

be assembled to inquire into the complaint. The Canadian Commission supplements earlier legislation passed during the Diefenbaker government enacting a *Canadian Bill of Rights*, enforceable in the courts.

Speaking at a United Nations Association Conference in Perth on 21 April 1978, A.L.R.C. Chairman, Mr. Justice Kirby, scrutinised the debate on human rights protection in Australia:

"In this country we pass every year more than a thousand statutes. There are still more laws governing citizens if we include regulations, by-laws and other subordinate legislation. The peril in this proliferation of lawmaking is the erosion of rights by oversight. A Bill of Rights, so it is said, would arm the judiciary with new tools with which to fight the battles of the twentieth and twenty-first centuries. Listing them in a public document, available from schooldays, would inculcate in citizens the accepted principles of our living together in Australian society. It would provide a touchstone against which laws, that are often hastily drawn, could be measured. . . . It is a good thing that in Australia there is a broad measure of bipartisan recognition that new tools are needed. That there is a division of opinion about the form the tools should take is less important."

Land Compensation Hearings Conclude

"Doesn't thou 'ear my 'erse's legs, as they canters awaay?"

Proputty, proputty, proputty — that's what I 'ears 'em saay"

Tennyson, *Northern Farmer*, 1869.

One of the few "Bill of Rights" provisions to slip into the Australian Constitution is now up for review. Section 51(xxxi) permits the Parliament to make laws with respect to the acquisition of property *on just terms* from any State or person for any purpose in respect of which the Parliament has power to make laws. The A.L.R.C. project to review the *Lands Acquisition Act* has produced a detailed working paper and short discussion paper (D.P.#5). These have been debated in all parts of the country during the past eight weeks.

The Commissioner in charge of the reference, Mr. Murray Wilcox Q.C., has interrupted his practice at the Sydney Bar to lead seminars in all capitals at which judges, practising law-

yers, valuers and government officials, Commonwealth and State, have turned critical attention upon the A.L.R.C. proposals for reform.

Four major reform themes stand out:

- *A pre-acquisition inquiry.* It is proposed that in the event of a disputed acquisition, the property owner should be entitled to require a public inquiry to scrutinise the needs for acquisition, any alternatives and, possibly, environmental implications.
- *Procedural Reforms.* New informal procedures, utilising the Commonwealth's Administrative Appeals Tribunal, should be introduced to permit speedier and cheaper resolution, particularly of small claims.
- *New Compensation Formula.* To "spell out" how "just terms" are to be arrived at, a new compensation formula is proposed. This suggests assessment on the basis of full indemnification of financial loss and proposes adding other benefits, including a solatium for intangible losses not presently compensated.
- *Injurious Affection.* The Commission has proposed a limited entitlement to compensation arising out of injurious affection caused by some Commonwealth operations, without the necessity of actual acquisition, as is required at present.

In addition to the seminars, public sittings have been held in every capital city and in Darwin and Canberra. They have been busy. A long parade of Members of Parliament, public servants, experts and ordinary citizens have come along to complain about the injustices and inadequacies of current lands acquisition law. Many citizens who had been on the "receiving end" of compulsory government acquisition recounted their experience. Unhappily, tales of insensitivity and rudeness on the part of government officials marked almost every public sitting. Whatever the Act says, it is difficult to overcome the sense of resignation and futility on the part of most citizens who receive notice of an acquisition. Many told the A.L.R.C. Commissioners that they had no idea where to turn. The need for plain English notices and a statutory right at least to initial legal and valuation advice seems convincing.

Another recurring theme was the inability of persons with a small difference between valuations, say \$5,000, to "take on" the Commonwealth. Such persons are often unable to hazard the costs of litigation. They take the Commonwealth's lower offer and are left with an abiding sense of injustice which the present statute does not remedy. Simplified, cheaper procedures, akin to arbitrations which are possible in Western Australia, may permit the just resolution of disputed valuations. At the moment, the Act confers a theoretical right of access to the courts, which many citizens cannot afford to chance.

Perhaps the most difficult issue facing the Law Reform Commission is how to define the rights to injurious affection to be available to landowners whether or not any land is taken from them. In the vicinity of large Commonwealth works, such as airports, the possible diminution in property values is significant. Everyone agrees that the right to compensation should not be dependent upon acquisition of land. Those who "pick up the tab" for society as a whole, should be compensated for the losses they sustained in the value of their property. But how far should such rights to compensation go? The A.L.R.C. has proposed a limited entitlement for the decrease in value caused by certain construction factors (denial of access, loss of air or overshadowing) and certain use factors (noise, vibration, smell and discharges). In this the A.L.R.C. has followed the U.K. *Land Compensation Act 1973*. Whilst this has the advantage of providing working models which have not been prohibitively expensive, it has been criticised as artificial and conceptually weak. If compensation is paid for loss of air and access, why, in principle, should it not be paid for loss of view?

Copies of the Commission's discussion paper are still available from the A.L.R.C., Box 3708, G.P.O., Sydney. The project will be open for comment until September 1978. The Commission hopes to have its report, with draft legislation, by the end of 1978.

Meanwhile, in advance of federal legislation, the Northern Territory Administration has prepared a *Lands Acquisition Ordinance* to take the place of the Commonwealth Act upon the transfer of governmental responsibility in July 1978. The opportunity has been

taken in the Ordinance to incorporate many of the A.L.R.C. suggestions including:

- Pre-acquisition hearings.
- Service of detailed information on acquisition, including valuation and the manner of its calculation.
- A new formula for the assessment of compensation, largely following the A.L.R.C. proposals.
- A new informal tribunal, to conduct pre-acquisition inquiries and to determine just compensation.

On 27 April 1978 the A.L.R.C. Commissioners had discussions in Darwin with Members of the Legislative Assembly concerning lands acquisition reform. Many innovative changes proposed in the A.L.R.C. discussion paper have found their way into the new Ordinance.

The combination of discussion papers, seminars and public sittings in all major centres of Australia has now become a routine procedure of the Australian Law Reform Commission. Large numbers of valuers, particularly, have taken part in these seminars, sometimes numbering three or four hundred participants. The A.L.R.C. is gradually improving the processes of consultation designed to permit the informed and the lay community to have a say before reports are finalised. The innovation of seminars and discussion papers was the contribution of Mr. Wilcox to law reform technique during his period as a full-time Commissioner. Although Mr. Wilcox has returned to practice at the Sydney Bar, he continues, as a part-time Commissioner, to lead the A.L.R.C. projects on Defamation and Lands Acquisition.

Consumer Credit Reforms

"Words pay no debts, give her deeds."

Shakespeare,
Troilus and Cressida, III, 2, 58.

Victorian Attorney-General Haddon Storey Q.C., on 11 May 1978, introduced into the Victorian Parliament important reform measures designed as part of uniform credit laws throughout Australia. The measures introduced were three:

- Credit Bill 1978