At the end of the public sittings Mr. Scott drew attention to four issues for decision by the A.L.R.C.:

* The definition of death.
* Permissibility of transplants from live donors.
* The acceptability of the French approach or the necessity for consent before tissues and organs are taken.
* Ethical training in the medical profession.

The common law has tended to define death in terms of stoppage of the circulation of the blood. See (1976) 126 *New L.J.* 1232. But that will not do now. Ventilators and artificial respirators can keep a person's circulation going, although he has suffered irretrievable loss of use of the brain. How should the law cope with this? The A.L.R.C. proposes a definition of death, which will accept irreversible coma as a criterion.

Opinion was sharply divided in the public submissions concerning live donations, especially by children. As for tissue from dead persons, many laymen inclined to favour the approach of the recent French legislation (above). The medical profession, however, was extremely cautious. One doctor told the Sydney hearings that the very obligation to seek the consent of relatives puts a brake on any suggestion of recklessness or precipitate action by transplanters. The A.L.R.C. working paper takes up an intermediate position. Hospital authorities in possession of suitable cadaver donors would have a strictly limited list of relatives to approach.

In Perth and elsewhere stress was laid upon the need to train the medical profession for the moral challenges of current medical techniques. Transplants of fetal material are occurring overseas and have been perfected in animals. Should the law permit them here? The A.L.R.C. *Report* is due before 30 June 1977. Mr. Scott stressed the unique inter-disciplinary nature of the reference. "Doctors, lawyers, and moral philosophers have sat down to produce a law which has then been submitted to the public audience. Hopefully the Commission's report will become a basis for a modern, uniform law. The law must face up to the expanding horizons of transplantation. It must acknowledge that every day, in every major city, ventilators are turned off", Mr. Scott said.

Aboriginal Customary Laws: Redressing the Balance

> "Too little work has been done on the nature and content of Aboriginal law. We should not conclude that, because it is unwritten, it does not exist or that it is ephemeral."
>
> H. C. Coombs

The Federal Attorney-General, Mr. Ellicott, in consultation with the Minister for Aboriginal Affairs, Mr. Viner, has given the Australian law Reform Commission perhaps its most difficult task. A new reference calls on the A.L.R.C. to consider Aboriginal customary laws and particularly its application in the Australian criminal justice system. A reference was signed on 9 February 1977. It will involve the Commission in an inquiry and report upon:

* Whether it would be desirable to apply Aboriginal customary law in whole or part generally or to tribal Aboriginals.
* Whether existing courts should be used, and if so how.
* To what extent Aboriginal communities themselves should have the power to apply laws and practices.

The A.L.R.C. Chairman has already had conversations in the Northern Territory with the Majority Leader, Dr.G. Letts, M.L.A. and the Cabinet Member for Law, Miss Elizabeth Andrew, about the Reference. Consultations have also been had with members of the Judiciary in the Northern Territory, Aboriginal leaders and departmental officers and academics interested in the subject. On 24 March 1977, the Chairman was invited to appear before the Joint Committee on Aboriginal Affairs of the Federal Parliament. This Committee is chaired by Mr. P.M. Ruddock, M.P., and contains four former federal Ministers for Aboriginal Affairs. The Committee emphasised the need for close consultation with the Aboriginal communities in Northern and Central Australia. One Member, Mr. K.E. Beazley, suggested that the transformation in Australia's attitudes to its Aboriginal people in the past ten years represented an attempt to scramble out of the category of "conquerors" into the category of those nations which had done a "fair deal" with their indigenous inhabitants. The A.L.R.C. Reference should not be seen in isolation. Important initiatives, bipartisan in origin, have been taken since the Aboriginal referendum in 1967.

The reference follows the controversy which flared after Mr. Justice Wells of the Supreme Court of South Australia sentenced an Aboriginal, Sydney Williams, to return to his tribe and obey their lawful orders. In the result, Williams was speared and the outcry is recorded in (1976) 50 *A.L.J.* 386. The A.L.R.C. is now asked to look at the question on a comprehensive basis. Is it too late to grant some form of recognition to Aboriginal customary laws? Sydney Williams no doubt ascribed the red robes and horse-hair wigs which he confronted in court to our "tribal laws". In the new land rights area, is there a place for some form of self control or is it imperative that we should all be one under the unified law of Australia? Will ethnic communities in Australia demand similar special privileges? Where will it all end?

Fortunately, the Commission has already secured extremely useful contacts with experts in Canada. This is one result of the recent visit of the Vice-Chairman of the Canada L.R.C., Mr. Justice Bouck. A law reform officer, Mr. Tearle, has received permission from the New Zealand authorities to investigate Maori land courts in New Zealand. Contacts have also been made with the Village Courts Administration in Papua New Guinea, as with the Australian Institute of Criminology and the Institute of Aboriginal Affairs. The *Criminal Investigation Bill 1977* (Cwth) introduces special rights for Aboriginals in the federal criminal investigation system. It may be important to see these moves in a total framework. Most lawyers will react adversely to proliferation of systems. Certainly, the problems and implications are enormous. But we are seeking a new compact with Aboriginal Australians and this may involve, to some extent, respect for their laws, or at least some of them.

Law Council's New Look

> "I think we may class the lawyer in the natural history of monsters".
>
> *John Keats*

The Law Council of Australia is the federal organisation of law societies and bar associations of Australia. Since the appointment of its full-time Secretary-General, Mr. Bob Nicholson, the Council has taken on a dynamic "new look". Mr. Nicholson is a practitioner from Perth, W.A. He is stationed in Melbourne and recently secured a full-time administrative officer, Mr. C.J. Roper, who did his law degree in Sydney. The Council President, David Ferguson, is keen to make sure that the Law Council is an organisation which "does much more than merely conduct conventions". The models of the A.B.A. and C.B.A. are before the Law Council.

Bob Nicholson has written a challenging paper for the 19th Australian Legal Convention in Sydney in July 1977. Titled *Law Reform and the Legal Profession* it suggests new ways in which the profession can contribute to law reform.

Meanwhile, the Council is helping the A.L.R.C. in all of its references by organising action committees to provide ideas and comment on working papers. As well, the Executive is considering :

* Professor Peden's report on Harsh and Unconscionable Contracts.
* The Maritime Law Association's recommendations on Admiralty Jurisdiction. The Law Council supports the view that the Commonwealth Government should move to consider the desirability of introducing comprehensive legislation to confer Admiralty jurisdiction on Australian courts.

The Law Council will shortly publish the first edition of an *Australian Legal Profession Digest*. This will be accompanied by a summary news sheet titled *Australian Lawyer*. These publications will be similar to the A.L.R.C. Digest and *Reform*. They will deal with matters directly relating to the legal profession rather than general matters of law. Anyone who has read the C.B.A. *National* will acknowledge the utility of this initiative.

The Law Council has recently established an exchange scheme by which a solicitor from a large firm in Sydney is to be exchanged with a senior officer of the Commonwealth Attorney-General's Department. Mr. Nicholson told the Australian Law Reform Agencies Conference in Canberra in May 1976 that the cross-fertilisation of people and ideas had not gone far enough in Australia. This exchange scheme may be the beginning of something big. From 4 April 1977 the Law Council will move to its new premises at 155 Queen Street,