former members of the Commission have been obliged to continue to be closely associated with references for which they had responsibility in order that further delays did not occur. But for this continuing assistance delays in the presentation of the Commission's reports would have been unacceptably longer. The Commission has six full-time researchers together with the Chairman's Associate who is engaged for most of his time in research for the Commission. These research officers are conducting research into seven references. It is considered that there is no scope for reduction in the number of research, administrative or secretarial staff without the most serious consequences for the viability of the Commission's research effort.

Consultants

32. Section 23 of the Law Reform Commission Act 1973 provides that the Chairman may, with the approval of the Attorney-General, appoint consultants to the Commission. The following is a list of honorary consultants who have been appointed with the approval of the Attorney-General and who have assisted the Commission in the year past:

Consumers in Debt—Stage II.

- Mr E.W. Bartlett, Manager, Barcoll Credit Services
- Mr J.K. Chippindall, Solicitor, Sydney
- Mrs Beryl Coleman, Australian Institute of Credit Management
- Mr John Cornish, Director, Statistical Methods Section, Australian Bureau of Statistics
- Mr Colin Dawson, General Manager, Credit, Waltons Limited
- Mr A.J. Duggan, University of Melbourne
- Mr J.L. Gibson, Assistant Secretary, Department of Business and Consumer Affairs
- Mr G. Holmes, Principal Legal Officer, Attorney-General's Department, Canberra

Mr Peter Kay, Peter Kay and Associates
 Mr Bruce Kercher, Macquarie University
 Mr John O. Llewellyn, Executive Director, Australian Finance Conference
 Mr Anthony P. Moore, University of Adelaide
 Dr T.C. Puckett, Department of Social Work, La Trobe University
 Mr Peter Timmins, Chief Executive Officer, Australian Federation of Credit Union Leagues Limited
 Mr D.J. Trewin, former Director, Statistical Methods Section, Australian Bureau of Statistics
 Mr Brian S. Walker, Supervisor, Budgeting Advisory Service, S.A. Department for Community Welfare
 The Hon. Mr Justice J.M. White, Supreme Court of South Australia
 Mr John E. Willis, Department of Legal Studies, La Trobe University

Insurance Contracts

Mr L.J. Cohn, Deputy General Manager and Chief Actuary, The National Mutual Life Association
 Mr John P. Dawson, Executive Director, The Confederation of Insurance Brokers
 Mr K.E. Dorrell, Director, W.T. Greig Pty Ltd
 Mr A.J. Duggan, University of Melbourne
 Mr Stephen France, Mercantile & General Life Reinsurance Co. of Australia
 Mr R.G. Glading, A.P.A. Life Assurance
 Professor J. Goldring, School of Law, Macquarie University
 Mr J.G. Green, Director, MCN Australasian Pty Ltd
 Professor D.J. Harland, University of Sydney Law School and Chairman, National Consumer Affairs Advisory Council
 His Honour Judge D.C. Heenan, Chairman of Judges, District Court of Western Australia
 Mr J. Hingley, Federation of Associations of A.M.P. Society Representatives
 Mr F. Hoffman, Chairman (N.S.W.), The Corporation of Insurance Brokers of Australia
 Mr P.M. Holt, Assistant Commissioner, Trade Practices Commission
 Mr R.A. Judge, Deputy Life Insurance Commissioner (Commonwealth)
 Mr Peter Kell, Assistant General Manager, General Accident Fire & Life Assurance Co. Ltd
 Professor Spencer L. Kimball, Professor of Law, University of Chicago
 Mr F.H. Letcher, formerly Assistant General Manager, The United Insurance Co. Ltd; Director, City Mutual General Assurance Co. Ltd
 Professor Harold Luntz, George Paton Professor of Law, University of Melbourne
 Mr S.I. McDonald, McDonald Benjamin Smyth (N.S.W.) Pty Ltd
 Mr A.M. MacGillivray, General Manager, Shield Life Assurance Ltd
 Mr E. Madill, Young Madill & Co. Pty Ltd, Chartered Loss Adjusters
 Mr J. Marshall, Cranney Insurance (Aust.) Pty Ltd
 Mr G.R. Masel, Messrs Phillips, Fox and Masel, Solicitors
 Mr G.L. Melville, Life Insurance Commissioner for the Commonwealth
 Mr A.P. Moore, University of Adelaide
 Mr I. O'Brien, Secretary, Public Affairs, A.M.P. Society
 Mr R.P. Quinn, Queensland Insurance Commissioner
 Mr N.E. Renton, Executive Director, Life Insurance Federation of Australia
 Mr A.J. Robinson, General Manager, R.A.C.V. Insurance Pty Ltd
 His Honour Judge Arthur Rogerson, Chairman, Credit Tribunal of South Australia
 Mr R. Smith, Executive Director, Insurance Council of Australia
 Mr John A. Smythe, Life Underwriters Association

Mr J.K. Staveley, Managing Director, A.M.P. Fire & General Insurance Co. Ltd
 Professor K.C.T. Sutton, Professor of Law, University of Queensland
 Mr G. Taylor, Assistant Secretary, Department of Treasury
 Mr Gordon Taylor, Chief Legal Officer, A.M.P. Society
 Mr R. Thomas, Macquarie University
 Mr D.P. Wallace, Assistant General Manager, T & G Mutual Life Society Ltd
 Mr John G. Wallace, General Counsel in Australia for Lloyds
 Mr Timothy M. Webber, Company Solicitor, N.R.M.A. Insurance Limited
 Mr John Willis, Department of Legal Studies, La Trobe University

Aboriginal Customary Law

Mr Jimmy Biendurry, former member of National Aboriginal Conference
 Professor R.M. Berndt, Department of Anthropology, The University of Western Australia
 Dr H.C. Coombs, Visiting Fellow, The Australian National University
 Ms Pam Ditton, Lawyer, Central Australian Aboriginal Legal Aid Service
 Father Patrick Dodson, Aboriginal Catholic priest and community worker, Alice Springs
 Mrs Molly Dyer, formerly of the Victorian Aboriginal Child Care Agency
 The Hon. Sir William Forster, Chief Justice, Supreme Court of the Northern Territory
 Mr G.P. Galvin, Chief Stipendiary Magistrate, Northern Territory
 Assistant Commissioner A. Grant, Northern Territory Police
 Mrs Ruby Hammond, formerly Aboriginal Legal Rights Movement, South Australia
 Mr Barney King, Field Officer, Aboriginal and Torres Strait Islander Legal Service
 Ms Marcia Langton, Education Officer, Australian Institute of Aboriginal Studies
 Mr Tom Lewis, President, Beswick Town Council
 Mr J.P.M. Long, Department of Aboriginal Affairs, Canberra
 Mr Andrew Ligertwood, University of Adelaide
 Dr Ken Maddock, Macquarie University
 Mr John Newfong, formerly National Aboriginal Conference
 Dr. S.S. Richardson, Principal, Canberra College of Advanced Education
 Mr Silas Roberts, Maningrida Council, Northern Territory
 Mr. G. Robinson, Executive and Policy Unit, Department of Law, Darwin
 Professor K.W. Ryan, Professor of Law, University of Queensland
 Dr P.G. Sack, Fellow, Institute of Advanced Legal Studies, Australian National University
 The Hon. Mr Justice John Toohey, Judge of the Federal Court of Australia, Supreme Court of the Northern Territory and formerly Aboriginal Land Commissioner

Privacy

Professor Stanley I. Benn, Professorial Fellow in Philosophy, Research School of Sciences, Australian National University
 Mr B. Bargon, General Manager, Credit Reference Association of Australia Ltd
 Mr P.W. Bates, Lecturer, University of N.S.W.
 Mr R.A. Butcher, Director, Wards Mercantile Agency Pty Ltd
 Mr G. Cashman, Department of the Capital Territory
 Mr Roger Clarke, formerly of the N.S.W. Privacy Committee
 Mr G. H. Cooper, Management Consultant, Touche Ross and Co., Sydney
 Mr L.J. Curtis, Commonwealth Attorney-General's Department
 Mr G.D. Faichney, Capital Territory Health Commission
 Mr R.J. Findlay, Commonwealth Department of Health
 Mr A.W. Goldsworthy, General Manager and Chief Executive of the S.G.I.O. Building Society
 Mr B. Guerin, Chairman, South Australian Data Processing Board
 Dr L. G. Lawrence, Management Consultant, Touche Ross and Co., Sydney

Mr D. Leavey, Special Investigations Officer, Government Insurance Office of N.S.W.
 Professor H. McCloskey, Professor of Philosophy, La Trobe University, Melbourne
 Mr P. McGonigal, Department of Industry and Commerce
 Mr M. Migus, Department of Immigration and Ethnic Affairs
 Mr R. Minns, Commonwealth Public Service Board
 Professor R. G. Nettheim, Professor of Law, University of New South Wales
 Mr C. Shields, Insurance Claims Consultant, Sydney
 Mr S.F.M. Skehill, Department of Social Security
 Mr B. Smith, Australian Bankers' Association
 Mr R.A. St John, Department of the Prime Minister and Cabinet
 Mr. A. L. Tyree, Lecturer in Law, University of New South Wales

Access to the Courts

Mr A. Aho, formerly of Confederation of Australian Industry, now of Queensland Confederation of Industry
 Mr G.D. Allen, Australian Industries Development Association
 Mr A.J. Boulton, Legal Officer, ACTU
 Mr A. Cornell, Solicitor, Messrs Blake and Riggall
 Mr A. Cullen, Federal Secretary, Australian Finance Conference Ltd
 Mr P. Gallagher, Commissioner, Department of Consumer Affairs, N.S.W.
 Mr A.R. Godfrey-Smith, The N.S.W. Institute of Technology
 Mr. J. Greenwell, First Assistant Secretary, Business Affairs Division, Attorney-General's Department, Canberra
 Professor D. Harland, University of Sydney
 Mr F. Hoffman, National President, Corporation of Insurance Brokers
 Mr P. Holt, Assistant Commissioner, Trade Practices Commission
 Mr A.G. Kerr, Deputy Commonwealth Ombudsman, Canberra
 The Hon. Mr Justice Lockhart, Federal Court of Australia
 Mr A. Moore, University of Adelaide
 Mr O.D. Sperling, Solicitor, Messrs Higgins, Morgan & Partners, Sydney
 Mr M.G. Vernon, Chairman, Consumer Affairs Council (A.C.T.)
 Dr G. De Q. Walker, Australian National University
 Mr M.R. Wilcox, Q.C., Barrister, Sydney
 Professor N.J. Williams, Barrister, Melbourne
 Mr J.R.T. Wood, Barrister, Sydney
 Mr. P. W. Young, Q.C., Barrister, Sydney

Sentencing

Dr A.A. Bartholomew, Consultant Psychiatrist, Department of Health, Victoria
 Dr T. Beed, Director, Sample Survey Research Centre, University of Sydney
 Mr. P. Cashman, Research Officer, Law Foundation of New South Wales
 Mr W. Clifford, Director, Australian Institute of Criminology
 The Hon. Xavier Connor, Q.C., formerly Judge of the Federal Court of Australia and Supreme Court of A.C.T.
 Mr L.B. Gard, Director, Department of Correctional Services, South Australia
 Mr A.R. Green, Prisoners' Action Group
 Dr G.M. McGrath, University of New England
 Mr J.G. Mackay, Director, Probation and Parole Service, Attorney-General's Department, Hobart
 Mr W. Nicholl, Stipendiary Magistrate, Australian Capital Territory
 Mr T. Purcell, Director, The Law Foundation of New South Wales
 Mr F. Rinaldi, Australian National University, Canberra

The Hon. Mr Justice Roden, Supreme Court of New South Wales, Member of the Australian Capital Territory Law Reform Commission
 Dr A.J. Sutton, Director, N.S.W. Bureau of Crime Statistics and Research, Sydney
 Senior Superintendent W. Williams, Q.P.M., Australian Federal Police, Canberra

Evidence

Mr K. V. Borick, Barrister, South Australia
 The Hon. Sir Richard Eggleston, Chancellor, Monash University, Melbourne
 The Hon. Mr Justice H.H. Glass, Supreme Court of N.S.W.
 Mr C. Hermes, Chief Magistrate, Court of Petty Sessions, Canberra
 Mr Dyson Heydon, Barrister, Sydney
 Mr D. A. Jessop, Attorney-General's Department, Canberra
 The Hon. Judge Martin, Q.C., District Court, Sydney, and Member of the Australian Capital Territory Law Reform Commission
 The Hon. Mr Justice P.E. Nygh, Family Court of Australia
 The Hon. Mr Justice I.F. Sheppard, Federal Court of Australia
 Mr D. Sturgess, Barrister, Brisbane
 Mr C. Tapper, Reader in Law, Oxford University
 Dr D. Thomson, Department of Psychology, Monash University, Melbourne
 Mr Frank Vincent, Q.C. Barrister, Melbourne
 Mr P. Waight, Lecturer in Law, Australian National University, Canberra
 Mr M. Weinberg, Senior Lecturer in Law, University of Melbourne

33. The Commission records its appreciation to the consultants who freely give of their time in consulting on Commission drafts, attending meetings and otherwise making themselves available for consultation. It also records its thanks to universities, employers and organisations which, in many cases have consented to the appointment of its honorary consultants.

34. The Commission is also fortunate to have the assistance of Professor J.G. Starke, Q.C. who is assisting the Commission in a consultative capacity with its References on Aboriginal Customary Law, Privacy and Sentencing, and Mr J. Q. Ewens, C.M.G., C.B.E., formerly First Parliamentary Counsel of the Commonwealth of Australia, who is assisting the Commission in settling the drafting of legislation to accompany its report on Insurance Contracts and is also a consultant on the Commission's Sentencing and Evidence references. The Commission also acknowledges the work done by Mr N.T. Sexton, former Director of the Legislative Drafting Institute in connection with the Reference on Insurance Contracts.

Commission Publications

35. The Law Reform Commission Act 1973 makes provision for the Commission to furnish reports to the Attorney-General on each of its references. The Minister is then required to table such reports in Parliament. The reports can be obtained from Australian Government Publishing Service bookshops throughout Australia; a list of titles appears at the front of this report. The Commission also issues consultative papers in connection with its references; these are working papers, issues papers, research papers and discussion papers. The papers, which normally receive the widest distribution, apart from reports, are the Commission's discussion papers. An explanation of each category of paper follows:

Issues Papers—These are usually published in the early stages of a reference. They are intended to raise for consideration the principal issues that seem to present themselves. Conclusions and proposals are generally kept to a minimum. These papers are circulated to persons and organisations who are expert in the area and who are able to make suggestions

to the Commission about matters arising from the terms of Reference and the scope of the issues to be explored.

Discussion Papers—These generally contain the Commission's tentative proposals or advance various options for reform. They are distributed widely to help focus public and expert debate. The function of discussion papers is frequently misunderstood. They are not draft reports. The presence of tentative proposals merely provides an indication of the Commission's thinking at the time of the publication of the paper. The options for reform contained in the paper assist in identifying solutions. These are then tested in subsequent public debate. The comments and submissions are considered by the Commission when preparing its final report.

Summary Discussion Papers—In appropriate cases, a summary discussion paper will also be issued, which will generally have a wider circulation than the full paper. It indicates that persons wishing to comment can obtain a copy of the full discussion paper on request. In this way, the Commission hopes to reach persons and organisations who have an interest in, or may be affected by, Commission proposals. By arrangements with the *Australian Law Journal*, the *Legal Service Bulletin* and relevant specialized journals (e.g. *The Valuer*, *Insurance Broker*, *Aboriginal Legal Bulletin* etc.) arrangements are made for the general distribution of the pamphlet throughout the legal profession and other professions or industries specially affected. As a result of this distribution, many informed comments are received and suggestions and criticisms made which are of specific help to the Commission.

Working Papers—A discussion paper may or may not be supported by a detailed working paper. This will depend upon the nature of the subject matter and the requirements of the reference. Where a working paper is prepared, it will generally be available on a limited basis because of its bulk and the cost of production. Because of its detailed and technical nature, a working paper is intended for persons who have a particular expertise in the subject under consideration and who are able and willing to comment in detail.

Research Papers—These are prepared by individual officers based on research and/or field work undertaken by them on a particular aspect of a reference. They are in the nature of internal papers prepared by a member of the Commission's staff for the Commission's consideration. Accordingly, they do not reflect the Commission's views. They are circulated on a limited basis to persons and organisations who may wish to provide initial comment before the Commission undertakes a more detailed consideration of the issues raised and secures public comment on them. Research papers often form the basis of parts of the Commission's Discussion papers and final report.

The following table sets out the Research Papers issued by the Commission

Privacy

Research Paper 1	Employment Records: Commonwealth Employment Service
Research Paper 2	Employment Records: Australian Public Service
Research Paper 3	Statistical Records: Census of Population and Housing
Research Paper 4	Statistical Records: Production of Statistics in the Commonwealth Government
Research Paper 5	Health Insurance Records
Research Paper 6	Final Storage of Personal Information: Archival Practices
Research Paper 7	Medical Records
Research Paper 8	Federal Police Records
Research Paper 9	Credit Records
Research Paper 10	Educational Records
Research Paper 11	Taxation and Privacy

Research Paper 12	Social Security and Privacy
Research Paper 13	Banking and Privacy

Sentencing

Research Paper 1	An Analysis of Penalties Provided in Commonwealth and Australian Capital Territory Legislation
Research Paper 2	Minimum Standards for Treatment of Federal Offenders
Research Paper 3	Alternatives to Imprisonment: The Fine as a Sentencing Measure
Research Paper 4	Community Work Orders as an Option for Sentencing
Research Paper 5	Sentencing the Federal Offender: Jurisdictional Problems
Research Paper 6	Federal Parole Systems
Research Paper 7	Limiting Sentencing Discretion: Strategies for Reducing the Incidence of Unjustified Disparities
Research Paper 8	Probation as an Option for Sentencing
Research Paper 9	Social Security Prosecutions
Research Paper 10	A National Survey of Judges and Magistrates

Evidence

Research Paper 1	Comparison of Evidence Legislation Applying in Federal Courts and Courts of the Territories
Research Paper 2	Common Law of Evidence: Areas of Disagreement and Uncertainty
Research Paper 3	Hearsay Evidence Proposal
Research Paper 4	Secondary Evidence of Documents
Research Paper 5	Competence and Compellability of Witnesses
Research Paper 6	Sworn and Unsworn Evidence
Research Paper 7	Relevance
Research Paper 8	Manner of Giving Evidence

Aboriginal Customary Laws

Research Paper 1	Promised Marriage in Aboriginal Society
Research Paper 2	The Recognition of Aboriginal Customary or Tribal Marriage: General Principles
Research Paper 3	The Recognition of Aboriginal Tribal Marriage: Areas for Functional Recognition
Research Paper 4	Aboriginal Customary Law: Child Custody, Fostering and Adoption

Clearing House Functions for Australia

36. The Commission is continuing its functions as a clearing house of law reform information in Australia. The services provided include the publication of its quarterly bulletin *Reform* and the issue of the Law Reform Index and its half yearly supplements. To this will be added shortly *The Law Reform Digest*. The Commission also has responsibility for collecting suggestions for law reform made by persons and organisations in respect of matters within Commonwealth responsibility.¹

37. *Reform*. The quarterly bulletin *Reform* continues to be read widely both in Australia and overseas. The current circulation of the bulletin exceeds 1,500 copies. The subscription readership continues to grow. The bulletin contains information on law reform developments both in Australia and overseas. It also contains details of reports completed or in preparation by Australian law reform agencies as well as agencies in a number of overseas countries. Extracts from *Reform* are frequently reproduced in Australian and overseas law journals. It has proved

¹ Annual Report 1980 (ALRC 17) 6-7, 21.

an effective and inexpensive way of bringing to a wide audience, general information about progress in law reform in Australia.

38. *The Law Reform Digest.* *The Law Reform Digest* will be published in the next few months. It will contain a summary of law reform proposals made by law reform agencies throughout Australia, New Zealand and Papua New Guinea from 1916 to 1980. It will be of great use in common law countries throughout the world in bringing to notice in a single, convenient volume, the proposals of the Australasian law reform agencies concerning improvement of the legal system. It should spread the influence of the reports of the agencies and contribute to the work of law reform, particularly in developing countries. It is hoped that, within Australasia, it will ensure that unnecessary duplication of law reform research effort is kept to a minimum.

39. *Law Reform Suggestions.* Following the Government's acceptance of the recommendation by the Senate Standing Committee on Constitutional and Legal Affairs that the Commission should compile a register of law reform suggestions and report on them annually to Parliament, the Commission included in its 1980 and 1981 Annual Reports a schedule of suggestions. A schedule of suggestions received since the last Annual Report is at Appendix A. This schedule contains suggestions for law reform which have come to the Commission's notice in the past year. The list is not meant to be exhaustive nor does it include proposals made by other law reform agencies. Although some suggestions are not new and may have been made previously, they are included as giving an indication of concern about aspects of the law. Inclusion of a suggestion does not imply any opinion by the Commission about the merits or otherwise of the suggestion.

Public Consultation

40. The Commission has always stressed the importance of consulting the public before formulating its final recommendations on reform of the law. The importance of public consultation in this process was also stressed by the Senate Standing Committee on Constitutional and Legal Affairs which made the following recommendation:

The Law Reform Commission, while fully maintaining and asserting its independence, should take into account the likely acceptability of its proposals to Government and Parliament. To this end it should in the course of preparing its reports inform itself in the manner and to the extent it thinks necessary or appropriate by consulting with Government and Opposition politicians and interested community groups. Government and Opposition parties should fully co-operate with the Commission in any steps it may take to inform itself in this way.²

41. Methods of public consultation used by the Commission include:

- distribution of consultative papers;
- conduct of public hearings and seminars;
- issue of media releases;
- conduct of surveys and public opinion polls;
- undertaking interviews with the press;
- participating in radio and television programmes;
- holding discussions with parliamentary committees and individual Members of Parliament;

² *Reforming the Law, a Report by the Senate Standing Committee on Constitutional and Legal Affairs on the Processing of Law Reform Proposals in Australia*, AGPS, Canberra, 1979, 24.

- making addresses to professional bodies, universities, community organisations and conferences;
- holding discussions with individuals;
- invitation of written submissions

The method of public consultation varies between references. It is obvious that different methods must be used for References as different as Evidence and Aboriginal Customary Law. However, the Commission has made every effort to stimulate public debate on its proposals in the past and will continue to do so.

Visits

42. The Commission is maintaining its policy of reciprocal exchange arrangements with similar organisations in Australia and overseas. It is continuing its close links with such international organisations as the Commonwealth Secretariat, the Council of Europe and the Organisation for Economic Co-operation and Development. The many visitors to the Commission from within Australia and overseas enable it to strengthen its contacts with organisations and persons whose work is relevant to projects before the Commission, and to law reform generally.

Appreciation

43. The Commission expresses its appreciation for the assistance provided by government departments, both Commonwealth and State, Australian Embassies and High Commissions and law reform bodies and universities in Australia and overseas. The Commission has also had the benefit of consultations with many distinguished judges, legal and other scholars, Parliamentarians, members of the legal profession, representatives of industry and community organisations, government officers and officials of international organisations. These are greatly appreciated and assist the Commission in the effective discharge of its functions.

3. Completed Projects

Completed Projects

44. *Completed References and Annual Reports.* Table 3 sets out in summary form the reports completed by the Commission and action taken in respect of those reports. Further details are set out in the paragraphs following the table.

TABLE 3 COMPLETED REFERENCES AND ANNUAL REPORTS

Reference	Date received	Consultative papers	Report	Action
Criminal Investigation	15 May 1975	Working Paper No.1 <i>Complaints Against Police</i> -June 1975	ALRC 1 <i>Complaints Against Police</i> tabled 7 August 1975	Complaints (Australian Federal Police) Act 1981 (Cwlth). Commenced 1 May 1982. Also reflected in N.S.W. in Police (Allegations of Misconduct) Act 1977 (N.S.W.)
			ALRC 2 <i>Criminal Investigation</i> tabled 8 November 1975	Criminal Investigation Bill, 1981. Presented 18 November 1981. Debate adjourned to allow public comment
Annual Report 1975			ALRC 3 <i>Annual Report 1975</i> tabled 11 November 1975	Senate Standing Committee on Constitutional and Legal Affairs report <i>Reforming the Law</i> . Ministerial Statement May 1980. Resolution of Senate 24 September 1981 (See para. 12, above)
Alcohol, Drugs and Driving	22 January 1976	Working Paper No.2 <i>Alcohol, Drugs & Driving</i> -February 1976	ALRC 4 <i>Alcohol, Drugs & Driving</i> tabled 23 September 1976	Motor Traffic (Alcohol & Drugs) Ordinance 1977 (A.C.T.) implemented December 1977
Annual Report 1976			ALRC 5 <i>Annual Report 1976</i> tabled 11 November 1976	As ALRC 3
Consumer Insolvency Stage I—The Regular Payment of Debts	10 May 1976	Working Paper No.3 <i>Consumers in Debt</i> November 1976	ALRC 6 <i>Insolvency: The Regular Payment of Debts</i> tabled 4 November 1977	Amendments to s.149 Bankruptcy Act 1966 based in part on Commission's recommendation. Other aspects of Commission report under consideration by the Attorney-General's Department. Cf. Debts Repayment Act, 1978 (S.A.)

Reference	Date received	Consultative papers	Report	Action
Stage II Debt-Recovery & Insolvency				See Table on current References
Human Tissue Transplants	15 July 1976	Issues Paper No.1 <i>Statutory Brain Death</i> -November 1976 Working Paper No. 5 <i>Human Tissue Transplants</i> -January 1977	ALRC 7 <i>Human Tissue Transplants</i> tabled 21 September 1977	A.C.T. Transplantation and Anatomy Ordinance 1978 implemented December 1978 Legislation based on Commission's report enacted in Queensland and Northern Territory. Bill introduced in Victorian Parliament based on report, December 1981. Action in other States announced
Annual Report 1977			ALRC 8 <i>Annual Report 1977</i> tabled 8 November 1977	As ALRC 3
Complaints Against Police (Supplementary Report)	7 January 1977	Working Paper No.6 <i>Complaints Against Police (Supplementary Report)</i> -March 1977	ALRC 9 <i>Complaints Against Police (Supplementary Report)</i> tabled 9 June 1978	As ALRC 1
Annual Report 1978			ALRC 10 <i>Annual Report 1978</i> tabled 24 November 1978	As ALRC 3
Defamation	23 June 1976	Working Paper No.4 <i>Defamation</i> November 1976 Discussion Paper No. 1 <i>Defamation: Options for Reform</i> January 1977 Discussion Paper No. 2 <i>Privacy and Publication: Proposals for Protection</i> April 1977 Discussion Paper No. 3 <i>Defamation and Publication Privacy—A Draft Uniform Bill</i> October 1977	ALRC 11 <i>Unfair Publication: Defamation and Privacy</i> tabled 7 June 1979	Referred by the Commonwealth Attorney-General to the Standing Committee of Commonwealth and State Attorneys-General. Under consideration by the Standing Committee. Announcements made that progress towards uniform Defamation Act is being made

Reference	Date received	Consultative papers	Report	Action
Privacy and the Census	25 May 1976	Discussion Paper No.8 <i>Privacy and the Census</i> (May 1979)	ALRC 12 <i>Privacy and the Census</i> tabled 15 November 1979	Government's response to Commission recommendations indicated on 20 November 1979, 10 September 1980 and 30 April 1981. Some proposals implemented Census and Statistics Amendment Act 1981
Annual Report 1979			ALRC 13 <i>Annual Report 1979</i> tabled 22 November 1979	As ALRC 3
Lands Acquisition	7 July 1977	Working Paper No.8 <i>Lands Acquisitions Law Reform Proposals</i> Dec. 1977 Discussion Paper No.5 <i>Lands Acquisition Law-Reform Proposals</i> . January 1978	ALRC 14 <i>Lands Acquisition and Compensation</i> tabled 22 April 1980	Under consideration by Department of Administrative Services. Implemented in part by Lands Acquisition Act 1978 (N.T.)
Sentencing Stage I	11 August 1978	<i>Sentencing: National Survey of Judges and Magistrates</i> (interim report), March 1979 Discussion Paper No.10 <i>Sentencing Reform Options</i> , June 1979	ALRC 15, <i>Sentencing of Federal Offenders</i> tabled 21 May 1980	Implementation in part by Crimes Amendment Act 1982. Attorney-General is negotiating with States concerning the proposed Sentencing Council
Insurance Contracts Stage I	9 September 1976	Issues Paper No.2 <i>Insurance Contracts</i> June 1977 Discussion Paper No.7 <i>Insurance Contracts</i> , October 1978	ALRC 16, <i>Insurance Agents and Brokers</i> tabled 16 September 1980	Treasurer announced on 10 June 1981 that the Government had not accepted the Commission's recommendations. Questions of extended credit to brokers to be kept under review. Insurance (Agents and Brokers) Bill 1981 passes Senate without division. Still before House of Representatives.
Annual Report 1980			ALRC 17 <i>Annual Report 1980</i> tabled 3 December 1980	As ALRC 3
Child Welfare	18 February 1979	Discussion Paper No. 9. <i>Child Welfare: Children in Trouble</i> , May 1979	ALRC 18, <i>Child Welfare 1981</i> tabled 12 November 1981	Under consideration by Department of the Capital Territory. Active discussions on new Ordinance had with

Reference	Date received	Consultative papers	Report	Action
		Discussion Paper No. 12 <i>Child Welfare: Child Abuse and Day Care</i> , May 1980		Minister and Departmental officers.
Annual Report 1981			ALRC 19 <i>Annual Report 1981</i> tabled 12 November 1981	As ALRC 3
Insurance Contracts Stage II	9 September 1979	Issues Paper No. 22 <i>Insurance Contracts</i> June 1977 Discussion Paper No.7 <i>Insurance Contracts</i>	ALRC 20 <i>Insurance Contracts</i>	Recently tabled. 1982

Complaints Against Police (ALRC 1 and 9)

45. The Complaints (Australian Federal Police) Act 1981, introducing substantially the scheme proposed by the Commission, came into force on 1 May 1982.¹ The legislation provides for:

- establishment of an Internal Investigation Division of Police;
- the Commonwealth Ombudsman to be a neutral recipient and, in some cases, investigator of complaints with certain enhanced powers; and
- establishment of a Police Disciplinary Tribunal, presided over by a member of the Judiciary. The Federal Police Disciplinary Tribunal members are Mr Justice Kelly of the Federal Court, Mr J.B. Norris Q.C., and Mr R.J. Cahill S.M.

Yet to be proclaimed is the Australian Federal Police Amendment Act 1981. That Act implements two further recommendations of the Commission.² These dealt with:

- provision for vicarious liability by the Commonwealth for the conduct of police officers in the course of their duties; and
- provision requiring identification numbers and address of police in uniform.

The origin of the rule that the Commonwealth was not liable, as an ordinary employer is, for the acts or omissions of police officers was described, analysed and criticised in the Commission's reports. In advance of federal legislation, the Queensland Police Act was amended to provide for vicarious liability for police. Legislation has also been introduced in other States.

Criminal Investigation (ALRC 2)

46. The Criminal Investigation Bill 1977 was introduced into the Parliament on 24 March 1977. When the Parliament was dissolved in November 1977 the Bill lapsed. A slightly amended Bill was re-introduced by the Attorney-General on 18 November 1981. Senator Durack described the measure as 'the single most significant reform in Australian policing'. He

¹ Complaints (Australian Federal Police) Bill 1981 Australia, Senate, *Hansard*, 26 February 1981, 170.

² Australia, Senate, *Hansard*, 26 February 1981, 172.

said that his view of the legislation and the impact it would have on policing was shared by the Commissioner of the Australian Federal Police, Sir Colin Woods. Senator Durack said that the Bill set out in a clear and precise form the rights and duties of citizens and members of the AFP in relation to the investigation of offences against Federal and A.C.T. laws:

The legislation also seeks to establish a proper balance between the community's need for effective law enforcement and the need to preserve and respect basic human rights and freedom.

Listing some of the important features of the Bill, the Attorney-General mentioned:

- a person in custody interviewed by the police would be given a specific right to be assisted by a lawyer and time to contact a lawyer;
- restrictions will be imposed on the use of force, including firearms, for the purpose of arrest;
- strict criteria will be laid down for arrest without warrant;
- taking of fingerprints will be permitted for identification purposes only;
- provision will be introduced to protect the identification of suspects through identification parades and other procedures;
- rules will be laid down as to the sound recording and admissibility of oral confessions made to police officers;
- general search warrants will be abolished and special provisions made to cover the granting of particular search warrants;
- alterations will be made to the system of police bail, including spelling out of criteria to be applied by the police in making bail decisions; and
- recognition will be given to the need for special assistance to Aborigines, children and non English-speaking suspects when under interrogation in criminal matters.

The Attorney-General pointed out that the form of the legislation followed a thorough review of the 1977 Bill. The Government had considered submissions by police, civil liberties, legal professional bodies and others. However, although a number of changes had been made 'they did not interfere with the major reforms proposed in the 1977 Bill'. Senator Durack indicated that the Commissioner of the Federal Police, Sir Colin Woods, had told him that the provisions in the Bill were 'workable in the Federal area' of policing. Their introduction could have a long-term impact beyond the Federal Police, if State Governments chose to follow the Commonwealth's lead. Senator Durack said the Criminal Investigation Bill represented probably the first attempt by a common law country to state comprehensively the principles applying to criminal investigation, consistently with the requirement of the International Covenant on Civil and Political Rights.

In a real and practical way this Bill, together with the Complaints (Australian Federal Police) Act 1981 and the Human Rights Commission Act 1981 demonstrates the concern of the Government with the protection and promotion of the rights of the individual. The Bill exemplifies the Government's appreciation that the rights of the individual, to be effective, need to be set out clearly and specifically.

Debate on the Bill was adjourned to allow public comment, and has yet to be resumed.

Alcohol, Drugs and Driving (ALRC 4)

47. The Motor Traffic (Alcohol and Drugs) Ordinance 1977 (A.C.T.) No. 17 of 1977, based with minor exceptions on the Commission's fourth report, is now in force in the Australian Capital Territory. Some consideration of the operation of the Ordinance is being given by the Criminal Law Consultative Committee of the Australian Capital Territory which is convened and chaired by the Chairman of this Commission.

Insolvency: The Regular Payment of Debts (ALRC 6)

48. The Commission's sixth report, *Insolvency: The Regular Payment of Debts*, was tabled in Federal Parliament on 4 November 1977. The Commission proposed that a regular payment of debts program be established to enable non-business debtors to pay their debts by instalments over a period of up to three years. Arrangements of a similar nature have operated successfully in the United States for over forty years. Further particulars of the Commission's recommendations can be found in the *Annual Report 1977*.³ The report was under consideration by the Department of Business and Consumer Affairs, which was abolished on 7 May 1982. Responsibility for the implementation of the report then passed to the Attorney-General.

49. Some of the basic recommendations of the Commission's report were enacted in South Australia in the Debts Repayment Act 1978, noted in the *Annual Report 1979*.⁴ That Act has not come into force. In 1980, following a change of Government at the general election, the Government of South Australia announced that it had decided not to proclaim the Act at present. Speaking in the Estimates Committee, the Minister of Community Welfare and Minister of Consumer Affairs, the Hon. J.C. Burdett, indicated that the Government wished to examine the operation of the most recent amendments to the federal Bankruptcy Act⁵ before proclaiming the Debts Repayment Act 1978. The Minister added that the Act will not be repealed. It will be left on the Statute Book so that the opportunity is clearly there to proclaim it if it does appear to be appropriate at some time.⁶

50. In July 1981, the Minister for Business and Consumer Affairs (the Hon. Mr J. Moore) released a list of detailed proposals for amendments to the Bankruptcy Act and called for public submissions. One proposal is that, where an estate has divisible assets of less than \$1000 and no objection has been lodged, the bankrupt should be discharged after six months from the date of his bankruptcy. This proposal arose out of a review of Federal bankruptcy functions designed to cut down on unproductive bureaucracy and regulation. A Joint Management Review queried whether any useful purpose was served, in the case of bankrupts with virtually no assets, by the requirement that they must remain bankrupt for at least three years unless they approach a court for early discharge. The material cited in support of the proposal quotes in full from the Commission's sixth report. In that report, the Commission recommended automatic discharge of non-business debtors after six months. Already legislation to reduce the period from five years to three years has been passed.⁷

Human Tissue Transplants (ALRC 7)

51. The A.C.T. Transplantation and Anatomy Ordinance 1978, came into effect in December 1978. The Ordinance is based on the draft Ordinance proposed by the Commission in its report. Legislation based on the Commission's recommendations has also been enacted in Queensland and the Northern Territory. A Bill based on the Commission's report was before the Victorian Parliament when it was dissolved for the 1982 elections. The Ministers of Health in South Australia, Western Australia, and New South Wales have announced the intention to introduce legislation based on the report. The report is not only important as a uniform law

³ ALRC 8, 27-8.

⁴ ALRC 13, 26.

⁵ Bankruptcy Amendment Act 1980. See *Annual Report 1980*, ALRC 17, 26.

⁶ *Parliamentary Debates*, South Australia, 9 October 1980, 437 (House of Assembly, Estimates Committee B). Cf. 26 November 1980, 2209 Legislative Council.

⁷ Bankruptcy Amendment Act 1980, s. 72 which inserted a new s. 149 in the Bankruptcy Act 1966.

exercise. It also represents a successful model for the achievement of law reform in a controversial area of concern. A number of bioethical problems of a similar character have produced public calls for reference to the Law Reform Commission.

Unfair Publication (ALRC 11)

52. The Commission's report, which was tabled on 7 June 1979 has been under consideration by the Standing Committee of Commonwealth and State Attorneys-General. Details of the Commission's proposals are set out in the 1979 Annual Report.⁸

53. The Standing Committee of Federal and State Attorneys-General at Queenstown, New Zealand, on 15 February 1982 continued to work through the proposed uniform Act. It was agreed that a person wishing to plead justification as a defence to a defamation action should have to establish that his statement was 'for the public benefit as well as that it was the truth'. Under Australian law at present, truth alone is a defence to civil actions for defamation in a number of jurisdictions, whilst in others, it is necessary for the defendant to establish truth and public benefit or truth and public interest. The Commission's report, proposed a different compromise to that suggested by the Law Ministers. The Commission suggestion was that truth alone should be the defence of justification. However, to compensate for the deletion of the uncertain element of 'public benefit' in some jurisdictions, the Commission proposed a carefully designed and limited privacy action, where it was established that the publication complained of, though true, invaded, without public justification, the private zone of the subject. Commenting on the decisions made in New Zealand, the Commonwealth Attorney-General, Senator Durack, said that they had 'substantially advanced progress towards uniform defamation law in Australia'. He said that the Attorneys-General had 'now agreed on most of the major issues which would form the basis of a uniform defamation law'. Amongst the other conclusions reached at the New Zealand meeting were:

- the need for further consideration of absolute privilege;
- the need for a uniform list of proceedings and reports which will be entitled to qualified privilege;
- introduction of a strict time limitation for the bringing of actions, being one year from knowledge of the publication or three years from its date, whichever is sooner. The Commission recommended six months or three years;
- provision for injunctions and corrections in the case of defamation of the dead. Further consideration is to be given to damages in such cases, although the Commission recommended against damages in such cases;
- preparation of a draft model Bill and consideration of whether it should be a code.

The Commonwealth Attorney-General said that he hoped it would be possible to dispose of the remaining issues of the uniform defamation law at the next meeting of the Standing Committee. A further meeting of the Ministers is to take place at the end of August 1982.

54. An earlier meeting of the Committee in Perth announced on 26 November 1981 that agreement had been reached on the main categories of remedies that should be available to the proposed uniform defamation laws. The Attorney-General, Senator Durack, indicated that the main categories of remedies agreed on were:

- power for the court to order publication of a correction;
- power for the court to order publication of the fact that a judgment has been made in a defamation action;

⁸ ALRC 13, 27-28.

- power for the court to make injunctions and declarations;
- delineation of the rules governing the calculation of damages for defamation.

The principles of damages follow closely the recommendations of the Commission. The issue of the abolition of punitive damages, recommended by the Commission, was not apparently dealt with.

Privacy and the Census (ALRC 12)

55. The Commission's report on this subject was tabled in Parliament on 15 November 1979. Details of the Commission's proposals are set in the Commission's Annual Report 1980.⁹ Details of the Government's response to some of the proposals made by the Commission are also set out in the Annual Report 1980.¹⁰ On 10 September 1980 the Treasurer made a further statement on other aspects of the Commission's report.¹¹ That statement is summarised in the Annual Report 1981.¹² The Census and Statistics Amendment Act 1981¹³ incorporates the decisions announced in the Treasurer's statements of 20 November 1979 and 10 September 1980.

Lands Acquisition and Compensation (ALRC 14)

56. The Commission's fourteenth report, *Lands Acquisition and Compensation* was tabled in Parliament on 22 April 1980. Details of the Commission's proposals are set out in the Annual Report 1980.¹⁴ A significant number of the Commission's proposals have been implemented in the Northern Territory.¹⁵ This legislation was based on the proposals set out in the Commission's discussion paper *Lands Acquisition Law: Reform Proposals*.¹⁶ Many of the proposals in the discussion paper were incorporated in the Commission's report. The report is still under consideration for the Commonwealth by the Department of Administrative Services. It is understood that an inter-departmental working group is examining the report.

Sentencing of Federal Offenders (ALRC 15)

57. *Sentencing Alternatives*. The Crimes Amendment Act 1982 was given Royal assent on 16 June 1982. The Act makes a number of reforms to the punishment of federal offenders, implementing some of the proposals contained in the Commission's interim report *Sentencing of Federal Offenders* which was tabled in Parliament 21 May 1980. Details of the Commission's proposals are set out in the Annual Report 1980.¹⁷ Proposals adopted by the legislation include:

- provision that, when a gaol term is not mandatory, a person convicted of a federal or Capital Territory offence should not be sentenced to prison unless the court is satisfied that in all the circumstances no other penalty is appropriate;

⁹ ALRC 17, 27-28.

¹⁰ ALRC 17, 28-29.

¹¹ Australia, House of Representatives, *Debates* 10 September 1980, 1081.

¹² ALRC 19, 26-27.

¹³ Australia, House of Representatives, *Debates* 30 April 1981, 1854.

¹⁴ ALRC 17, 29-30.

¹⁵ Lands Acquisition Act 1978 (N.T.)

¹⁶ ALRC DP 5.

¹⁷ ALRC 17, 30-33.

- provision requiring a court to state its reasons in writing why no other sentence is appropriate, if a prison sentence is imposed;
- provision to make available for the punishment of federal offenders, alternatives to imprisonment (such as community service orders or weekend detention) available in the State in which he is convicted.

58. **Prosecution Guidelines.** The Commission's interim report dealt with the 'punishment' of federal offenders and pointed out that such punishment could be determined or influenced by prosecution decisions. One of the important recommendations of the report was that the federal Attorney-General should issue guidelines to federal prosecutors, establishing the lawful policy to be adopted by them in exercising their discretion. It was further recommended that these guidelines should be published and available for review and criticism.¹⁸ In his address to the National Convention of the Young Liberals on 14 January 1982, Senator Durack, the federal Attorney-General, announced his intention to table in the Senate a statement setting out the Commonwealth's prosecution policy. He said that the policy would spell out the general principles which the federal Attorney-General and the officers of his department would apply in the institution and conduct of prosecutions:

The policy will deal with such questions as the decision to prosecute, the conduct of cases, the question of indemnities for witnesses and private prosecutions.

The Attorney-General said that it would be the first time any government in Australia had decided to make public the principles that would guide it in such matters.

59. **Sentencing Council.** Establishment of a national sentencing council was also proposed in the Commission's interim report. Mr. Viner, on behalf of the federal Attorney-General, told the House of Representatives on 12 May 1982:

I have written to the State and Northern Territory Attorneys-General proposing the establishment of a sentencing council. The proposal envisages that the council would consist of Federal, State and Territory judges and that the A.C.T. would be represented on such a council. Although the specific functions of the proposed council have yet to be agreed upon, I would see as the prime purpose of the council, promotion of greater consistency and uniformity in the sentencing of offenders throughout Australia. . . . Differences in State and Federal criminal laws and procedures have in the past created problems for effective law enforcement . . . Establishment of the sentencing council is regarded as a particularly constructive reform.

The Council proposed by the Government differs somewhat from that envisaged in the Commission's report. The latter proposed a Council comprising judges, magistrates, criminal justice administrators, correction authorities, legal practitioners and academics. The Commission proposed that the judicial members should form the majority. Under the announced initiative, the Council will be comprised of judges only. Furthermore, the proposal appears to envisage the establishment of a Sentencing Council administratively, rather than by legislation, as contemplated by the Commission in its interim report.

60. **Prison Census.** The Australian Institute of Criminology is currently conducting a National Prison Census in conjunction with the Australian Bureau of Statistics and all Australian correctional authorities. The Census, which is intended to be repeated annually, was another recommendation of the Commission's interim report on sentencing.

61. **Future Issues.** A number of further issues will be dealt with in the final report. These are outlined in Chapter 13 of the report on the *Sentencing of Federal Offenders*.¹⁹ For a summary of these issues see the *Annual Report 1980*.²⁰

¹⁸ See ALRC 15, para. 67-71.

¹⁹ ALRC 15, 305-320.

²⁰ ALRC 17, 38-39.

Insurance Agents and Brokers (ALRC 16)

62. The Commission's report on Insurance Agents and Brokers (ALRC 16) was tabled in Parliament on 11 September 1980. Details of the Commission's recommendations are set out in the Commission's Annual Report 1980.²¹ On 10 June 1981 the Treasurer announced in Parliament that the Government did not propose to implement the recommendations contained in the report including for a system of registration of insurance brokers and a requirement for brokers to maintain client funds in audited trust accounts.²² The Treasurer did, however, foreshadow the possibility of legislation to deal with one particular problem discussed in the report. At present brokers are able to invest or otherwise use premiums and other moneys entrusted to them for their own benefit. The Treasurer said that this problem warranted special attention and indicated that he would be making a further statement on the matter following consultation with the insurance industry.²³

63. Following the Government's announced decision not to implement the report ALRC 16, Senator Gareth Evans introduced a Private Member's Bill in the Senate based substantially on the Bill attached to the Commission's report. The Government continued to oppose the measure. However, the Bill finally passed through the Senate without a division being called. The Bill has been introduced into the House of Representatives and the debate stands adjourned at the time of this report.

64. In mid November 1981 the Federal Treasurer (The Hon. J.W. Howard) tabled in the Parliament the report of the Committee of Inquiry into the Australian Financial System (The Campbell Report). The Report commented on the Commission's report on Insurance intermediaries (ALRC 16). Noting that there had been little regulation of insurance brokers or agents in Australia and that self-regulation has been fragmented, the Committee also pointed out that neither common law nor statute was clear concerning the responsibility of insurers for the actions of their agents. It was to clarify this responsibility that much of the Commission's report was directed. The Campbell Report did not consider that self regulation alone would be sufficient to deal with the problems identified. On the contrary it expressed concern about the proliferation of differing State laws to regulate insurance brokers:

The Committee would not favour sole reliance on self regulation. Governments clearly have a role in protecting individual consumers against fraud and misrepresentation. The committee also stresses the desirability of consistent regulation. . . . It believes every action should be taken by the government to ensure that appropriate co-operative national legislation is developed. This could provide for the holding of funds in trust accounts in connection with their business as brokers, as recommended by the Law Reform Commission.

The Campbell Report also favoured the Commission's proposal that brokers should have to disclose commission received as remuneration for insurance transactions. Following the Treasurer's announcement the Western Australian Parliament has passed state legislation implementing a system of occupational control of brokers engaged in selling general insurance.²⁴ Like the draft legislation attached to the Commission's report, the Western Australian legislation requires brokers to be registered and makes professional indemnity insurance a condition of registration. The legislation goes beyond the Commission's proposals in allowing the Licensing Board to refuse a licence on the basis of the applicant's character or lack of qualifications. The legislation also requires agents who sell general insurance to register with the Board. The

²¹ ALRC 17, 33-34.

²² Australia, House of Representatives, *Debates*, 10 June 1981, 3417.

²³ *id.*, 3418.

²⁴ General Insurance Brokers and Agents Act 1981 (W.A.).

Governments of New South Wales and South Australia have indicated that they intend to introduce legislation regulating insurance brokers, although apparently in terms different to that enacted in Western Australia.

Child Welfare (ALRC 18)

65. The Commission's report was tabled in Parliament on 12 November 1981. Details of the Commission's recommendations are set out in the Commission's *Annual Report 1981*.²⁵ Tabling the report, Senator Chaney (the Minister representing the Acting Federal Attorney-General) indicated the action that was being taken by the Government to handle consideration of the report:

Careful study is clearly required in respect of this report on child welfare. My colleagues will be arranging for relevant officers to consider the report in detail. In addition, views will be sought from the A.C.T. Children's Advisory Committee. As child welfare is a State responsibility, relevant State Departments will also be consulted, as will the A.C.T. House of Assembly and organisations concerned with child welfare in the Territory. In due course there may be a need for further discussions to be arranged with the Law Reform Commission. Following those considerations of the report, my colleague the Minister for the Capital Territory expects to present options to the Government for child welfare legislation in the Australian Capital Territory.

Discussion is being conducted at the invitation of the Minister for the Capital Territory and senior officers of the department, concerning the terms of a new Ordinance based on the Commission's report. Good progress is being made in those discussions.

Insurance Contracts (ALRC 20)

66. **Background to Report.** This report arises out of a reference to the Commission by the Commonwealth Attorney-General. It is the second of two reports proposing reform of the law of insurance contracts. It should be read with the Commission's earlier report *Insurance Agents and Brokers* (ALRC 16) referred to above. Until now, the Australian law of insurance contracts has been a mixture of common law principles, many of them inherited from earlier times, and a number of Imperial, Federal and State statutes. There has never been a coherent scrutiny of the adequacy and appropriateness of the Australian law of insurance contracts until this report.

67. **The Issues.** In responding to the reference, the Commission examined the law governing insurance contracts at the principal stages of the relationship between insurer and insured. Some of the situations where current law required reconsideration to ensure that, where losses occur and the insured has acted in good faith, he should receive greater protection included:

- **The Duty of Disclosure.** An insured is obliged to disclose to an insurer any fact which a prudent insurer would regard as relevant to the assessment of the risk, even if the insured has no business knowledge and not the slightest idea of what a prudent insurer would think relevant.
- **The Insurer's Remedies.** At present, where the insured is in breach of his contract, an insurer is entitled to refuse to pay a claim, and possibly place a large and unexpected loss on the insured, even if the breach caused no loss to the insurer at all.
- **Subrogation.** An insurer may require an insured to sue even a member of his family or an employee to collect, for the benefit of the insurer, reimbursement of insurance money paid.

²⁵ ALRC 19, 29-30.

- **Insolvency.** The insured may suffer a disastrous loss because the insurer is insolvent and unable to meet a claim.

68. **Guiding Principles.** In developing its proposals, the Commission had clearly in mind the need to strike an appropriate balance between:

- the economic costs, including indirect costs, of reform of present insurance law, institutions and arrangements; and
- the benefits—including indirect and intangible benefits, such as securing equity as between insurers and insureds—that would be achieved by such a reform.

In balancing these principles, the Commission paid particular attention to the Report on the Australian Financial System (the Campbell Committee Report). That Report recognised that intervention in the market place by legislation was justified where it was necessary:

- to improve the operation of the market, i.e. to make the market more competitive; or
- to achieve other important social objectives.

Many of the recommendations in the Commission's report are designed to improve the operation of the insurance market by ensuring that necessary and adequate information is available to prospective insureds. Others are designed to provide a set of rules that is fairer in the context of present day insurance than the rules developed in an earlier and far different time. The following principles were of particular importance in formulating the Commission's recommendations:

- **Uniformity and Modernisation.** Because insurance is a national industry, the law relating to insurance contracts should, so far as is possible, be uniform throughout Australia. It should be amended to clarify uncertainties which have arisen in principles developed over more than 200 years by common law judges and specify acceptable rules for the modern relationship of insurer and insured.
- **Assurance of Fair Competition.** The Commission recognised the vital importance of the insurance industry to the Australian community. Apart from its insurance activities, it is a major employer and investor. It is also a competitive industry. The Commission accepted the guiding philosophy of the Trade Practices Act. Freedom of contract and promotion of competition, so far as compatible with principles of equity and fairness to the insuring public, were accepted as basic goals.
- **Promotion of Informed Choice of Insurance.** As far as practicable, insureds should be supplied with sufficient information and otherwise protected by the law so that they are able to choose insurance policies which best meet their needs.
- **The Principle of the Utmost Good Faith** (*uberrima fides*). The insurance contract has traditionally been regarded as a relationship of 'the utmost good faith'. The Commission believed that this principle should continue to be the touchstone of insurance contracts law. But it should be made clear that the insurer as well as the insured should show the utmost good faith.
- **The Need to Avoid Unfair Burdens.** The remedies available to insurers in respect of misrepresentation, non-disclosure and breach of contract should not, as they may do at present, place a burden on the insured that is vastly disproportionate to the loss the insured's action caused to the insurer.
- **The Need to Avoid Catastrophic Losses.** So far as possible, insureds, who might otherwise unintentionally be exposed to the risk of catastrophic losses, should be protected against losing insurance cover through no fault of their own.

69. **The Commission's Proposals.** The Commission's principal reform proposals included:

- **Supply of Policy.** The insured should, on request, be entitled to a copy of his insurance policy. Where no policy is supplied, he should be protected against any unusual limita-

- tion on cover which is in the contract and which is not drawn to his attention.
- **Standard Cover.** To prevent insureds being surprised by unusual terms in major fields of domestic insurance, Regulations should provide for standard cover in motor vehicle, householder's/houseowner's, personal accident, consumer credit and travel insurance. Insurers should be able to vary the terms of standard cover. But to be effective, such variations should be specifically drawn to the attention of the insured.
 - **Misleading Conduct.** Present laws forbidding misleading conduct on the part of insurers should be preserved and extended.
 - **Insurable Interest.** The requirement that the insured must have an 'insurable interest', at the time when a contract of general insurance is taken out, should be abolished. The requirement should be preserved in the case of life insurance. But the present statutory categories of insurable interest in life insurance should be widened to include cases where the insured stands to suffer a pecuniary or economic loss on the death of the life insured.
 - **Insured's Duty of Disclosure.** The duty of an insured to disclose to the insurer matters relevant to the assessment of the risk should no longer be tested by asking what a prudent insurer would regard as relevant, but by asking what the insured knew, or what a reasonable person in the insured's circumstances would have known, to be relevant to the assessment of risk. The insurer's right to avoid a contract from its inception for non-disclosure should be abolished. The insurer should continue to be entitled to cancel the contract prospectively. It should also be entitled to adjust a claim to take into account the loss suffered by it because of the breach of the duty of disclosure.
 - **Misrepresentation.** Reforms similar to those recommended for the duty of disclosure should be made to the law relating to misrepresentation.
 - **Fraud by Insured.** Subject to retention of the provisions of the Life Insurance Act relating to mis-statements of age in life insurance, the insurer's right to avoid a contract from its inception for fraud should be retained. However, courts should have a power to adjust the rights of the parties where the loss the insured would suffer would be seriously disproportionate to the harm caused by his fraud.
 - **Contractual Obligations.** An insurer should no longer be entitled to refuse to pay a claim in the event the insured is in breach of contract. Instead, it should be entitled to reduce the claim in proportion to the prejudice it has suffered as a result of the breach.
 - **Cancellation of Insurance.** Notice of cancellation of insurance should be required in all cases and should be ineffective until substitute insurance is secured or a specified time has elapsed. The insurer's rights of cancellation in general insurance should be limited.
 - **Reasons for Refusal of Cover, Cancellation and Refusal to Renew.** Where an insurer refuses cover or renewal of cover, or cancels a policy, the insured should generally be entitled to know the reasons.
 - **Average and Under-insurance.** Insurers should be required clearly to inform the insured of the effect of an average clause and its operation in the case of householder's/houseowner's policies should be limited.
 - **Multiple Insurance.** 'Other insurance' clauses in insurance contracts should, except in certain limited cases, be rendered ineffective. The insured should be entitled to recovery from any of the insurers. That insurer should then be entitled to obtain contribution from the other insurers.
 - **Subrogation.** Subrogation recovery by an insurer against third parties should be limited where the third party is a member of the family of the insured, has some other personal relationship with the insured or is an employee of the insured.
 - **Right to Interest for Slow Payment.** The insured should be entitled to be paid interest by the insurer from the date on which a further delay by the insurer in the payment of a claim would be unreasonable.

- **Arbitration Clauses Ineffective.** Arbitration clauses in insurance contracts should be rendered ineffective.
- **State Courts' Jurisdiction.** Jurisdiction in respect of matters arising under the proposed legislation should remain with State courts. Consideration should be given to conferring jurisdiction to hear insurance disputes on State consumer claims tribunals.
- **Solvency Protections.** The Insurance Commissioner should be given the power to require a general insurer to reduce its level of investment in particular categories of investment for solvency and like reasons. There should be provision for review by the Administrative Appeals Tribunal. A policyholders' guarantee scheme should be established to protect insureds under contracts of general insurance against insolvency of insurers.
- **Discrimination.** Jurisdiction should be conferred on the Human Rights Commission to receive complaints in respect of unjustified discrimination in insurance on the grounds of sex, marital status or physical or mental handicap.

70. **Summary.** The Insurance Contracts report represents a major revision of the Australian law of insurance contracts. Implementation of its recommendations would represent an important contribution to encouraging high standards within the insurance industry. The recommendations are made taking into account the need to promote a proper measure of self-regulation by the industry itself and the need to provide necessary information to consumers and their representatives.

Current Projects

71. The following table sets out in summary form details of the Commission's current references. Additional details about these references are set out in paragraphs 72 to 97 below. The Terms of Reference at present before the Commission are set out at the end of this report in Appendix B.

TABLE 4 CURRENT REFERENCES

Reference	Date received	Consultative papers	Expected date of completion
Privacy	9 April 1976	Discussion Paper No. 2 <i>Privacy and Publication—Proposals for Protection</i> April 1977	Report on Privacy, excluding criminal records and law enforcement aspects, early 1983. Report on latter aspects, late 1983. Reports completed on <i>Unfair Publication: Defamation and Privacy and Privacy and the Census</i>
		<i>Privacy and the Census</i> Discussion Paper No. 8 <i>Privacy and the Census</i> April 1979	
		Discussion Paper No. 13 <i>Privacy and Intrusions</i> , June 1980	

Reference	Date received	Consultative papers	Expected date of completion
Consumer Insolvency Stage II—Debt Recovery and Insolvency	10 May 1976	Discussion Paper No. 14 <i>Privacy and Personal Information</i> June 1980 Research Papers Discussion Paper No. 6 <i>Debt Recovery and Insolvency</i> July 1978	Mid 1983
Access to the Courts (Standing to Sue and Class Actions)	1 February 1977	Discussion Paper No. 4 <i>Access to the Courts—I Standing: Public Interest Suits</i> —November 1977 Working Paper No. 7 <i>Access to Courts—I Standing: Public Interest Suits</i> November 1977 Discussion Paper No. 11 <i>Access to Courts II Class Actions</i> June 1979	Report on Standing: early 1983 Report on Class Actions: late 1983
Aboriginal Customary Laws	9 February 1977	Discussion Paper No. 17 <i>Aboriginal Customary Law-Recognition</i> November 1980 Research Papers (see list, para. 86)	Late 1983
Sentencing Stage II	11 August 1978	<i>Sentencing: National Survey of Judges and Magistrates</i> March 1979 Discussion Paper No. 10 <i>Sentencing Reform Options</i> —June 1979 ALRC 15 <i>Sentencing of Federal Offenders (Interim)</i> tabled 21 May 1980 Research Papers (see list, para. 81)	Interim Report delivered 1980. To be completed 1984
Evidence	18 July 1979	Discussion Paper No. 16 <i>Reform of Evidence Law 1980</i> , October 1980 Issues Paper No. 3 <i>Reform of Evidence Law</i> , October 1980. Research Papers (see list, para. 96)	1984

Debt Recovery and Insolvency

72. In its discussion paper *Debt Recovery and Insolvency*²⁶ the Commission advanced tentative proposals for the reform of the debt recovery procedures in the Australian Capital Territory. The paper also contained an outline of the principles which the Commission felt should apply to debt recovery procedures throughout Australia. In order to gain a more detailed knowledge of the operation of existing debt recovery systems and to provide comparative information to assist in estimating the costs of the Commission's reform proposals, the Commission conducted a survey of the debt recovery procedures available under New South Wales law. The survey was undertaken with the assistance of the New South Wales Government and the New South Wales Law Reform Commission. The survey involved a detailed examination of the 'life' of some 2,570 debt recovery actions commenced in New South Wales during the year 1975. The Australian Bureau of Statistics provided formal advice in the design of the survey sample and the survey form, the manner in which the survey was to be undertaken and confirmed that the selection of files actually obtained was in accordance with the survey design.

73. Because of the complexities of the debt recovery procedures, it took much time to make satisfactory arrangements for the preparation of data for analysis by computer. The possible stages of a debt recovery action are sequential to the point of entry of judgment but can then involve a series of loops and branches if multiple post judgment enforcement steps are taken. The difficulties were resolved and the preliminary results of the computer processing were delivered to the Commission early in 1981. Further progress on this reference from that point has been severely hampered by the staff ceilings imposed on the Commission. Two outstanding references, Insurance Contracts and Debt Recovery, were due for completion at approximately the same time. Staff numbers were and are such that it is not possible to proceed to a final report on each reference. The Commission decided to give priority to the reference on Insurance Contracts. Accordingly, work on the Debt Recovery reference was suspended at the end of January 1980. It was not resumed until mid 1982. As a result of this interruption, momentum was lost. Just before the end of June 1982, the results of the survey were received back from computer processing and work began on analysing them and writing up the results. The project has now been revived. The Commission continues to receive guidance and help from Professor David L Kelly, Professor of Law, University of Adelaide, formerly Commissioner in Charge of the Commission's Insolvency reference. The Commission expresses appreciation to Professor Kelly for his continuing assistance. A number of changes to the civil litigation procedures in the A.C.T. Court of Petty Sessions were effected by the Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982.²⁷ The new Ordinance adopts the proposal contained in the Discussion Paper that summonses might be served by ordinary post.²⁸ The Court is now authorised to order, on the application of the defendant, that a judgement debt be paid by such instalments and within such times as it thinks just.²⁹

Privacy

74. *Stage Reached.* During the past year, work on the privacy reference has advanced considerably. Decisions have been taken on most of the issues facing the Commission. The final report on the reference, excluding only criminal records and certain law enforcement aspects, is expected to be presented early in 1983.

²⁶ DP 6, 1978.

²⁷ Made 25 June 1982, in force 1 September 1982.

²⁸ DP 6, 27, 28; cf. Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982 (A.C.T., s. 22).

²⁹ s. 29; cf. DP 6, 35.

75. **Consultation.** There has been extensive and detailed consultation on the policy issues facing the Commission in the reference. The consultations have considerably assisted the Commission. Meetings of privacy consultants were held in May and June 1982 to discuss aspects of privacy and personal information and privacy and intrusions. The number of privacy consultants has been increased by the appointment of a number of consultants from Commonwealth Departments and authorities having a significant involvement with personal information or needing to engage in intrusive practices. The privacy consultants also include a number of representatives of the private sector with similar involvements and academics from relevant disciplines. The process of consultation with State law reform bodies with an interest in privacy has continued. The interim decisions taken by the Commission have been circulated for comment to the Western Australian Law Reform Commission, the Victorian Statute Law Revision Committee and the New South Wales Privacy Committee, all of which have either a privacy function or a reference dealing with privacy. The Commissioner in charge of the privacy reference, and officers of the Commission have, by invitation, attended a number of meetings of the New South Wales Privacy Committee. In May 1982 the Commissioner in charge and the Secretary and Director of Research of the Commission spent two days with the Western Australian Law Reform Commission discussing the Commission's privacy proposals.

76. **Scheme of Draft Proposals.** The terms of the Commission's reference are restricted to the Commonwealth's sphere, i.e., the Federal public sector and in the Australian Capital Territory. The Commission's proposals for privacy protection are expected to deal with:

- general administrative matters;
- powers of entry;
- surveillance;
- information privacy; and
- other miscellaneous matters.

Draft legislation to implement various alternative approaches has been prepared. It is clear to the Commission that any legislation should include:

- general provisions which confer privacy protection powers on a Privacy Commissioner, in conjunction with the other established Commonwealth institutions;
- confer rights of access to records of personal information along the line indicated in the Freedom of Information Act 1982;
- provide for
 - annual reports
 - public education
 - review of standards and practices in certain designated areas
- provisions relevant to intrusions by Commonwealth officers in certain areas.

In addition, there will be a need for amendment of some existing Commonwealth legislation.

77. **Further Research.** Although the extensive series of meetings with consultants, State colleagues working on privacy protection and State officers nominated by Ministers for liaison with the Commission, has recently been completed, it will be necessary, later in 1982, for members and officers of the Commission to have further consultations with Commonwealth officers, particularly those who are consultants to the Commission. The computer search and analysis of Commonwealth statutory provisions, begun in 1979 and mentioned in the 1980 *Annual Report*, with particular emphasis on provisions relating to powers of entry and power to demand production of documents, has been completed, analysed and tabulated. A similar search of the legislation of the Australian Capital Territory has been started.

78. **The Commission's Approach.** The Commission has concluded that current laws for the protection of privacy in Australia in Federal jurisdictions are inadequate but, that a general tort

remedy would not be appropriate. What may be needed is accessible, cheap administrative machinery. The Commission is also contemplating a limited restatement of the law relating to breach of confidence. To contain the cost of remedial machinery, and to achieve maximum consistency with established Commonwealth initiatives in the area of administrative law reform, freedom of information and human rights, the Commission is contemplating recommending that a Privacy Commissioner be created within the framework of established institutions. In the public sector, a critical decision has already been made by the Government and Parliament in the Freedom of Information Act 1982, namely, the decision to allow the private citizen access, in certain circumstances, to some classes of government information. The Commission's discussion paper *Information Privacy* highlighted this right to access as the key provision adopted in North American and European information privacy legislation. To meet the requirements of the Freedom of Information Act 1982, government departments and agencies will have to make changes in their organisation and administrative procedures associated with citizen access. Any extra costs associated with access on a slightly wider basis, as an information privacy protection will be minimal. To assess the feasibility of the machinery which the Commission is minded to propose, discussions have been held with the Human Rights Commission, the Commonwealth Ombudsman and the Attorney-General's Department.

79. As a result of the research completed, information received through the public consultation process, and discussions with State and Commonwealth government officials, the Commission has developed an approach to such powers in government officials which might involve recommendations for amendment to some existing legislation. In certain areas of official activity known to be particularly productive of privacy abuse, specific controls might be necessary. But there will be no attempt to cover the field through general legislation controlling official investigative power. The key recommendation presently proposed is that a Commonwealth body should be invested with privacy protection powers, including the functions of conducting on-going research, of making recommendations to government isolating areas of concern as they arise, and proposing particular legislative proposals directed at precisely identified areas of concern. This will make it unnecessary and undesirable to attempt, in the Commission's final report, to cover every existing power of entry or to demand production of documents and to analyse such powers in the abstract, with a view to their modification in the light of generally expressed privacy protection principles.

Sentencing

80. **Future Issues.** In the sentencing reference, the Commission is collaborating with the New South Wales Law Foundation and the Australian Institute of Criminology. The Commission's interim report *Sentencing of Federal Offenders* was tabled in Parliament on 21 May 1980. Details of the interim report are set out in the 1980 *Annual Report*.³⁰ Before proceeding to the preparation of its final report, the Commission intends to hold public hearings on the issues raised in the interim report. In view of the Commission's limited resources, it is not presently clear when the Commission will be able to proceed to a final report. The final report will deal with a number of questions not covered in the interim report. These are set out in Chapter 13 of the interim report and include:

- correctional facilities for the Australian Capital Territory;
- non-custodial options for the Australian Capital Territory;
- plea bargaining;
- judicial review of prosecution decisions;
- fines and means inquiry;

³⁰ ALRC 17, 30-33.

- deportation;
- restitution and compensation orders;
- criminal bankruptcy;
- pecuniary penalties payable to the Commonwealth;
- non-custodial sentences such as work release, day training centres, disqualification, confiscation and forfeiture, periodic detention, half-way houses, publicity of convictions;
- pardons;
- special offender groups such as migrant offenders, white collar offenders, mentally ill offenders, women offenders, Aboriginal offenders, children and young persons, military, drug and dangerous offenders;
- rights of prosecutors to address the court on sentence;
- pre-sentence reports.

The extension of the present full time Members on other projects of the Commission, the lack of staff resources, and concentration on other references has prevented significant progress being made on the sentencing reference over the past year. Work is expected to be resumed with the appointment in 1983 of a new full-time Commissioner who can take charge of the reference and lead the Commission to a final report.

81. **New Research Papers.** During the year past two research papers in the Sentencing Reference. Two additional sentencing research papers have been published, each of them prepared under the direction of Mr. Peter Cashman and Ms. Concetta Rizzo—officers of the Law Foundation of New South Wales. In the sentencing reference, the Commission is collaborating with the Law Foundation and the Australian Institute of Criminology in Canberra. The two further research papers are:

- ALRC Sentencing RP 9, Social Security Offenders.
- ALRC Sentencing RP 10, National Judicial Survey: Final Technical Report 1982.

The Commission expresses appreciation for the co-operation of the Law Foundation of New South Wales in the production of their two further research papers.

Aboriginal Customary Law

82. **The Reference.** This reference requires the Commission to enquire whether it would be desirable to recognise Aboriginal customary law. Recognition might be complete or partial, geographically confined or unconfined, or only in relation to Aborigines living in tribal conditions. Some of the issues perceived to arise from the reference and previous research and field trips are noted in earlier Annual Reports.³¹ The Commission has taken the view that the question of Aboriginal land rights is outside its terms of reference.

83. The Commission received the reference in 1977. Since then much work has been done collecting a wide range of material, submissions, literature etc. The Commission's discussion paper, *Aboriginal Customary Law—Recognition?* was issued in 1980, and formed the basis for extensive public hearings throughout Australia in 1981. Some of the issues raised in the discussion paper are set out in the *Annual Report 1981*.³²

84. Commissioner Bruce DeBelle, who was in charge of the reference during this period, returned to legal practice in Adelaide in mid-1981. His replacement, Dr James Crawford, Reader in Law in the University of Adelaide, joined the Commission and began work on the reference in January 1982. Since then the reference has entered a new phase. Detailed pro-

³¹ ALRC 10, 38–40; ALRC 13, 36–37; ALRC 17, 39–41.

³² ALRC 19, 36–37.

posals are being formulated in particular areas for consideration by the Commission, its consultants, and others interested in the reference. At the same time the Commission has continued the essential process of consultation with Aboriginal people, communities and organisations.

85. **New Personnel.** Professor Alice Tay of Sydney University has joined the Aboriginal Customary Law Division of the Commission. In June 1982 Mr Christopher Kirkbright (LL.B., B. Juris. (N.S.W.)) joined the Commission as a law reform officer under the national Employment Strategy for Aborigines Mr Kirkbright is himself an Aboriginal. His recruitment is, in part, a response to the call made at the 'Human Rights for Aboriginal People in the 1980s' Conference held at the University of N.S.W. in October 1981, for an Aboriginal researcher to strengthen the team on this reference.³³

86. **Research Papers.** The research staff has undertaken a program of producing fifteen research papers dealing in detail with specific policy areas of the reference. As at 30 June 1981, four of these were available:

RP 1: *Promised Marriage in Aboriginal Society.* This paper examines the forms of promised marriage in Aboriginal communities, and the requests made for some kind of recognition of promised marriages. However it concludes that direct recognition would not be satisfactory, involving as it would the loss of protection especially for younger women.

RP 2: *The Recognition of Aboriginal Customary or Tribal Marriage: General Principles.* This paper examines the general issues in the recognition of traditional Aboriginal marriage. It concludes that difficulties such as with definition and proof can be overcome. But argues in principle for a functional rather than a categorical approach to recognition of traditional marriage. Traditional marriage, though undoubtedly 'marriage' in the general sense, is in many ways unlike Marriage Act marriages. Not all legal incidents of Marriage Act marriages would be appropriate for traditional marriages. An examination of each relevant area is therefore necessary.

RP 3: *The Recognition of Aboriginal Tribal Marriage: Areas for Functional Recognition.* Such an examination is undertaken in this Paper. The Paper favours recognition in a variety of areas (e.g. legitimacy and adoption of children, accident compensation, inter-spousal compellability in the law of evidence) but not in others (e.g. spousal maintenance, rape in marriage, bigamy).

RP 4: *Aboriginal Customary Law: Child Custody, Fostering and Adoption.* Significant difficulties arise with the non-recognition of Aboriginal customs and traditions of child-care by the general law, in areas such as child welfare and social security legislation. Rather than recognizing customary adoption, which is an inappropriate category, the Paper argues for specific protection of appropriate informal placements within Aboriginal communities in accordance with custom. In doing so it draws heavily on the Indian Child Welfare Act 1978 (U.S.A.).

Further papers, on issues such as property distribution, criminal law, sentencing and disposition, evidence, the proof of customary law and community justice mechanisms, will become available over the next nine months. A list of the proposed research papers is contained in each of the completed papers.

87. **Further Discussion Papers.** The Conference on Human Rights for Aboriginal People in the 1980's called also for a further discussion paper on this reference, to explain the Commission's tentative proposals in more detail. The Commission will produce from one to three short (15–20 pages) discussion papers summarising the main areas of the reference. These will

³³ See (1981) 23 *Aboriginal Law Bulletin*, 9.

be based on the more detailed research papers, but will be briefer and have a much wider circulation. One such discussion paper is already being produced.

88. **Further Consultation.** Extensive public hearings were held through Australia in early 1981. Further public hearings, of a more informal nature, are being arranged for Alice Springs and the surrounding area for October 1982, to supplement the one-day hearing in 1981. As in the past, arrangements will be made for separate women's meetings. It is hoped to increase the number and range of consultants, and a series of regional consultants' meetings will be held (the first was in Darwin in May 1982). In conjunction with these the Commission will try to meet as many interested persons and organisations as possible. The Commission is conscious of the need to consult widely in the non-Aboriginal community, particularly in country and out-back areas. Special attention is being paid to this need in developing the process of consultation.

89. **Final Report.** It is anticipated that the Commission will report on this reference in late 1983. The process of consultation, outlined above will continue until the report is completed.

Access to the Courts

90. **The Reference.** Details of this reference are set out in the Commission's *Annual Report 1977*.³⁴ It requires the Commission to examine the law relating to the standing of persons to sue in Federal and other courts while exercising Federal jurisdiction or in courts exercising jurisdiction under any law of a Territory. It also requires consideration of the desirability of introducing class actions in such courts. The Commission has dealt separately with each aspect of the reference. In 1977 it published both a Working Paper and a Discussion Paper dealing with issues for consideration in the context of standing. Those papers are noted in greater detail in the Commission's *Annual Report 1978*.³⁵ On 30th June 1979 the Commission published a discussion paper on class actions. The Commission's *Annual Report 1979* contains a summary of that paper.³⁶ The Commission will be publishing two reports on this reference, dealing separately with standing and class actions. The standing reference is under the charge of Mr B.M. Debelle. Since 30 June 1981 Mr Debelle has been a part-time member of the Commission. Formerly he had been a full-time member. During the past year, Mr Debelle has been engaged principally upon drafting the final report in the standing reference. It is inevitable that where, because of lack of resources, it is necessary to ask a part-time Commissioner to take charge of a reference, progress will be slower than it would otherwise be. Nevertheless the final report on standing is expected to be completed by early 1983.

91. **Class Actions.** Because of lack of resources, work on the class actions reference has, been suspended over the year past except for monitoring developments in Australia and overseas, work on the reference is expected to be resumed on completion of the standing report. Mr B.M. Debelle is also Commissioner in charge of the class actions aspect of the reference.

Evidence

92. **Scope of Reference.** The reference involves a comprehensive inquiry into the law of evidence in Federal and Territory Courts. The Commission is required to report upon:

- whether there should be uniformity and if so to what extent in the laws of evidence to be

³⁴ ALRC 8, 33-36.

³⁵ ALRC 10, 37-38.

³⁶ ALRC 13, 37-39.

used in the High Court, the Federal Court, the Family Court, and the courts of the relevant Territories; and

- the appropriate legislative means of reforming the laws of evidence and of allowing for future change in individual jurisdictions should this be necessary.

93. **Progress of Initial Research Program.** The program for the reference was outlined in the 1980 *Annual Report*.³⁷ The following progress was reported in the *Annual Report 1981*:³⁸

- **Comparison of Evidence Laws.** The comparison of legislation of States and Territories has been completed. The comparison of the decisions of the courts of the States and Territories is nearing completion.
- **Analysis of Federal and Territory Courts.** Background information has been obtained about the nature of the jurisdictions of the relevant courts, their use of juries, and the extent to which and the circumstances in which judges of Federal Courts sit in more than one State or Territory.
- **Identification of Problems.** A discussion paper was issued in October 1980.³⁹ It attempted to identify problem areas and was circulated among judges and magistrates, legal practitioners, and university lecturers and tutors.
- **Issues Paper.** An issues paper was completed in October 1980. It raised a number of conceptual issues.⁴⁰ The paper has been circulated for comment to interested persons and organisations.
- **Psychological Assumptions.** The Commission has been collecting material from the substantial body of literature that is available and which is relevant to the psychological assumptions behind the laws of evidence. A Melbourne psychologist, Dr. Thomson, has been appointed a consultant for the reference.
- **Ethnic Issues.** The reference has been publicised through the ethnic media.
- **Impact of Technology.** Discussions have been held with persons involved in the computer industry and the micrographic industry.

94. **Consultation.** At the Law Reform Agencies' conference, held to coincide with the Twenty-first Australian Legal Convention, a session was devoted to the examination of how co-operation could be established at a working level between a number of Australian law reform bodies working on projects of evidence law reform.⁴¹

95. The Federal Court and the Family Court of Australia have each established committees of judges to consult with the Commission. The Law Council of Australia has established a national committee comprising practitioners from various jurisdictions. As well, the Commission is being assisted by a large number of distinguished consultants from several disciplines including experienced legal practitioners and Federal and State judges. Following the distribution of the discussion paper and the issues paper, extensive discussions have been held with a large number of people and organisations including State and Federal judges and legal practitioners.

96. **Research Paper Program.** In addition to the discussion paper and issues paper on the general directions for reform⁴² a series of research papers has been distributed to interested persons and groups willing to make comments on the particular topics dealt with in them. The list, up to the end of June 1982, is:

³⁷ ALRC 17, 43.

³⁸ ALRC 19, 40.

³⁹ ALRC DP 16—*Reform of Evidence Law*.

⁴⁰ *Annual Report 1980* ALRC 17, 44.

⁴¹ See 55 ALJ 617.

⁴² ALRC DP 16, *Reform of Evidence Law*, 1980.

- RP1 *Comparison of Evidence Legislation.* This paper collects detailed information on the variety and disparity of Australian State and Territory legislation governing evidence. Because of provisions in the Federal Judiciary Act, Federal courts apply the laws of evidence of the State in which they are sitting. The diversity of State and Territory statute law, demonstrated in RP1, is incorporated, in this way, in the present disparate evidence laws applied by Federal courts in Australia.
- RP2 *Common Law of Evidence.* This paper examines the disparities in the common law of evidence from one Australian jurisdiction to another, highlighting areas of disagreement and uncertainty. Because of the incorporation of State and Territory laws of evidence into the practice of Federal courts sitting in those States and Territories, these common law disparities are likewise incorporated into the evidence law applied in Federal courts.
- RP3 *Hearsay Evidence Proposals.* This paper contains a detailed analysis of the hearsay rule and its exceptions. There is also a reference to psychological research about hearsay evidence, a critique of the rule, a list of the many attempts to reform the rule and a proposal for hearsay evidence law reform.
- RP4 *Secondary Evidence of Documents.* This paper contains an analysis of the rules governing the admission of documents into evidence, an examination of the impact of legislation already passed in Australia to facilitate the proof of computer-generated, photocopied, microfilmed and other documents and a proposal for reform.
- RP5 *Competence and Compellability of Witnesses.* This paper deals with the rules of evidence governing the competence of persons to give evidence and the compellability of certain witnesses (such as a spouse) to give evidence in a criminal trial. A proposal is made for reform, which includes an enhanced judicial discretion to excuse certain close members of the family, in some circumstances, from the obligation to give evidence in a criminal trial.
- RP6 *Sworn and Unsworn Evidence.* This paper examines the laws and procedures governing the taking of oaths and the making of affirmations before evidence is taken in courts. It also examines the procedure by which, in some jurisdictions of Australia (not Queensland or WA) an unsworn statement may be made by the accused person in a criminal trial, which cannot be tested by cross examination and is otherwise protected from adverse comment. As in all the research papers from RP3 on, a specific reform proposal is attached in the form of draft legislation.
- RP7 *Relevance.* According to Chief Justice Barwick 'the fundamental rule governing the admissibility of evidence is that it be relevant'.⁴³ The paper argues that the courts rarely discuss the concept of relevance and there is considerable uncertainty as to its legal meaning. It concludes that 'relevance' means 'logically probative' and endorses the statement by Thayer⁴⁴:

The two leading principles should be brought into conspicuous relief, (i) that nothing is to be received which is not logically probative of some matter requiring to be proved; and (ii) that everything which is thus probative should come in, unless a clear ground of policy or law excludes it.⁴⁵

The paper concludes that there should be a statutory definition of relevance for the guidance of courts and litigants.

⁴³ *Wilson v. R.* (1970) 123 CLR 334, 337.

⁴⁴ A Preliminary Treatise on the Law of Evidence at Common Law 1st ed 1898 New York 1969.

⁴⁵ *id.*, 530.

- RP8 *Manner of Giving Evidence.* This paper tackles two threshold questions:
- whether the oral tradition of the trial is consistent with the objective of obtaining complete and accurate testimony, or whether greater reliance should be placed on the written word; and
 - whether the question and answer technique of examining witnesses is consistent with that objective or whether a free report from a witness would be preferable.
- The paper also examines the use of interpreters, the use of models, devices, charts and plans to assist in the giving of testimony, the right of a witness to refresh his memory from a document and the obligations that ensure to produce the document to the court, the use of leading questions and right to treat a witness as unfavourable as well as the tendering of prior consistent and inconsistent statements. Proposals are discussed for reform on these issues.

97. *The Future.* The preparation of the series of research papers is expected to be completed early in 1983. Outstanding topics include character evidence, admissions and confessions, standard of proof and corroboration, opinion evidence, identification and evidence on appeals. Regular consultants meetings have been held to consider each of the research papers. These meetings involve members of the Evidence Division of the Commission and the team of consultants which includes judges, law teachers, experienced trial barristers, police and psychological experts, to consider the research papers and their proposals. It is presently contemplated that, upon completion of the research paper series, a comprehensive draft Evidence Act will be prepared with supporting material and circulated widely for discussion.

A.C.T. Consultative Committee on Criminal Law Reform

98. The Annual Report 1980 described arrangements which exist in the Australian Capital Territory for institutional law reform.⁴⁶ It reported the work of the A.C.T. Consultative Committee on Criminal Law Reform. That Committee, convened and chaired by the chairman of this Commission, has continued to work actively through the past year. During the year it has met on seven occasions. The Committee reports to the Standing Interdepartmental Committee on Law Reform for the A.C.T. Copies of its reports are sent to the Minister for the Capital Territory and the Attorney-General, each of whom has responsibility for law reform in the A.C.T.

99. Issues which have been dealt with by the Committee during the past year have included:

- imprisonment in default of payment of fines;
- notice of alibi;
- short form committals;
- restitution orders in the Children Court;
- transborder crime;
- firearms and dangerous goods;
- jury panel availability; and
- order of closing speeches to the jury by counsel in criminal trials.

The Committee continues to represent a practical and effective contribution to the improvement of criminal law and procedure in the A.C.T. A number of proposals for criminal law reform made by the Committee have been approved by the respective Ministers and followed by legislation to amend the criminal law of the Territory.

⁴⁶ ALRC 19, 5-6.

A Commissioner for the A.C.T.?

100. On 12 March 1982 the Chairman of the Commission, Mr Justice Kirby, delivered the Canberra Day Oration. He suggested that more resources should be devoted to the improvement of the civil as well as the criminal law in the Australian Capital Territory. He said that thought might be given to the appointment of a resident full-time Law Reform Commissioner, specifically appointed to give attention to the law reform needs of Canberra and the Territory. He mentioned that provision for a Territory Commissioner was envisaged by sub-s. 12(a) of the Law Reform Commission Act 1973. The matter was taken up by the Council of the Law Society of the Australian Capital Territory at its meeting on 22 March 1982 when the following resolution was passed:

That the Society strongly endorses the recommendation that a Special Commissioner in the A.C.T. be appointed to the Australian Law Reform Commission to deal with A.C.T. matters.

In his Canberra Day Oration, the Chairman pointed out that although a number of members of the Commission had come from Canberra and one, Dr John Seymour, who led the Child Welfare Reference, was at the time resident in Canberra, the Commission had never had an office or staff located in the A.C.T.:

The special needs of reform for this Territory abound. There is plenty to do. Especially because of the governmental situation here, it is vital . . . that law reform should be done in close and constant touch with the Canberra community, responding to its needs. A modest increase in the investment in community law reform for Canberra deserves the attention of Government. We should not be content with a city of splendid public buildings set in beautiful surroundings but governed by laws that are all too often the product of the years the locusts have eaten. We should all be concerned to ensure that our institutions for law improvement are efficient and well funded. Injustice to a fellow citizen is the responsibility of everyone.⁴⁷

⁴⁷ M.D. Kirby, J, Canberra Day Oration, Address to Australian Capital Territory House of Assembly, 12 March 1982.

Auditor- General's Report

19 October 1982

The Honourable the Attorney-General
Parliament House
Canberra A.C.T. 2600

Dear Sir

LAW REFORM COMMISSION
FINANCIAL STATEMENTS 1981-82

In compliance with sub-section 35(2) of the Law Reform Commission Act 1973 the Commission has submitted for my report its financial statements for the year ended 30 June 1982. These comprise a statement of receipts and payments, a statement of assets and liabilities and accompanying notes.

The statements are in the form approved by the Minister for Finance under sub-section 35(1) of the Act. A copy is attached for your information.

In accordance with sub-section 35(2) of the Act, I now report that the accompanying statements are in agreement with the accounts and records of the Commission and, in my opinion—

- (a) the statements are based on proper accounts and records; and
- (b) the receipt and expenditure of moneys and the acquisition and disposal of assets by the Commission during the year have been in accordance with the Act.

Yours faithfully

R.G. Rose
*For and on behalf of
the Auditor-General*

Financial Statements

LAW REFORM COMMISSION STATEMENT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDING 30 JUNE 1982

1980-81	NOTES	1981-82
\$		\$
11 862		10 489
		Cash on hand and at bank 1 July 1981
		RECEIPTS
1 050 600	2	1 230 600
3 417		8 262
		Appropriation from the Commonwealth Government
		Other
<u>1 065 879</u>		<u>1 249 351</u>
		PAYMENTS
656 114	3	730 414
10 400		7 581
91 438		87 503
55 250		90 963
		Salaries and payments in the nature of salary
		Consultants' fees
		Travelling and subsistence
		Rental of premises
89 457	4	102 389
45 289		34 769
26 765		26 874
80 677	5	101 739
		Printing, Office requisites and office equipment
		Telephone and postage charges
		Library books and subscriptions
		Incidentals and other expenditure
<u>1 055 390</u>		<u>1 182 232</u>
10 489		67 119
		Cash on hand and at bank 30 June 1982
<u>1 065 879</u>		<u>1 249 351</u>

We certify that, to the best of our knowledge, the above Statement of Receipts and Payments correctly reflects the cash transactions and is in agreement with the accounts and records of the Commission.

M.D. Kirby
CHAIRMAN
B.A. Hunt
EXECUTIVE OFFICER

LAW REFORM COMMISSION

NOTES TO AND FORMING PART OF THE ACCOUNTS FOR THE YEAR ENDING 30 JUNE 1982

1. STATEMENT OF ACCOUNTING POLICIES

The financial statements for the financial year ended 30 June 1982 were prepared on the basis of income received and moneys expended. The statements comprise:

- a statement of receipts and payments
- a statement of assets and liabilities

2. RECEIPTS

The Commission is a statutory authority funded by parliamentary appropriation. The major source of other moneys received is the Commission's quarterly journal 'Reform'.

3. SALARIES AND PAYMENTS IN THE NATURE OF SALARIES

This expenditure covers salaries and allowances for the Members and staff of the Commission. It includes remuneration of the part-time Members.

4. PRINTING, OFFICE REQUISITES AND OFFICE EQUIPMENT

This expenditure covers the purchase of office requisites, stationery and equipment for the Commission plus the printing of the Commission's reports and discussion papers and other consultative papers, as well as a quarterly journal 'Reform'.

5. INCIDENTALS AND OTHER EXPENDITURE

This expenditure covers advertising, car hire, freight, removal of furniture and personal effects of Members and staff appointed from interstate and incidental expenditure.

LAW REFORM COMMISSION

STATEMENT OF ASSETS AND LIABILITIES AS AT 30 JUNE 1982

1980-81		1981-82
\$		\$
	ASSETS	
	CURRENT ASSETS	
150	Cash on hand	146
10 339	Cash at Reserve Bank	66 973
	FIXED ASSETS	
149 043	Office furniture and equipment at cost	168 840
182 209	Library books at cost	209 083
6 445	Other fixed assets	6 445
<u>348 186</u>	Total Assets	<u>451 487</u>
	LIABILITIES	
3 408	Accounts payable	10 298
<u>3 408</u>	Total liabilities	<u>10 298</u>

We certify that, to the best of our knowledge, the above Statement of Assets and Liabilities is in agreement with the accounts and records of the Commission.

M.D. Kirby
CHAIRMAN
B.A. Hunt
EXECUTIVE OFFICER

Appendix A

LAW REFORM SUGGESTIONS

This schedule contains some of the suggestions for law reform which have come to the Commission's notice in the past year. The schedule is not meant to be exhaustive nor does it include proposals made by other law reform agencies. Although some suggestions are not new and may have been made previously, they are included because they give an indication of concern about aspects of the law. Inclusion of a suggestion does not imply any opinion by the Commission about the merits or otherwise of the suggestion.

Administrative Law

Suggested need for s. 167(3) of the Customs Act 1901 to be amended to bring it into line with the long standing practices which have been followed by customs officers and with the impact of computerisation. That provisions deal with payment of duty under protest where there is a dispute as to the amount or rate of duty payable. (Mr A. N. Hall, Senior Member, Administrative Appeals Tribunal, letter to the Commission)

Animals

Suggested need for uniform legislation on animal welfare in Australia:

there is genuine and extensive public concern with respect to animal experimentation, the transport of animals, the care of animals and the proper treatment for both food-producing animals and domestic animals. Various States have new legislation in the pipeline with regard to amending their Animal Protection Acts, RSPCA Acts, etc. While these amendments are highly desirable, and in fact very necessary, it would make much better sense if the Acts between States were uniform so that an Australia-wide stand on animal welfare is adopted.

(H.M. Jones, on behalf of the Australian Veterinary Association Ltd, letter to the Commission)

Child Welfare

Suggested need to remove anomalies from the legislation governing child adoption in the A.C.T. and New South Wales:

'Relatives' [for adoption purposes] include an aunt and grandmother of the child, but not a great aunt as the grandmother's sister. The latter may be much of an age of the grandmother, may be younger and equally suitable to care for the child.

The other anomaly is that if such a baby was made a ward of the State it would be theoretically possible for the Minister to then accord the foster care of the child to such a great aunt, her care being supervised by Welfare in the usual way. But we found that wardship cannot be transferred from the Minister of the A.C.T. to the Minister of N.S.W. and this great aunt resides in N.S.W. More co-ordination of interstate laws seems desirable particularly when A.C.T. is such a small geographical island.

(Dr Helen B. Wiles, Canberra, letter to Commission)

Civil Rights

Assembly. Suggested need to reform A.C.T. laws on the right of assembly to make them comply with the International Covenant on Civil and Political Rights. (Mr Robin Handley, Canberra College of Advanced Education, cited *Canberra Times*, 11 February 1982, 8)

Bill of Rights. Suggested need to refer the preparation of a Bill of Rights for Australia to the Australian Law Reform Commission:

This Federal Council, considering the constitutional problems relating to the ratification of international covenants arising from the Australian Federal System of Government and; Further considering that many of the basic Human Rights are within the powers of the State Governments, and this has caused long delays and substantial reservations with regard to ratification of such covenants

Requests the Commonwealth Government to refer the preparation of a Bill of Rights for Australia to the Australian Law Reform Commission with a view to

- (a) providing a basis for discussion and consideration by the Commonwealth and State Governments and other interested parties and with the object of;
- (b) achieving a consensus of agreement on a possible Bill of Rights referred by way of referendum to the Australian people as an amendment to the Constitution.

(Resolution passed at United Nations Association of Australia Federal Council Meeting, 15 August 1981)

Compensation

Liability of the Commonwealth for Servicemen's Injuries. Suggested need law reform agencies to evaluate and report on the activities of servicemen which, though otherwise involving actionable negligence, should not give rise to a cause of action.

Public policy may require that, at some point in the continuum from civilian-like duties performed by servicemen in peacetime to active service in wartime, what would otherwise involve actionable negligence should not give rise to a cause of action. If so, the definition of liability would seem to be pre-eminently a case for legislation, preceded by evaluation and report by law reform agencies.

(Justices Stephen, Mason, Aickin and Wilson, *Groves v. The Commonwealth of Australia*, (1982) 40 ALR 193, 208)

Lump Sums. Suggested need to change the present lump sum accident compensation system:

[T]here is, I believe, grave disquiet in the community in regard to verdicts in favour of severely disabled persons arrived at by the applicant of Common Law principles. Under the Common Law, an injured person is required to receive at the hands of a Jury or a Judge one final lump sum which compensates that injured person, not only for the consequences of the injuries up to the date of the trial, but also for the consequences of the injury for the rest of the injured person's life. This means that a Juryman or Judge, as the case may be, has to project himself into the injured person's future life and seek to understand what that life will be and how it will be affected, in all its aspects, by the injuries received. In some cases, as in this case, this means looking at a person with a life expectancy of half a century or more and trying to compensate that person for loss of earnings, or hospital or nursing attention over the whole of that time. Many people might think that this goes dangerously close to playing God, but whether it be viewed that way or not, it can, at the best, only be regarded as an exercise in sheer fantasy. The area for difference of opinion on particular matters is boundless and the system even permits the fantasy of a trial Judge to be superseded by the fantasy of an Appeal Court. Many people believe that it is not in the interests of the community to continue with the present system and it may be seriously doubted whether even a large verdict, such as the present one, is, if the plaintiff does live 50 years—that is her life expectancy—in her interest either. Only Parliament can alter the present system, but the need for a system which, whilst attending to the injured person's requirements arising from his injuries, avoids placing huge sums of money in his hands, is pressing.

(Mr Justice Lee, Address to the Jury in *Skow v. Public Transport Commission*, Supreme Court of New South Wales, (1981), unreported 1;¹

¹ See also Sher, J.L. 'Damages for Personal Injuries, Current Developments, Future Trends and Suggested Reforms', (1981) 55 ALJ 458 and NSWLRC. Issues Paper: *Accident Compensation*, 1982.

Deductions. Suggested need for Commonwealth and State legislation to resolve the anomalies involved on the deductability in favour of the defendant of pensions, superannuation payments, unemployment benefits, sick pay, sickness benefits and the like:

I find it very difficult to perceive any rational thread in the web of cases . . . This may be an area in which there could only be complete and satisfactory resolution by legislation at both Commonwealth and State level.

(Mr Justice Miles, Supreme Court of New South Wales, letter to the Commission)

Contracts

Suggested need to standardise terminology and approach to breach of contract. The plethora of overlapping, and in some circumstances, redundant categories of breach result in undesirable imprecision of language and diversity of approach. A study of centuries of legal history should not be a pre-requisite to comprehension of current common law rules. The author suggests that the law would be greatly improved and simplified if the rules relating to discharge of contracts for breach were separated from other areas with which they are now connected. (Jane Swanton, 'Discharge of Contracts for Breach' (1981) 13 *Melbourne University Law Review*, 69)

Coroners

Suggested need to limit adverse publicity about people involved in coronial inquests who might subsequently be put on trial:

How can such people get a fair trial with all the jury having reached what may be a logical decision long before the trial.

(Kevin F. McCarthy, letter to the Commission)

Criminal Law

Suggested need to consider the amalgamation of murder and manslaughter into a single offence, unlawful homicide:

The advantage of this would be to introduce the flexibility into the law which it now lacks. It would also allow judges to exercise their discretion, from life imprisonment downwards, in passing sentence. A review of this option is needed.

(Editorial 'Call it homicide', *Sydney Morning Herald*, 28 November 1981, 12)

Criminal Procedure

Suggested need to abolish committal proceedings:

Committal proceedings are a total waste of time . . . If we had a truly independent prosecutor with a proper staff, he could decide if there was a prima facie case. . . . There is a wasteful duplicity in having committal proceedings and a trial.

(Chief Justice Blackburn, A.C.T. Supreme Court, address to Fifth South Pacific Judicial Conference, cited *Canberra Times*, 26 May 1982)

Defamation

Suggested need for defamation laws to be extended to enable ethnic groups to instigate class

actions. (Dr Paulo Totaro, Chairman, The Ethnic Affairs Commission, cited *Sydney Morning Herald*, 6 July 1981, 11)

Drugs

Marihuana Laws. Suggested need to decriminalise aspects of the possession and use of marihuana. (Australian Foundation on Alcoholism and Drug Dependence. *Social Policies on Drugs: Alcohol, Cannabis, Heroin*. Discussion Paper, prepared by National Workshop, Canberra, 1981)

Uniform Laws. Suggested need for unified legislation on veterinary drugs:

The problem is based on the fact that different States have different regulations regarding how drugs should be scheduled. This makes not only for a complex situation when the same drugs are sold with different schedules on their labels in different States, but also you will appreciate that complications arise under the Constitution (s. 92) where trade, commerce and intercourse must remain absolutely free. This allows breaches of scheduling to occur between users in different States. Many modern drugs are extremely potent and because of the failure in the past to amend the regulations, the problem is being compounded as new and better drugs become available in the market place and yet their scheduling (State by State) is not uniform.

(H.M. Jones, on behalf of the Australian Veterinary Association Ltd)

Federal Courts

Bifurcation of Appeals. Suggested need for reform to prevent bifurcation of appeals to State and Federal Courts:

The tax appeals come to this Court as a court of original jurisdiction pursuant to the provisions of the Income Tax Assessment Act. They are heard in the Administrative Law Division of the Court. It is a Division to which only certain of the judges are assigned. Another Division of the Court customarily administers those provisions of the Companies Act which require the intervention of the Court. When it was seen that there appeared to be some common problems involved in the tax appeals and this present application, it was decided that the same judge should hear all matters. Due to the constitution of the Court, that was possible to be done. Had it not been feasible, the extraordinary situation which would have obtained would have been that it would have been necessary to repeat the entirety of the evidence given in the tax appeals before the judge hearing application under the Companies Act, in order to give him the benefit of evaluating the witnesses and hearing the evidence given by them in the witness box. However, if these matters are to be taken further, then it will be necessary for an appeal from any decision in the tax appeals to be taken to the Federal Court of Australia and the appeal on this present application to be taken to the Court of Appeal of New South Wales. I will content myself by saying that that, with all due respect, seems to me to be a wholly unacceptable and undesirable state of affairs.

(Mr Justice Rogers, in re *Hatfield Enterprises Pty Limited and Companies Act*, Supreme Court of New South Wales (1982) unreported.)

High Court Appeals. Suggested need to abolish the right of appeal to the High Court of Australia; appeal should be by special leave in all non-constitutional cases. (James Crawford, *Australian Courts of Law*, Oxford University Press, Melbourne 1982, 151-152).

Income Tax

Suggested need to make private donations and offerings to churches concessional deductions for income tax purposes. (Raymond N. Conder, letter to the Commission)

Industrial Arbitration

Commonwealth Power over Wages and Conditions. Suggested need to give the Federal Parliament a wide power to legislate on wages and conditions:

[N]o law passed by the N.S.W. Parliament would be able to avoid 'the intractable problems which arise from the operation in this State of two very different sets of industrial laws, one Commonwealth, one State. In my opinion, the only way in which those problems can be solved is for the Commonwealth Parliament to gain, either by referendum or transfer from the States, a wide power to legislate with respect to terms and conditions of employment. I would envisage the Commonwealth power as a concurrent power and not as an exclusive power and as one which would enable the Commonwealth Parliament to make use of the existing State authorities.

(Sir Alexander Beattie, President of the New South Wales Industrial Commission, speaking on his retirement, cited *Sydney Morning Herald*, 30 October 1981, 3)

Damages for Award Breaches. Suggested need to replace the industrial law sanction of fines for breach of awards by a system allowing damages for losses due to award breaches, in the context of collective bargaining. (Hon. Ian Viner, MP, then Minister for Industrial Relations, cited *Financial Review*, 5 November 1981)

Jurisdiction of Federal Court. Suggested need to confer on the Federal Court wide powers to make orders in respect of officers and members of industrial organisations who are recreant to their duties:

A court of general jurisdiction has much more flexibility [than the Federal Court] in what it may do. If this were such a court it would, undoubtedly in a case such as this, be asked to restrain powers in the position of the appellants here from acting otherwise than in accordance with their duties and obligations as officers and members . . . Breaches of injunctions and undertakings of the kind I have mentioned would be punishable as contempts of court . . . We were told during argument that the appellants are still acting as if they are officers. Perhaps they will continue to do even after this judgment has been delivered. Unless a court has clear injunctive power that is the sort of problem that can arise. That it should exist redounds to the disadvantage of the membership whose funds are expended on legal costs in what may turn out to be an inconclusive exercise. If the court is invested with jurisdiction to deal adequately and completely with the entirety of a dispute the likelihood is that matters are brought to a head and disposed of much more expeditiously and thus more inexpensively than is the case under legislation such as here applied. It follows that it is highly important in my opinion that the legislation be changed to give this Court all jurisdiction necessary to deal with all aspects of disputes involving members and officials of organisations either amongst themselves or to which the organisations are parties. The legislation under which the organisations are registered is Commonwealth legislation and operates throughout Australia. The organisations are creatures of that legislation. There can be no question but that jurisdiction to give adequate relief should be vested in this Court.

(Mr. Justice Sheppard, *Cook v. Crawford*, Federal Court of Australia (1982) unreported)

Redraft. Suggested need to redraft the Conciliation and Arbitration Act 1904:

Most of the difficulties in this case arise from tortuous provisions of the Conciliation and Arbitration Act 1904 (Cwlth) as amended. The Act is of national importance and is intended to be understood and applied by many people, most of whom are not lawyers. Amendments over recent decades have made it a text book example of how laws should not be drafted. In the public interest it should be redrafted so as to be reasonably clear.

(Mr Justice Murphy, in *re Clarkson ex parte Australian Telephone and Phonogram Officers' Association*, High Court of Australia (1982) 39 ALR 1, 13)

Insurance

Suggested need for action to be taken to ensure that improper delays did not occur in the payment of insurance claims:

To string along a claimant from November until April is reprehensible conduct, in respect of which the Court should express its disapproval. In so far as it may be appropriate, I propose to notify the Department of Consumer Affairs and the Australian Law Reform Commission, which holds a reference in respect of insurance, of what has happened in this case, with a view to seeking to ensure that this sort of conduct does not recur.

(Mr Justice Rogers, *Bonacci v. Phoenix Assurance Co. of Aust. Limited*, Supreme Court of New South Wales, (1982), unreported)²

Intellectual and Other Property

Copyright. Suggested need for automatic copyright clearance for radio for the print-handicapped to enable the reading of newspapers, magazines and literary works on radio, specifically for the handicapped, without the need first to secure copyright clearance:

Radio for the print-handicapped is designed to help a seriously disadvantaged sector of the community in ways that help the print-handicapped, their families and the community . . . A useful precedent has been established in the U.S. automatic copyright clearance legislation for radio for the print-handicapped.

(Professor Neil Runcie, Chairman, Australian Council for Radio for the Print-handicapped, letter to the Commission)

Protection of Cultural Property. Suggested need to prohibit or regulate the export of items of major importance to the nation's heritage. (Lockhart J, Federal Court, Occasional Address given at the Conferring of the Degree of Bachelor of Laws, University of Sydney, 27 February 1982, 4)

Interest

Suggestion that a court ought to be able to grant interest on a judgment debt where property and goods sold and delivered, but not paid for, has passed to the purchaser:

'we see many cases . . . in which debtors withhold the payment of their debts and force creditors into litigation to recover them simply because they think it to be good business to do so. In this way they obtain, in effect, a free of interest unsecured loan and at prevailing interest rates the benefit they derive by doing so is very considerable as is the loss to the unpaid creditor. If in such cases the court had power to award interest by way of damages at the prevailing rate plus a point or two the practice might be thought to be less attractive.'

The court criticised its lack of jurisdiction to grant interest in these circumstances. It pointed to the injustice of allowing a party whose wrongfully withholding from the other party who is entitled to the use of the money the benefit of having the money in his possession and enjoying the use of it.

(Chief Justice Burt, *G. Knowles Pty. Ltd. v. Barrett Carpet Company Pty. Ltd.* Supreme Court of Western Australia, 54, 428, CCH (1981) ACS para. 55-125)

Landlord and Tenant

Suggested need to amend the Victorian Residential Tenancies Act 1980:

The need for an amending Act to the Victorian Residential Tenancies Act can be confidently forecast even at this early stage in the life of the new legislation.

A number of amendments are proposed. (Dr. Adrian Bradbrook, University of Melbourne, 'The Rights and Duties of Landlords and Tenants Under the Victorian Residential Tenancies Act', (1981) 13 *Melbourne University Law Review* 159, 195)

² See *Insurance Contracts* (ALRC 20), para. 319-324.

Mental Health

Management of Mentally Infirm Persons. Suggested need for urgent reform of the Australian Capital Territory legislation:

Plainly, the legislation relating to the management of the property and affairs of mentally infirm persons in the Australian Capital Territory is in need of urgent reform.

(Mr Justice Lockhart, in re M, Supreme Court of the Australian Capital Territory (1982) unreported)

Privacy. Suggested need for privacy legislation to give mentally retarded people a right of access to their medical and other records to enable them to take action to overcome the results of unfair information practices and to redress other wrongs. (Susan C. Hayes and Robert Hayes, *Mental Retardation*, 1982, 297-298)

Thorough Examination. Suggestion that problems of the punishment and treatment of mentally ill offenders need attention:

[This] would benefit greatly from a discrete and thorough examination of mental illness and the law [deserving] a special reference to the Australian Law Reform Commission as well as to other State law reform bodies.

(Ivan Potas, 'Just Deserts for the Mad', 2)

Migration

Suggested need to change migration laws so as not to discriminate against Australian residents who are not citizens:

[M]en and women who have lived with us for many years but decided, for emotional or material reasons, not to become Australian citizens should not be deported. There should be only two exceptions to this rule, when the person can be proved to have come to Australia for criminal purposes or to have committed a crime of real gravity. Otherwise, those who settle in Australia are members of the Australian family. Good, bad or indifferent, they are not unlike the rest of us, born here by accident.

(Editorial, 'A Threat Remains', *Canberra Times*, 1 November 1981, 2)

Money Lenders

Suggested need to reconsider the Money Lenders Ordinance 1936 (A.C.T.):

The Ordinance . . . does not differentiate between ordinary borrowers liable to be imposed upon by persons lending them money and corporate borrowers, apparently well able to take care of themselves in commercial transactions, borrowing at what seems to have been a commercial rate of interest in a climate totally different from that which prevailed when the Ordinance was first enacted. It may be that . . . there is a need for reconsideration of the Ordinance to see whether it is presently appropriate to conditions which have changed radically since 1936 and, if it is not, whether the relevant policy considerations dictate its amendment.

(Mr Justice Kelly, *J. & S. Holdings Pty. Limited v. N.R.M.A. Insurance Limited* A.C.T. Supreme Court (1981) 39 ACTR 1, 41)

Motor Traffic

Suggested need for uniform national road law (Gordon Trinca, National Chairman, Road Trauma Committee, cited the *Age*, 18 November 1981)

Parliamentary Privilege and Contempt

Suggested need for a review of the privileges, procedures and legislation governing Parliamentary privilege and contempt and changes to the Parliamentary Privileges Committee:

Parliaments have become the judge, jury, hangman and even arresting officer in cases which it believed reflected adversely on the institution. The Committee should also have its powers of penalty removed.

'To have no absolute right of legal defence seems an extraordinary state of affairs when the person charged may lose his or her liberty. The right of defence is essential.'

(Mr Ranald Macdonald, cited *Canberra Times*, 6 November 1981, 6)

National Health

Suggested need to amend National Health Act 1953:

I would also recommend that consideration be given to the question whether some discretionary power may be capable of being conferred upon the Director-General to enable an appropriate payment to be made in cases such as the present where a patient in an isolated area, acting in good faith on the advice of his medical practitioner, seeks specialist treatment from a specialist who turns out ultimately not to have been a suitable specialist with respect to the applicant.

(Mr A.N. Hall, Senior Member, *Knight v. The Director-General of Health*, Administrative Appeals Tribunal (1981) 4 ALN No. 65, N66)

Passports

Suggested need to waive the obligation of separated spouses to obtain approval from one another to obtain a passport.

I separated from my husband in February 1981, and in July of that year obtained a document filed in the Family Law Court, stating my husband and I were no longer under any financial obligation to one another. . . . [W]e do not have any children . . . When applying for a passport, I was told that I *MUST* have my husband's approval in the form of a signature on the application. If I were divorced and there were no financial obligations, a passport would be issued without any notification to my husband. I am a Catholic, and as such, am not keen to file for divorce. This leaves me with the options of either approaching my ex-husband and asking for his signature, a scene which I would find both embarrassing and degrading, or file a Statutory Declaration, in which case the Department of Foreign Affairs would notify my husband of my passport application. This is not only unsatisfactory, but I find it an invasion of my privacy.

(Constituents letter forwarded by Mr J. Birney, M.P.)

Practice and Procedure

Suggested need for existing forms of procedure to be adapted for proceedings involving the more complex commercial organisations of today, carrying on business all over the globe in many different fields, utilising the international financial facilities made available by modern methods of communication:

Unless the pleadings, the interlocutory steps and the method of hearing are modified so as to eliminate the inessential and the contest between the parties restricted to matters truly in issue, the cost and length of hearing would make impossible, trials of proceedings such as the present.

(Mr Justice Rogers, *Gollin Holdings Limited & Anor v. Adcock & Ors*, Supreme Court of New South Wales [1981] 1 NSWLR 691, 693)

Public Duty and Private Interest

Suggested need for reciprocal legislation involving the States and the Commonwealth to cover pecuniary interests. The Premier of New South Wales, Mr Neville Wran, QC, referred to the fact that New South Wales pecuniary interest legislation could refer only to financial matters within New South Wales. (Cited *Sydney Morning Herald*, 13 November 1981)

Small Claims Tribunals

Suggested need, in view of the Trade Practices Act 1974 (Cwlth), to amend Small Claims Tribunals Act 1973 (Qld), s. 17(1) which purports to exclude courts or tribunals of any kind from determining the issue in dispute before a Small Claims Tribunal:

Although . . . the Act appears to indicate an intention that the Tribunal shall not be bound to apply the general law to claims that come before it, it is by no means clear that the operation of Federal law thereby is, or can be, validly displaced. Part V of the Commonwealth Trade Practices Act 1974 (as amended) inevitably applies to many of the claims which come before the Tribunal and the validity of a State law requiring that such claims be determined not by the application of the provisions of that Part but by reference to what is 'fair and equitable to all parties' may be open to question as involving direct inconsistency with Federal law . . .

(Mr Justice McPherson, *R. v. The Judges of the District Court Holden at Brisbane; ex parte Kruger Enterprises*, Supreme Court of Queensland (1982), CCH (1982) ACS, para. 55-186, 56, 810)

Social Security

Suggested need for law reform in connection with allowances for handicapped and severely handicapped children:

a wealthy person who has a severely handicapped child faces no kind of means test. But a person who has a child needing only marginally less care and attention than that needed by a severely handicapped child has to be subjected to severe financial hardship to be eligible at all, and is then still required by the legislation to face the test of the Director-General's discretion as to whether the full \$73 per month should be paid. We would not ordinarily make such a comment, but in this case we feel entitled to question whether the intention of legislation is really reflected in these provisions.

(Mr R.K. Todd, Senior Member; Dr A.H. Marsh, Member and W.B. Tickle, Member, *Yousef v. Director-General of Social Services*, Administrative Appeals Tribunal, (1981) 4 ALD 317, 319)

Subpoenas

Suggested need for amendment to the rules governing compliance with subpoenas:

(a) Rules of court to be amended to permit the recovery of some part at least of the amount incurred by strangers to litigation in looking out and producing documents

' . . . If persons are to be charged, care would need to be taken to see that impecunious parties to litigation were not deprived of access to documents because of costs. Perhaps in these circumstances the community should pay'.

(b) Subpoenas should include a statement that they may be set aside if they are oppressive.

(c) Subpoenas to produce documents ought not to be served without the leave of a judicial or court officer unless [the parties are given at least 14 days to comply with the subpoena].

(Professor R. Baxt, 'The Onerous Obligations of Banks and Other Persons to Produce Documents—A Statement of Principle and a Plea for Reform', *The Bankers' Magazine of Australasia*, October 1981, 179, 182 citing Mr Justice Sheppard in *Bank of New South Wales v. Withers* (1981) 35 ALR 21)

Trusts

Suggested need to protect creditors' rights in relation to trading trusts. The emergence of the trading trust as an alternative to the proprietary company for the operation of a family business, with a two dollar registered company as trustee, has led to the frustration of creditors' rights in ways not possible in dealings with a simple trading company. (Professor H.A.J. Ford, 'Trading Trusts and Creditors' Rights' (1981) *Melbourne University Law Review* Vol. 13 No. 1, 1)

Wills

Suggested need for wills to be automatically revoked upon divorce:

That the Law Society of New South Wales should press for the law relating to Wills to be amended to provide that upon any decree of dissolution of marriage being granted by the Family Court of Australia, then the Wills of the parties to the action be automatically invalidated upon such decree becoming absolute, unless the Will is made in contemplation of the decree of dissolution of marriage. (Resolution of Regional Presidents Conference of the Law Society of New South Wales, 28 October 1981)

Appendix B

TERMS OF REFERENCE

PRIVACY

I, ROBERT JAMES ELLICOTT, Attorney-General, HAVING REGARD TO

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, namely
 - (i) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and
 - (ii) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal;
- (b) the provisions of section 7 of the Act which provides that, in the performance of its functions, the Commission shall review laws to which the Act applies, and consider proposals, with a view to ensuring
 - (i) that such laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
 - (ii) that, as far as practicable, such laws and proposals are consistent with the Articles of the International Covenant on Civil and Political Rights; and
- (c) the provisions, in particular, of Article 17 of the Covenant which provides, inter alia, that 'no one shall be subjected to arbitrary or unlawful interference with his privacy':

HEREBY REFER the following matters to the Law Reform Commission, as provided by the Law Reform Commission Act 1973,

TO INQUIRE INTO AND REPORT UPON—

- (1) the extent to which undue intrusions into or interferences with privacy arise or are capable of arising under the laws of the Commonwealth Parliament or of the Territories, and the extent to which procedures adopted to give effect to those laws give rise to or permit such intrusions or interferences, with particular reference to but not confined to the following matters:
 - (a) the collection, recording or storage of information by Commonwealth or Territory Departments, authorities or corporations, or by persons or corporations licensed under those laws for purposes related to the collection, recording, storage or communication of information;
 - (b) the communication of the information referred to in sub-paragraph (a) to any Government Department, or to any authority, corporation or person;
 - (c) without limiting the operation of sub-paragraphs (a) and (b), the collection, recording, storage and communication of information obtained pursuant to the Health Insurance Act 1973-1975 and the Health Insurance Commission Act 1973;
 - (d) powers of entry on premises or search of persons or premises by police and other officials; and
 - (e) powers exercisable by persons or authorities other than courts to summon the attendance of persons to answer questions or produce documents;
- (2) (a) what legislative or other measures are required to provide proper protection and redress in the cases referred to in paragraph (1);
- (b) what changes are required in the law in force in the Territories to provide protection against, or redress for, undue intrusions into or interferences with privacy arising,

inter alia, from the obtaining, recording, storage or communication of information in relation to individuals, or from entry onto private property with particular reference to, but not confined to, the following:

- (i) data storage;
- (ii) the credit reference system;
- (iii) debt collectors;
- (iv) medical, employment, banking and like records;
- (v) listening, optical, photographic and other like devices;
- (vi) security guards and private investigators;
- (vii) entry onto private property by persons such as collectors, canvassers and salesman;
- (viii) employment agencies;
- (ix) press, radio and television;
- (x) confidential relationships such as lawyer and client and doctor and patient;

(3) any other related matter;

but excluding inquiries on matters falling within the Terms of Reference of the Royal Commission on Intelligence and Security or matters relating to national security or defence.

IN MAKING ITS INQUIRY AND REPORT the Commission will:

- (a) have regard to its function in accordance with section 6(1) of the Act to consider proposals for uniformity between laws of the Territories and laws of the States; and
- (b) note the need to strike a balance between protection of privacy and the interests of the community in the development of knowledge and information, and law enforcement.

DATED this ninth day of April 1976

R.J. Ellicott, Q.C.,
Attorney-General

CONSUMERS IN DEBT

I, ROBERT JAMES ELICOTT, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, namely
 - (i) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and
 - (ii) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal; and
- (b) the desirability of avoiding injustice to and oppression of debtors and of facilitating the collection of debts,

HEREBY REFER the following matters to the Law Reform Commission, as provided by the Law Reform Commission Act 1973,

TO REPORT UPON—

- (1) whether the Bankruptcy Act in its application to small or consumer debtors makes adequate provision to enable such debtors to discharge or compromise their debts from their present or future assets or earnings;
- (2) if the answer to (1) is no, whether any and what measures could be adopted by way of legislation to achieve that objective; and
- (3) what measures could be adopted by way of legislation to provide financial counselling facilities to small or consumer debtors.

IN MAKING ITS REPORT the Commission will have regard to—

- (a) the community's interest in the financial rehabilitation of small but honest debtors, and the need to ensure that creditors have an effective means of enforcing the payment of debts due to them; and
- (b) the function of the Commission in accordance with section 6(1) of the Law Reform Commission Act to consider proposals for uniformity between laws of the Territories and laws of the States.

DATED this tenth day of May 1976

R.J. Ellicott, Q.C.,
Attorney-General

INSURANCE CONTRACTS

I, ROBERT JAMES ELICOTT, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, namely
 - (i) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and
 - (ii) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal,
- (b) the lack of uniformity between the laws of the Territories and the laws of the States in the field of insurance;
- (c) the relative bargaining power between insurer and insured;
- (d) the need for contracts of insurance to strike a fair balance between the interests of insurer and insured;
- (e) the desirability of ensuring that the manner in which insurance contracts are negotiated and entered into is not unfair;
- (f) the desirability of ensuring that there are no unfair provisions in insurance contracts,

HEREBY REFER the following matters to the Law Reform Commission, as provided by the Law Reform Commission Act 1973,

TO REPORT UPON

- (1) the adequacy of the law governing contracts of insurance (excluding marine insurance, workers compensation and compulsory third party insurance) having regard to the interests of insurer, insured and the public, and in particular
 - (a) whether terms and conditions presently found in contracts of insurance operate unfairly;
 - (b) whether certain, and if so what, terms and conditions should be mandatory in contracts of insurance;
 - (c) whether certain, and if so what, terms now found in contracts of insurance should be prohibited;
 - (d) whether the practice of incorporating statements made in proposal forms into contracts of insurance provides an equitable basis of contract between the insurer and the insured;
 - (e) whether it should be mandatory for an insurer to supply to a person seeking insurance written information as to that person's rights and obligations under the proposed contract;
 - (f) whether arbitration clauses in contracts of insurance are operating unfairly to the parties or are otherwise undesirable;
 - (g) whether the principles of the law of agency in pre-contractual negotiations should be modified to provide greater fairness to the insured;
- (2) what, if any, legislative or other measures are required to ensure a fair balance between the interests of insurer and insured; and
- (3) any other related matter.

IN MAKING ITS REPORT the Commission will have regard to its function in accordance with section 6(1) of the Law Reform Commission Act to consider and present proposals for uniformity between laws of the Territories and laws of the States with a view to such proposals being considered by the States.

DATED this ninth day of September 1976

R.J. Ellicott, Q.C.,
Attorney-General

ACCESS TO THE COURTS

I, ROBERT JAMES ELLICOTT, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, namely—
 - (i) laws made by, or by the authority of, the Parliament, including laws of the Territories so made; and
 - (ii) any other laws, including laws of the Territories, that the Parliament has power to amend or repeal,with a view to the systematic development and reform of the law, including, in particular—
 - (i) the modernisation of the law by bringing it into accord with current conditions;
 - (ii) the simplification of the law; and
 - (iii) the adoption of new or more effective methods for the administration of the law and the dispensation of justice;
- (b) the provisions of section 7 of the said Act which provide that, in the performance of its functions, the Commission shall review such laws with a view to ensuring that such laws do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
- (c) criticism of the restrictions in the present law upon the capacity and right of persons to be heard in courts and proposals which have been made relating to class actions,

HEREBY REFER to the Law Reform Commission, as provided by the Law Reform Commission Act 1973, for REVIEW of the laws to which the said Act applies relating to—

- (a) the standing of persons to sue in Federal and other courts whilst exercising federal jurisdiction or in courts exercising jurisdiction under any law of any Territory; and
- (b) class actions in such courts,

AND TO REPORT UPON—

- (a) the adequacy thereof;
- (b) any desirable changes to the existing law in relation thereto but having regard to any constitutional limitations on Commonwealth power; and
- (c) any related matter.

IN MAKING ITS REPORT the Commission will also have regard to its function in accordance with section 6(1)(d) of the said Act to consider and present proposals for uniformity between laws of the Territories and laws of the States with a view to such proposals being considered by the States.

DATED this first day of February 1977

R.J. Ellicott, Q.C.,
Attorney-General

ABORIGINAL CUSTOMARY LAWS

I, ROBERT JAMES ELICOTT, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing laws to which the Law Reform Commission Act 1973 applies, of considering proposals for the making of laws to which that Act applies and of considering proposals for uniformity between laws of the Territories and laws of the States;
- (b) the special interest of the Commonwealth in the welfare of the Aboriginal people of Australia;
- (c) the need to ensure that every Aborigine enjoys basic human rights;
- (d) the right of Aborigines to retain their racial identity and traditional life style or, where they so desire, to adopt partially or wholly a European life style;
- (e) the difficulties that have at times emerged in the application of the existing criminal justice system to members of the Aboriginal race; and
- (f) the need to ensure equitable, humane and fair treatment under the criminal justice system to all members of the Australian community.

HEREBY REFER the following matter to the Law Reform Commission, as provided by the Law Reform Commission Act,

TO INQUIRE INTO AND REPORT UPON whether it would be desirable to apply either in whole or in part Aboriginal customary law to Aborigines, either generally or in particular areas or to those living in tribal conditions only and, in particular:

- (a) whether, and in what manner, existing courts dealing with criminal charges against Aborigines should be empowered to apply Aboriginal customary law and practices in the trial and punishment of Aborigines;
- (b) to what extent Aboriginal communities should have the power to apply their customary law and practices in the punishment and rehabilitation of Aborigines; and
- (c) any other related matter.

IN MAKING ITS INQUIRY AND REPORT the Commission will give special regard to the need to ensure that no person should be subject to any treatment, conduct or punishment which is cruel or inhumane.

DATED this ninth day of February 1977

R.J. Ellicott, Q.C.,
Attorney-General

SENTENCING

I, PETER DREW DURACK, Attorney-General, HAVING REGARD TO—

- (a) the function of the Law Reform Commission, in pursuance of references to the Commission made by the Attorney-General, of reviewing Commonwealth and Territorial laws to which the Law Reform Commission Act 1973 applies;
- (b) the costs and other unsatisfactory characteristics of punishment by imprisonment;
- (c) the desirability of ensuring that offenders against a law of the Commonwealth are treated as uniformly as possible throughout the Commonwealth in respect of the sentences imposed on them;
- (d) the need for a revision of laws of the Commonwealth and the Australian Capital Territory, with particular reference to the questions
 - (i) whether principles and guidelines for the imposition of sentences of imprisonment should be formulated; and
 - (ii) whether existing laws providing alternatives to imprisonment are adequate;
- (e) the conclusions of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concerning the use of imprisonment, as set out in the report of the United Nations Secretariat in relation to the Congress (E.76.IV.2); and
- (f) the matters to be considered at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in Australia in 1980, with particular reference to the agenda topic relating to the de-institutionalisation of corrections,

HEREBY REFER the following matter to the Law Reform Commission, as provided by the Law Reform Commission Act, 1973,

FOR REVIEW AND REPORT ON the laws of the Commonwealth and the Australian Capital Territory relating to the imposition of punishment for offences and any related matters.

IN ITS REVIEW AND REPORT the Commission—

- (1) shall collaborate with the Australian Institute of Criminology;
- (2) shall have particular regard to—
 - (a) the formulation of principles and guidelines for the imposition of a sentence of imprisonment;
 - (b) the question whether legislation should be introduced to provide that no person is to be sentenced to imprisonment unless the court is of the opinion that, having regard to all the circumstances of the case, no other sentence is appropriate;
 - (c) the adequacy of existing laws providing alternatives to sentences of imprisonment;
 - (d) the need for new laws providing alternatives to sentences of imprisonment, with particular reference to restitution orders, compensation orders, community service orders and similar orders;
 - (e) the need for greater uniformity in sentencing, with particular reference to laws with respect to the grading of offences and orders and with respect to processes designed to structure discretion in sentencing by means of the establishment of guideline sentences and the use of a sentencing council, institute or commission for this purpose;
 - (f) the laws that would be required to give effect to the recommendations of the Commission;

- (g) the provisions of Section 7 of the Law Reform Commission Act providing that, in the performance of its functions, the Commission shall review laws to which the Act applies, and consider proposals, with a view to ensuring
 - (i) that such laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and
 - (ii) that, as far as practicable, such laws and proposals are consistent with the Articles of the International Covenant on Civil and Political Rights; and
 - (h) its function in accordance with Section 6(1) of the Act to consider proposals for uniformity between laws of the Territories and laws of the States;
- (3) shall—
- (a) consider the question whether, in the determination of the punishment for an offence, an emphasis should be placed on—
 - (i) the state of mind of the offender in the commission of the offence; or
 - (ii) the personal characteristics of the offender and the need for treatment; and
 - (b) take into account the interests of the public and the victims of crime.

THE COMMISSION IS REQUIRED to submit by 1 June 1979 an Interim Report on the subject matter of the reference dealing in particular with those aspects of the reference that are relevant to expediting and maximising de-institutionalisation of punishment.

DATED this eleventh day of August 1978

Peter Durack
Attorney-General

EVIDENCE

- I, PETER DREW DURACK, Attorney-General of the Commonwealth of Australia, HAVING REGARD TO—
- (a) the recommendations of the Senate Standing Committee on Constitutional and Legal Affairs, made in its Report on the Reference: The Evidence (Australian Capital Territory) Bill 1972 that:
 - (i) a comprehensive review of the law of evidence be undertaken by the Law Reform Commission with a view to producing a code of evidence appropriate to the present day; and
 - (ii) a Uniform Evidence Act be drafted:
 - to apply the same law of evidence to A.C.T. and to the external Territories;
 - as far as is appropriate, to apply the same law of evidence in all Commonwealth courts and tribunals; and
 - to include the matters now covered in the Evidence Act 1905 and the State and Territorial Laws and Records Recognition Act 1901; and
 - (b) the need for modernisation of the law of evidence used in Federal Courts, the Courts of the Australian Capital Territory and the external Territories and Federal and Territory tribunals by bringing it into accord with current conditions and anticipated requirements;

HEREBY REFER to the Law Reform Commission as provided by the Law Reform Commission Act 1973 TO REVIEW the laws of evidence applicable in proceedings in Federal Courts and the Courts of the Territories with a view to producing a wholly comprehensive law of evidence based on concepts appropriate to current conditions and anticipated requirements AND TO REPORT:

- (a) whether there should be uniformity, and if so to what extent, in the laws of evidence used in those Courts; and
- (b) the appropriate legislative means of reforming the laws of evidence and of allowing for future change in individual jurisdictions should this be necessary.

IN MAKING ITS INQUIRY AND REPORT the Commission will have regard to its functions in accordance with sub-section 6(1) of the Act to consider proposals for uniformity between laws of the Territories and laws of the States.

DATED this eighteenth day of July 1979

Peter Durack
Attorney-General

ALRC 11, see Defamation and Privacy
 ALRC 12, see Privacy and the Census
 ALRC 14, see Lands Acquisition and Compensation
 ALRC 15, see Sentencing of Federal Offenders
 ALRC 16, see Insurance Agents and Brokers
 ALRC 18, see Child Welfare
 ALRC 2, see Criminal Investigation
 ALRC 20, see Insurance Contracts
 ALRC 4, see Alcohol, Drugs and Driving
 ALRC 6, see Consumer Insolvency
 ALRC 7, see Human Tissue Transplants
 ALRC 9, see Complaints Against Police
 Aboriginal Customary Laws
 current project, 82-89, Table 4
 discussion papers, 87
 research papers, 35-6
 Access to the Courts
 class actions, 8, 90-91, Table 4
 standing to sue, 90, Table 4
 Administrative law—law reform suggestions, see Appendix A
 Alcohol, Drugs and Driving Report (ALRC 4), 47
 Animals—law reform suggestions, see Appendix A
 Appointments, see Law Reform Commission, the Australian
 Appreciation, 43
 Australian Capital Territory
 Consultative Committee on Criminal Law Reform, 98-99
 possible Commissioner, 100

 Campbell Report, 3-4, 7, 11
 Census, see Privacy and the Census
 Child Welfare
 law reform suggestions, see Appendix A
 Report (ALRC 15), 65, Table 3
 Civil Rights—law reform suggestions, see Appendix A
 Class Actions, see Access to the Courts
 Commissioners, see Law Reform Commission, the Australian
 Committee on the Australian Financial System (the Campbell Committee), 3-4, 7, 11
 for Accidents—law reform suggestions, Appendix A
 Compensation and Lands Acquisition—law reform suggestions, see Appendix A
 see Lands Acquisition and Compensation
 Complaints Against Police Report (ALRC 1 and 9), 45, Table 3
 Completed Projects, 44-70
 Consumer Insolvency
 Stage I—The Regular Payment of Debts Report (ALRC 6), 48-50, Table 3
 Stage II—Debt Recovery and Insolvency, 67, 68-69, Table 4
 Consultants, see Law Reform Commission, the Australian
 Contracts—law reform suggestions, see Appendix A
 Coroners—law reform suggestions, see Appendix A
 Criminal Investigation Report (ALRC 2), 46, Table 3
 Criminal Law
 law reform suggestions, see Appendix A
 Reform see A.C.T. Consultative Committee on Criminal Law Reform
 Criminal Procedures—law reform suggestions, see Appendix A
 Current Projects, 71-97

 Debt Recovery and Insolvency, see Consumer Insolvency
 Defamation
 and Privacy Report (ALRC 11), 52-54, Table 3
 law reform suggestions, see Appendix A
 Drugs—law reform suggestions, see Appendix A

 Economics and Law Reform, 1-10
 Evidence
 current project, 92-97, Table 4
 research papers, 35, 96
 Federal Courts—law reform suggestions, see Appendix A
 Functions, see Law Reform Commission, the Australian

 High Court Appeals—law reform suggestions, see Appendix A
 Human Tissue Transplants Report (ALRC 7), 6, 51, Table 3

 Income Tax—law reform suggestions, see Appendix A

Industrial Arbitration—law reform suggestions, see Appendix A
 Insolvency, see Consumer Insolvency
 Insurance Contracts
 Stage I—Insurance Agents and Brokers Report (ALRC 16) 10-11, 62-64, Table 3
 Stage II—Insurance Contracts Report (ALRC 20), 11, 66-70, Table 3
 Insurance—law reform suggestions, see Appendix A
 Intellectual Property—law reform suggestions, see Appendix A
 Interest on Judgement Debts—law reform suggestions, see Appendix A

 Landlord and Tenant—law reform suggestions, see Appendix A
 Lands Acquisition and Compensation Report (ALRC 14), 55, Table 3
 Law Reform Commission, the Australian
 consultants, 32-34
 divisions, Table 2
 functions, 16, 36
 meetings, Table 1
 members, 17
 new appointments, 21-24
 publications, see Publications of the Commission
 reappointments, 18-20
 remuneration of members, 25-29
 retirements, 25-27
 staff, 30-31
 Law Reform Digest, 38
 Law Reform Suggestions, 39, Appendix A

 Members, see Law Reform Commission, the Australian
 Mental Health—law reform suggestions, see Appendix A
 Migration—law reform suggestions, see Appendix A
 Money Lenders—law reform suggestions, see Appendix A
 Motor Traffic—law reform suggestions, see Appendix A

 National Health—law reform suggestions, see Appendix A

 Parliamentary Privilege and Contempt—law reform

suggestions, see Appendix A
 Passports—law reform suggestions, see Appendix A
 Practice and Procedure—law reform suggestions, see Appendix A
 Privacy
 and defamation, see Defamation and Privacy
 and the Census Report (ALRC 12), 55, Table 3
 current project, 74-79, Table 4
 research papers, 35
 Processing Law Reform, 12-15
 Public Consultation, 40-41
 Public Duty and Private Interest—law reform suggestions, see Appendix A
 Publications of the Commission, 35-39
 see also under title to each reference

 References
 current program, see Current Projects
 terms of reference, see Appendix B
 Regulatory Mechanisms, 5-10

 Senate Standing Committee on Constitutional and Legal Affairs: Report on 'Reforming the Law government response, 13
 recommendations, 12, 39, 40
 Senate resolution, 14
 Sentencing of Federal Offenders
 research papers, 35, 81
 Stage I Report (ALRC 15), 57-60, Table 3
 Stage II, 61, 80-81, Table 4
 Small Claims Tribunals—law reform suggestions, see Appendix A
 Social Security—law reform suggestions, see Appendix A
 Staff, see Law Reform Commission, the Australian
 Standing to Sue, see Access to the Courts
 Subpoenas—law reform suggestions, see Appendix A
 Suggestions for Law Reform, Appendix A

 Terms of Reference, see Appendix B
 Trusts—law reform suggestions, see Appendix A

 Unfair Publication, see Defamation and Privacy
 Visits, 42

 Wills—law reform suggestions, see Appendix A

END