The Commission was especially assisted by the presence of New South Wales and Tasmanian officers who have their State laws under current revision. The need for major modernisation of laws and practices here is clearly outlined in the A.L.R.C. Discussion Paper.

The paper suggests many changes. Amongst the more important are:

- The provision of an inquiry, to a fixed time limit, to hear objections to the compulsory acquisition of private land and to make recommendations to the Minister.
- All acquired properties to be acquired within two months of the decision to proceed.
- Plain English notices of rights to be given to all dispossessed owners.
- The Commonwealth to pay 90% of valuation on proof of title.
- Provision for review of valuation by the Administrative Appeals Tribunal with recourse to the Federal Court in certain circumstances.
- Compensation to be assessed on the basis of full indemnification of financial loss and to include certain specific items. These are to include disturbance allowances for financial losses, discretionary solatium for intangible losses by home owners, reinstatement in certain circumstances, and loan assistance for home owners unable to procure new premises with compensation.
- Injurious affection to be available to all land owners whether or not their land is taken from them for a scheme but to be limited to decrease in value caused by construction factors (loss of access, air, overshadowing etc) or use factors (noise, vibration, smell, fumes etc).

The A.L.R.C. now plan a series of public seminars and public sittings in all parts of Australia. Valuers, real estate agents, lawyers, departmental officers and members of the public will be invited to comment on the A.L.R.C. tentative scheme. The public consultation will probably be arranged in March-April 1978. The time-table will be published nationally. Meanwhile, the A.L.R.C. is carefully examining comments that are being received. It is also working closely with State officers who are reviewing equivalent State legislation. Copies of the discussion paper are available from The Law Reform Commission, Box 3708, G.P.O., Sydney, N.S.W., 2001. It will be distributed with the *Australian Law Journal* to all subscribers to the A.L.J. The discussion paper continues the A.L.R.C. effort to put tentative ideas in a short paper which busy people may be prepared to read. This procedure has already produced hundreds of useful submissions in other references. It has now become the standard A.L.R.C. procedure in major references. (See *Annual Report 1977*, 22.)

Minority Rights *v.* Majority Rights

> "All history is a record of the power of minorities, and of minorities of one."
>
> R. W. Emerson, c. 1880.

We live in the age of the plural society, where it is acceptable, even desirable, to be different. Law and law reform have a place in striking the balance between the rights of majorities and of minorities in our free society. The important reference given to the A.L.R.C. on *Aboriginal Customary Laws* illustrates the latest effort of the Australian majority to strike a new "deal" with its indigenous Aboriginal minority, so far as the legal system is concerned. The report of the A.L.R.C. on *Criminal Investigation* recognised four minority groups in Australia deserving of special legal protection:

- Aboriginals
- Non-English-speaking accused
- Children
- Mentally Ill and Defective accused.

The A.L.R.C. report and the *Criminal Investigation Bill* give particular, special protections for the first three categories mentioned. The provision of interpreters, of the facility of lawyers or of a "prisoner's friend", translated notices of rights and so on are all designed to redress inequalities which sometimes arise from the equal application of the one law to different groups.

The protection of minorities constantly comes before law reform commissions. The W.A.L.R.C. working paper *Review of Bail Procedures* addresses itself to special groups

(children, Aborigines, non-residents, migrants and other groups). In South Australia the Committee on the Rights of Persons with Handicaps has distributed a discussion paper with recommendations for law reform to assist persons with handicaps. (Mr. Justice Bright, Chairman.)

Even the A.L.R.C. reference on Defamation raises this issue. In its first discussion paper *Defamation — Options for Reform* the Commission proposed a new remedy so that a member of an impugned group (social, ethnic or religious) could secure an injunction against repetition of a slur on that group. No damages would be allowed. No such remedy is available in Australia. In some Canadian provinces the *Defamation Act* provides this kind of redress.

The debate on this suggestion continues, many people believing that procedures of conciliation and "round table discussion" are more apt than courtroom methods. The latter, it is feared, will simply impose the adversary "winner take all" solution instead of attacking the root cause of the social tension. The Commonwealth Commissioner for Community Relations, established under the *Racial Discrimination Act* 1975 and various State officers have functions to conciliate community tensions of this kind.

In his first major address since being appointed a Lord of Appeal, Lord Scarman, past Chairman of the Law Commission of England and Wales, turned his attention to *Minority rights in a plural society*. He asked a question of universal concern here: what is the role of the law in helping to resolve the dilemma which arises when the rights of an individual are put at risk in the interests of a disadvantaged group?

Lord Scarman points out that "plural societies are here to stay". He asserts that they "offer much of value to their members and . . . the challenge is not how to convert them into homogeneous societies, but how to manage them fairly and acceptably as plural societies". He contrasts the United States approach to the dilemma of the plural society and that adopted in Britain. In the United States, the Bakke case, which now awaits decision in the Supreme Court, has exposed the dilemma. A white student, applying for a place in the medical school of a university was passed over in favour of a coloured student with less qualifications. Have his constitutional rights been infringed because he was rejected on the ground that it was desirable to increase the number of coloured doctors? Is not his rejection an act of discrimination against the white man based on his colour and ethnic origin? Is it right that the individual should pay the price needed to provide advancement for the disadvantaged group?

> "The Americans have not yet provided their final answer. But they have devised a method —a combination of legislative and judicial development pursuant to and controlled by a written Constitution and a Bill of Rights."

Lord Scarman points out that in Britain "We have made more use of legislation and less use of judges." "We have not," he declares, "yet thought out a solution of principle. We have simply acted to meet urgent difficulties, preferring to use administrative and legislative methods wherever possible. [The Americans] have one great advantage over us. The Bill of Rights and the Supreme Court engage the loyalty and respect of the American people. The same cannot be said of the Equal Rights Commission or the Commission for Racial Equalities or the two Statutes . . . the risk is that in seeking to do justice to those who are disadvantaged we impose injustice on others."

Lord Scarman appeals for a clear-sighted adherence to "the fundamental principle, equal justice under the law". He concludes that the complexities of the plural society are such that "without a Bill of Rights we are in danger of losing our sense of direction".

Lord Scarman's elevation to Britain's highest court has not stifled his reforming zeal, including in matters of high policy and controversy.

Law Reform: "Out of the Legal Ghetto?"

> "[L]aw reform commissions . . . work the sterile fields of legal doctrine, bringing forth mice after monumental efforts, while the more serious problems of the legal order go unattended and become more serious."
>
> J. N. Lyon, "Law Reform Needs Reform" (1974) 12 *Osgoode Hall L.J.* 422, 427.

In [1976] *Reform* 21 we set out the substance of Professor J. N. Lyon's stinging attack on law reform. Now, Mr. R. A. Samek has entered the fray in "A Case for Social Law