it is necessary for the law to keep pace with the conditions that exist in today's society. If, because of unequal bargaining power, unfair conditions are imposed on the insured, legislation is needed to remedy the inequality. The Federal Attorney-General likened the problem to other areas of consumer protection. Mr. Ellicott stressed that he did not believe that there are "grave abuses evident in this area" but the A.L.R.C. was asked to consider the matter so that the Government could determine whether it should legislate in relation to it.

Mr. David St.L. Kelly, formerly Reader in Law at the University of Adelaide, has been assigned as Commissioner in charge of this Reference. Mr. Kelly told "Reform" that the Reference called particular attention to the following aspects of Insurance contracts:

* Unfair terms and conditions
* Terms and conditions that should be mandatory
* Terms and conditions that should be prohibited
* A possible statement of rights and obligations for the insured
* Arbitration clauses.

Mr. Kelly said that the Commission would approach consumer groups, the insurance industry and the community generally to get views on the scope and nature of the problem.

> "The Reference excludes marine insurance, workers' compensation and compulsory third party insurance. There are other constitutional limitations. Nevertheless, what remains is an important area of insurance law. The Reference provides an opportunity for an Australian response to the private law of insurance contracts", Mr. Kelly said.

As in other references, the Attorney-General has asked the Commission to have regard to its function to consider and present proposals for uniformity between the laws of the Territories and laws of the States with a view to such proposals being considered by the States. It is interesting in this respect to note that the Western Australian Attorney-General has now given the W.A.L.R.C. a Reference on Privacy that parallels the National Reference given to the A.L.R.C. by Mr. Ellicott. The two Commissions are already making arrangements to work closely on the project which may represent a breakthrough for the development of uniform laws in Australia. Mr. Justice Kirby said that the "inadequate" machinery for promoting and servicing uniform laws in this country would be dealt with in the A.L.R.C.'s *Second Annual Report* to Federal Parliament. This Report will be tabled in October 1976.

Rape : The debate continues

> "..[R]ape is a most detestable crime, and therefore ought severely and impartially to be punished ...; ... it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent..."
> - Sir Matthew Hale C.J., *Pleas of the Crown*, I, p.634

Dr. John Helmer, a Senior Lecturer in Political Science, is reported in "The Age" (10 September 1976) as saying that rapists in Victoria have an 80% chance of avoiding conviction. He asserts that a legal system that permits this, favours rape as a "better gamble than risking V.D. by going to a massage parlour". A number of law reform reports have now been delivered suggesting rape law reform. In the last quarter, an important Report from the Victorian Law Reform Commissioner, Mr. Smith Q.C., proposes substantial changes in court procedures and rules of evidence in Victoria. There have been earlier reports from the Tasmanian Law Reform Commission, the South Australian Criminal Law Committee and the Women's Advisory

Board in New South Wales. The matter is also on the programme of the Queensland Law Reform Commission. The issue : How to reduce the embarrassment and trauma suffered by victims during rape trials without removing the protections for the accused traditional in our system of criminal justice.

In his Report, the Victorian Law Reform Commissioner follows up his Working Paper which produced a Government commitment to reform the rules of evidence governing rape trails. The Victorian Attorney-General, Mr. Haddon Storey O.C. summed up the Report:

> "The principal recommendations are designed to reduce the number of occasions when a victim has to give evidence, to cut out as far as possible questions directed to the victim's previous sexual behaviour and to ensure that the matter is disposed of speedily".

In July 1976 the Victorian Premier, Mr. Hamer, suggested that the prosecutrix should be allowed to give her evidence in a sworn written statement at the committal proceedings instead of orally. He proposed that her previous sexual experience should not be the subject of questions, unless specifically permitted by the trial judge.

The figures attached to the V.L.R.C.report show that 75% of persons committed for trial in Victoria on rape type offences pleaded guilty or were convicted. This compares with 76% in N.S.W. Certainly once legal machinery has been set in motion, the figures do not bear out the claim of Dr. Helmer. However, he is unrepentant and calls all the suggestions now made "flea bites". Perhaps lawyers are more conscious than political scientists of the fact that even in rape trials, the accused has rights.

In August, the South Australian Government announced its intention to enact legislation basically along the lines recommended by the S.A.C.L.R.C.'s Special Report *Rape and Other Sexual Offences*. However, there were some differences. The proposed legislation will make it possible for a wife to charge her husband with rape, irrespective of whether they are living under the same roof or not. The Report had recommended that such a charge could only be brought against a husband where the spouses were living apart. The suggestions in the Report that the age of consent be lowered to 16 and that incest should cease to be a separate offence have been put aside by the Government for further consideration. South Australian Attorney-General Duncan said that the aim of the legislation would be "to extend equal rights in the eyes of the law to all people".

The proposed legislation in Victoria and S.A. has promoted reform suggestions in other States. Mr. Medcalf, W.A. Attorney-General, recently announced that he too intends to ease the strain and embarrassment facing women who give evidence in rape trials. In announcing this he said that he was studying the V.L.R.C. and S.A.C.L.R.C. reports. This indicates again the initiative in Western Australia to promote an efficient use of law reform agencies in this country.

The new Attorney-General for New South Wales, Mr. Walker, has also proposed legislation on this topic. He said that one possibility which his Department had been asked to study was the removal of the offence of rape as such and the introduction of varying degrees of assault (SMH 30 July 1976). Of course, in Michigan the offence as such has been abolished as part of the reform procedure. The focus of attention is diverted from the sexual to the assault aspect of the offence. Since Mr. Walker's announcement Mr. Justice Lee of the Supreme Court of New South Wales has called attention to the apparent unfairness of a trial procedure that allows accused, immune themselves from questions, to submit the complainant to hundreds of questions about her private sexual conduct. (*R v. Macey & Ors.* (unreptd) 30 September 1976.

The Tasmanian Government has before it the Tas.L.R.C. *Report and Recommendations For Reducing Harassment and Embarrassment of Complainants in Rape Cases*. Tasmanian Attorney-General, Mr. Miller, announced on 31 July that the Government proposed to introduce legislation in the current session which will restrict questioning about the complainant's previous sexual history, restrict the publication of names and addresses and limit the number of people allowed in court when women give evidence. It will also provide that a husband may be charged with the rape of his wife where the parties have been legally separated. A number of other reforms to implement the L.R.C. proposals were also foreshadowed. Every State in Australia is therefore doing something about rape law reform. Many of the proposals are along the same lines. The same issues crop up in all of the reports. The value of co-operation between law reform agencies is illustrated by the identity of references on this subject.

Random tests : The silver bullet?

> "Oh God! That men should put an enemy in their mouths
> to steal away their brains"
> *Othello, II, 3*

The A.L.R.C.'s latest Report *Alcohol, Drugs and Driving* (A.L.R.C.4) opens with this Shakespearean lament, which takes on a new anguish in the age of the motor car. The Commission was specifically asked whether "random tests" should be introduced in the Australian Capital Territory. The Commission answered this question in the negative. The Reference was received on 22 January and the Commission's 200-page Report was in the hands of the Attorney-General, Mr. Ellicott, as required by 30 June 1976. It attaches draft legislation and amasses a great deal of Australian and overseas material on the unhappy mixture of petrol and alcohol.

The Commission suggests the simplification of the law and the lowering of the preconditions for police tests. Only two tests are proposed:

* Involvement in an accident as driver of a motor vehicle; or
* Reasonable cause to suspect that a person has alcohol or a drug in his body.

On simplification, the A.L.R.C. no doubt had in mind the following report in the London Daily Mail:

> "An A.A. spokesman said 'We agree the breath test laws need simplification. They have cost motorists a great deal of money in finding the various loopholes. We think the government should find some way of compensating them'."

The Commission based its rejection of random tests principally on the evidence of road traffic experts that it would have no long term effect on the road toll. The delicate relationship between citizen and police would be disturbed for no sure gain. Dr. Michael Henderson, N.S.W. Director of Traffic Safety, told the Commission "Random tests ..[are] not a silver bullet". (A.L.R.C.4 p.109).

The Commission Chairman,Mr. Justice Kirby, explained the Commission's stand:

> "It is traditional in British societies, before police intervention into the ordinary conduct of citizens is tolerated, that some reasonable cause to warrant a suspicion on the part of the police officer is generally required. This tradition, which is at the heart of our liberty, ought not lightly to be sacrificed. It ought not to be sacrificed at all, in this context, without the clearest