

measures depending on human judgment and decency' were likely to be more effective than legislation. It can be anticipated that there will be much more discussion of these issues in the months ahead. One very useful discussion in the public forum before an audience estimated at several hundred thousand was organised by the ABC Science Unit on 14 April 1982. Titled the Science Conference on Bio-Technology, the radio program was led by Dr. Robyn Williams. The ALRC Chairman, Mr. Justice Kirby, Sir Gustav Nossal, Mr. Barry Jones MP and many other *dramatis personae* in the science-law debate took up a two-hour discussion. It ranged over IVF, human tissue transplants, genetic engineering and genetic counselling. Some of the most telling interventions were offered by parents in the IVF program. Mr. Barry Jones wound up the program with an appeal for a greater attention to science policy issues in the Federal Parliament. This is also the theme of his well reviewed new book *'Sleepers, Wake! Technology and the Future of Work'* (Oxford, 1982). The book urges all of us to become aware of the implications of science in today's society. It is a book well worth attention.

questions for us all. The theme of community concern about bioethical questions was advanced by the Governor General, Sir Zelman Cowen in his Victor Coppleson oration, given in Sydney on 23 April 1982. He returned to the part he had played in the ALRC Report *Human Tissue Transplants* and to the 'sharp division' within the Commission on on issue, namely donations of non-regenerative tissue by living minors. On this issue Sir Zelman and Mr. Justice Brennan, now of the High Court of Australia, were in 'clear dissent'. And then he drew his conclusion:

The point is well made that there must be sensitivity to the issues, and that intelligent debate should be initiated between scientists and laymen with the aim of establishing proper protocols. If this is not done . . . there is a high risk of an eventual unthinking legislative backlash against science and scientists.

Will the warning be heeded? Do we have the institutions to help law makers face the intensely complex sensitive and fast moving modern world of science?

odds and ends

■ **hrc program.** The Human Rights Commission under its Chairman Dame Roma Mitchell (see below p. 114) has embarked on a very busy program. Its first research project, a Survey of Research Literature in the Human Rights Area, is to be funded by the HRC but carried out by an independent consultant. The project was awarded to Professor Alice Erh-Soon Tay of Sydney University, a part-time member of the ALRC. It is to be completed by April 1983. The survey, as announced, is intended to concentrate on basic civil liberties, prisons, freedom of thought and expression, political rights, discrimination, the rights of the child and disabled and mentally retarded person's rights. Research evaluating the effectiveness of human rights bodies is also to be included. It was also announced in April 1982 that the HRC will review the Commonwealth Crimes Act and some other federal criminal legislation. The purpose of the review will be to examine whether parts of the legislation infringe human rights. The HRC is also currently seeking submissions on the right to freedom of expression in Australia. This right is contained in article 19.2 of the International Covenant on Civil and Political Rights subject to certain restrictions in article 19.3. In calling for submissions, the HRC has stressed that it does not wish to traverse once again on the issues already investigated by the ALRC in its report on *Unfair Publication* or the recent Freedom of Information legislation enacted by Federal Parliament. Finally, the HRC is to commission a survey of human rights in country towns with special focus on human rights problems faced by Aborigines. The research advisory committee, for this project chaired by Professor Charles Rowley, has equal numbers of Aboriginal and non-Aboriginal members and has called for proposals from researchers interested in conducting the study.

■ **board reprieved.** A last minute reprieve was granted for the Anti-Discrimination Board of New South Wales after the announcement by the NSW Premier on 7 June that the Board would be abolished. At that time the Premier said that the judicial functions of the Board had been assumed by an Equal Opportunity Tribunal chaired by a District Court Judge. He said that the education

and research functions of the Board would be transferred to the office of the NSW Counsellor for Equal Opportunity. The abolition of the Board, which had done valuable reporting work on the law and discrimination in NSW, was recommended as part of a NSW 'Razor Gang' endeavour to cut costs in the State Public Service. However, strong lobbying by community groups to retain the Board won a reassessment of the Board's fate. As a result, the Premier announced on the 30 June that the Board would not be abolished after all.

■ **new books.** Four new books with an important law reform content were published in the last quarter. They include Professor John Peden's monograph *The Law of Unjust Contracts* (Butterworth). The New South Wales Contracts Review Act 1980 arose out of a report to the NSW government by Professor Peden. The new book attempts to place the Act in its historical context, especially in the light of common law and equitable developments in the law governing unconscionability. Professor Peden clearly prefers the development of legislative criteria rather than leaving this area to the vicissitudes of the development of judge-made law. The book identifies some of the main policy issues and Part 2 contains the text of the Act and annotations. For practitioners there are also some useful sample pleadings. It is to be hoped that in a future edition there will have been sufficient cases brought under the Act, to allow an attempt at an economic, as well as a legal, evaluation of the impact of this kind of legislative reform. No one will be better placed to offer this than Professor Peden who was present at the creation. Another book of law reform importance is Professor Colin Tatz's *Aborigines and Uranium and other Essays* (Heinemann). Of special interest is Chapter 4 dealing with Aborigines, law and race relations. One section of this chapter deals with judicial efforts at law reform, not least in the Supreme Court of the Northern Territory. The now famous 'Forster Rules' concerning the interrogation of Aboriginal suspects are explained and illustrated. It can be hoped that the next edition will be able to refer to the enactment of the Criminal Investigation Bill 1981 with its special provisions to govern Federal Police interrogation of Aboriginal suspects. In his future work on Aborigines and the law, Professor Tatz (Found-

ation Professor of Politics at the University of New England) will also be able to call on the growing body of research material being published by the ALRC in its project on Aboriginal Customary Laws, under Dr. James Crawford. Dr. Crawford's own new book *Australian Courts of Law* (Oxford) contains a useful part on future directions for reform of the Australian Courts. (See below p. 114). Finally, mention must be made of the important paperback by Mr. Barry Jones MP *'Sleepers, Wake: Technology and the Future of Work'* (Oxford). Mr. Jones is one of relatively few Parliamentarians who takes a keen interest in science policy. With characteristic modesty he lays down in the book 'Jones' seven laws'. The book has received 'rave' reviews. It contains a program for survival and enhanced quality of life in the age of high technology. The central theme of law reform importance is the need to assure the ultimate Parliamentary control over scientific developments affecting people. Not all will agree with every word of the text but it is an important and timely work with many implications for future law reform in the age of mature science. Mr. Jones' concern about the Parliamentary role crosses party lines. In an important address to a seminar in Sydney on 3 April 1982 the former Liberal Party Senator, Mr. Christopher Puplick delivered a thoughtful contribution on 'Public participation in a Technocratic Society'. He began with Harold Macmillan's view that the divine right of kings should not be replaced by 'the divine right of experts'.

■ **magistrates meet.** The Australian Stipendiary Magistrates' Association annual meeting held in Canberra on 12 June was opened by Sir Gerard Brennan, a Justice of the High Court of Australia. Sir Gerard pointed out that magistrates are 'the judicial officers whom the majority of the community see at work' and 'the community's aspiration for justice is satisfied chiefly in your courts'. He also said that the judicial system was inevitably labour-intensive and costly, because of the requirement to treat cases 'individually, not as policy decisions applicable to whole groups'. Sir Gerard said that no other branch of government could be relied upon to give 'so surely and so comprehensively an answer when its powers are invoked by a citizen'. He repeated his view that public clamour for reform must be directed to the

political not the judicial branch of government. Amongst papers read at the conference were papers by ALRC Commissioner Tim Smith on the ALRC evidence project and several which dealt with the Criminal Investigation Bill 1981. The Deputy Chairman of the Human Rights Commission, Mr. Peter Bailey reviewed the important role played by police and stipendiary magistrates in protecting human rights in the community. Publicly and privately at the meeting, reference was made to the recent announcement by the NSW Attorney-General, Mr. Walker, of the intention of that State to alter the law governing magistrates. In future, magistrates will no longer be members of the public service but will have independent tenure similar to that of other members of the judiciary. The adjective 'Stipendiary' will also be dropped from their title in New South Wales.

■ **industrial relations.** Suggestions for reform of Australian industrial relations law and machinery — basically designed in the 19th Century — continued to erupt during the last quarter. The former Minister for Industrial Relations, Mr. Ian Vineer wrote to the *Canberra Times* (12 April 1982) calling attention to his several speeches in favour of reform. Singled out for particular mention was a widely held community view that a craft system of union organisation is increasingly creating difficulties for the sensible operation of industrial relations. In Victoria, on 22 March 1982 the review of the State arbitration system was predicted because of complexities in the regulations governing the new Victorian Industrial Relations Commission. The advent of the new Labor government may be expected to lead to new attention to union disquiet. In the High Court of Australia, Mr. Justice Murphy has expressed concern that an important decision affecting the interpretation of the powers of the Australian Conciliation and Arbitration Commission should be made without hearing from the Federal Government on intervention or from the Commission itself. The case concerned the power of an Arbitration Commissioner to order the person to attend the conference to help resolve the dispute. See *Re Gough; ex parte Key Meats Pty. Ltd.* (1982) 56 ALJR 263, 268. Meanwhile, in Adelaide a review of the Industrial Conciliation and Arbitration Act 1972-1982 (S.A.) has been published in a

Discussion Paper issued by Mr. Frank Cawthorne who is examining the issues. The use of the Discussion Paper technique is to be applauded, although the DP runs to nearly 600 pages. The paper contains a specific proposal on the quandaries posed by the interaction of Federal and State unions following the decision in *Moore v. Doyle* (1968) 15 FLR 59. A report to the Federal government by the late Mr. Justice J.B. Sweeney led to certain federal legislation in 1974 but not, so far, to much complementary state legislation. Mr. Cawthorne recommends that the Sweeney report be implemented in South Australia, with certain modifications.

■ **married property.** From Scotland comes the news that the summary of the Scottish Law Commission report No. 67 *Aliment and Financial Provision* (November 1981) contained in [1982] *Reform* 24 was not quite accurate. In advance of the receipt of the Scottish Report, the item relied upon a news report in the *London Times* (7 November 1981). According to the *Times*, the Scottish Law Commission proposals would impose the obligations of maintenance for three years after which it would cease unless there were exceptional circumstances. A leading article in the *Times* criticised this proposal. Subsequently Mr. Robert Eadie, Secretary of the Scottish Commission, wrote to the *Times* explaining that the so-called three year rule would be subject to exceptions, providing expressly for the two situations mentioned by the editorialist and referred to in *Reform*. Under the Scottish Commission proposals, the rules as to periodical allowance (maintenance) would be without prejudice to the Court's power in all cases to award a capital sum payable by instalments. The proposal actually envisaged that an order for payment of a capital sum — whether by instalment or otherwise — or transfer of property would be the preferred method of dealing with the financial consequences of divorce. Access can now be had to the Scottish report which has arrived in Australia. So far, there is still no news on the Australian ad hoc Committee on Matrimonial Property. However, at a seminar of the Women Lawyers' Association of New South Wales attended by women lawyers from three States, the Chief Judge of the Family Court, Justice Elizabeth Evatt on 20 March 1982 urged that clearer rules for property

settlements should be introduced into federal law in order more strictly to define the division of property between divorcing couples. Chief Judge Evatt said that clearer rules for property settlements would make the law more certain, reduce the time and cost of legal proceedings and give many women the security of an immediate legal entitlement to marriage property instead of merely a privilege to apply to the Family Court (*SMH* 22 March 1982).

new reports

Australia

ALRC : *Evid.* : Relevance, 1982.
✓ *RP 7*
: *Evid.* : Manner of Giving Evidence, 1982.
✓ *RP 8*
: *Sent* : Social Security Offenders, 1982.
RP 9 See above p. 98
: *Sent.* : National Judicial Survey: Final
RP 10 Technical Report, 1982. See above
p. 98.
NSWLRC: *IP* : Accident Compensation, 1982.
See above p. 92.
: *31* : Reports on the Legal Profession
: : Vol 1 — General Regulation and
Structure. See above p. 82.
: *32* : Vol 2 — Complaints, Discipline and
Professional Standards. see above
p. 82.
: *IP* : Accident Compensation.
SALRC : *68* : Report relating to Gaming and
Wagering
: *69* : Report relating to Group
Defamation.
VLRC : *12* : Provocation and Diminished
Responsibility as Defences to
Murder, 1982.
SA : *DP* : Review of the Industrial
Conciliation and Arbitration Act,
1972-1981, 1982.

Canada

: : Tenth Annual Report 1980-81
BCLRC : *53* : Report on Distress for Rent.
: *54* : Annual Report 1981
Manitoba
LRC : : Eleventh Annual Report 1982.
: *49* : Report on the Rules Against
Accumulations and Perpetuities
: *50* : Report on Investment Provisions
under The Trustee Act.
Saskatchewan
LRC : : Yearly Review 1981.
: : Tentative Proposals for an
Enforcement of Maintenance
Orders Act.

United Kingdom

Law Com : *113* : Sixteenth Annual Report 1980-81
Scot Law
Comm : *68* : Report on Bankruptcy and Related
Aspects of Insolvency and
Liquidation
: *CP 1* : Contract Law — Exchange of
Standard Terms Forms in Contract
Formation Law Reform Proposals.
: *CP 2* : Contract Law — Legal Background

Northern
Ireland
Queen's
Univ. of
Belfast : : Servicing of the Legal System:
Annual Report 1980-81.

United States of America

Calif LRC: : Annual Report 1981
: : Recommendation relating to
Holographic and Nuncupative
Wills.
: : Recommendation relating to
Attachment.

Africa

Zimbabwe
Advisory
Com LR : *WP 3* : Civil Imprisonment

new references

Fiji LRC An initial program was announced in June,
1982.. It includes: *Legal Aid and the Duty
Solicitor scheme, Expunging of criminal
convictions, Alternatives to imprisonment,
Strata Title ownership, Divorce, Testate
succession.*

what's going on in the LRCs?

Australian Law Reform Commision

- *Insurance Contracts.* Draft report with printer. Expected to be tabled Budget sittings of Federal Parliament, 1982.
- *Law Reform Digest.* Manuscript with printer. Publication expected next quarter.
- *Sentencing.* Two new Research Papers issued. Project awaiting resources for completion. See above p. 98.
- *Privacy.* Work in hand (WIH). Professor Hayes held discussion with WALRC in May 1982. Two meetings with Consultants May, June 1982. Draft ALRC Bill being prepared to complement FOI legislation, commencing October 1982. Report expected late 1982, early 1983.