unreasonable;
- employers will have to give employees who have been less than one year in the job one week's notice;
- employees who have been in the job for more than a year will be entitled to one week's notice for each two years of service, with a maximum of four weeks;
- payment in lieu will have to be provided if the appropriate notice period is not given;
- during a notice period, an employee must be given one day off a week to look for another job;
- employers will have to notify, inform and consult with employees and unions when major changes in production, including technology, affect employment;
- employers will not be able to dismiss for discriminatory reasons such as race, colour, sex, marital status, family responsibilities, pregnancy, religion, political affiliations, national extraction and social origin;
- employers and employees will have to follow procedures set down for settlement of dispute over dismissal;
- an employee made redundant can be entitled to up to eight weeks' pay, depending on the period of service.

odds and ends

■ ***legal aid.*** Speaking at the opening in Adelaide of the new office of the Legal Services Commission of South Australia, Senator Evans released details of a Commonwealth discussion paper on legal aid. He said that it was designed to reshape the distribution of Commonwealth legal aid funds and better ensure equal access to the law for all Australians.

The discussion paper proposed that the basis of future Commonwealth funding should include an evening up between States of the number of persons assisted per head of population, and a guarantee that no state would be reduced below its 1983/84 level of persons assisted. It suggested:
- that the Commonwealth should provide legal aid funds without regard to whether matters proceeded under Commonwealth law or in courts exercising Commonwealth jurisdiction, or involved 'Commonwealth persons', but on the basis of the application by each State or Territory Commission of uniform assistance guidelines prepared in consultation with and endorsed by the Commonwealth;
- that changes to fee scales affecting Commonwealth funding should not be made without prior consultation with the Commonwealth Attorney-General; and
- that funding should be by way of a special purpose grant subject to certain conditions including compliance with assistance guidelines.

The discussion paper has been circulated widely among the legal aid community for comment. Senator Evans said that continuation of present funding would involve an expenditure of more than $250 million for legal aid over the next three years. During his speech, the Attorney-general remarked that the South Australian Legal Aid Commission was in the forefront of efficient legal aid delivery. He cited the fact that 6.8 per 1000 population received legal aid in South Australia compared with 5.2 in Western Australia, 4.2 in Victoria and 4.0 in Queensland. In addition, the average cost per Commonwealth-funded matter referred to a private legal practitioner in South Australia was $375, compared with $913 in Victoria, $476 in Queensland and $596 in Western Australia. Furthermore, in South Australia 26.2% of Commonwealth funded matters were handled 'in-house', compared with 20.9% in Western Australia, 9.7% in Victoria and 9.6% in Queensland. Senator Evans said that he believed the success in South Australia was 'due in no small measure to the degree of co-operation that has been achieved ... between the Commission and the private legal profession'.

■ ***new law reform commission.*** The Victorian Attorney-General, Mr Jim Kennan, announced

in August the State government would legislate to establish a Law Reform Commission which would comprise a full time chairperson as well as full and part time commissioners. Whilst acknowledging that Victoria already had a Law Reform Commissioner, Mr Kennan said the new Commission 'will increase the capacity of the commissioner to perform the difficult task of analysing social and legal problems and involving and educating the public in the process of change' and will ensure that a wider range of people are involved in the law reform process as it would not necessarily be composed entirely of lawyers. Whilst the new commission will work pursuant to matters referred to it by the Attorney-General it will also be able to prepare reports on minor legal issues of community concern without the need for references; such issues could be suggested by members of the public. It will also be given a general brief to monitor law reform in Victoria. Mr Kennan said funding for the Law Reform Commission would be provided from the same source as the funding for the Law Reform Commissioner. Currently, the Law Reform Commissioner, is funded by consolidated revenue, but his staff are funded by the Victoria Law Foundation which in turn receives funds from the Solicitors' Guarantee Fund interest. It is proposed that the additional full time and part time commissioners and staff would be funded from the Law Foundation.

■ ***traffic accident study.*** The New South Wales Law Reform Commission has conducted an extensive research program in connection with its accident compensation reference. The Commission has undertaken case study programs to collect information on the experiences and problems of accident victims. One such program called the Traffic Accident Study was undertaken by a firm of consultants MSJ Keys Young Planners Pty Ltd on behalf of the Commission. A Report on the Traffic Accident Study was released by the Attorney General of NSW, the Hon Mr Landa, on 11 June 1984. Copies are available from the Commission.

The study involved compiling 86 case studies of people who received compensation, either by settlement or verdict, for injuries sustained in motor vehicle accidents. The study produced detailed information on the experiences and problems of accident victims. While the Traffic Accident Study was not designed to produce statistically valid results, it has provided valuable information about the experiences of traffic accident victims on which the Commission will draw in preparing its Report on a Transport Accidents Scheme.

The Commission's basic concern was to determine the adequacy of each respondent's income and financial resources to meet accident-related expenses and losses at the time of the survey. Adequacy was assessed by applying two basic tests. First, a respondent's income and financial resources were regarded as adequate if they were sufficient to meet accident-related expenses such as medical, hospital, nursing and home care costs. Secondly, in cases where there had been a loss or reduction in earning capacity, a respondent's income and financial resources were regarded as adequate if they covered reasonable living expenses in addition to accident-related expenses. It was assumed for this purpose that reasonable living expenses could be met with an income of $150 gross per week. Major findings were as follows:

- There were 33 respondents with inadequate income and financial resources. All but six of these respondents received their compensation before 1 January 1979. Twenty one were receiving unemployment benefits.

- Twelve respondents were in a financially vulnerable position. Respondents were placed in this category but their financial positions were precarious. In some of these cases, it was anticipated that an event would occur, such as loss of employment or further deterioration in health which would significantly reduce income or increase costs. In other cases, adequacy of income and financial resources was dependent on continued provision of free nursing and attendant care by family members.

- More than half of the cases overall and nearly two-thirds of the cases resolved before 1 January 1979 involved inadequacy of financial vulnerability. More than half the cases resolved before this date involved inadequacy.

- Thirty-nine respondents had adequate incomes and financial resources. However, 20 of these cases were resolved after 1 January 1979 and it was probably too soon to make definite judgments about adequacy in such cases. At least one third of the respondents in the adequate category received, but were not dependent upon, free nursing or attendant care from a spouse or close relative, and this undoubtedly contributed to their financial security.

- In relation to 17 respondents, we were able to compare the predictions made by the courts in regard to their future accident-related expenses and losses with their *actual* expenses and losses at the time of the survey. In 16 of the 17 cases, we found that the courts' predictions were inaccurate in substantial ways.

- Before compensation was received, many respondents exhausted savings, amassed debts and had to rely on social security benefits or financial support from their families. These problems were exacerbated by delays in the resolution of claims, which averaged four years.

- Most respondents received investment advice and often invested their compensation in real estate. Only seven respondents clearly mismanaged or dissipated their compensation.

- Forty-eight respondents had undertaken rehabilitation programs. Many of these respondents expressed their satisfaction with physiotherapy programs. However, criticism was directed to occupational therapy programs and to the institutional nature of rehabilitation centres.

■ ***admin review launched.*** In July a new quarterly bulletin called *Admin Review* was launched by the Attorney-General, Senator Gareth Evans. The bulletin is produced under the auspices of the Administrative Review Council, the Federal Government's independent advisor on administrative review, and is edited by its Director of Research, Dr John Griffiths. The bulletin aims to fill a gap in the existing literature of federal administrative review by providing non-technical information about recent developments in this ever-growing area. It is primarily directed to a lay audience but it should also be of considerable value to lawyers. As appears from the first issue, the bulletin will contain regular reports on developments concerning the Administrative Appeals Tribunal, the Ombudsman, the courts and freedom of information. The first issue also contains a feature article on reform of the social security appeals stucture. The ARC's recent report proposing changes to the Social Security Appeals Tribunals is discussed there briefly and succinctly. Future issues – the next to be in October – may be purchased from the Australian Government Publishing Service. Enquiries about subscriptions should also be directed to AGPS.

■ ***accident compensation research paper.*** The New South Wales Law Reform Commission has published a research paper entitled 'Proposals to Modify the Common Law'. This paper was prepared for the Commission by a consultant, Professor Michael Chesterman, who is currently a Commissioner of the Australian Law Reform Commission. The Paper deals with modifications to the rules of the common law relating to actions for damages for personal injury. This topic was dealt with in the context of the proposals advanced by the New South Wales Law Reform Commission in its Working Paper entitled *A Transport Accidents Scheme for New South Wales.* The Research Paper identifies policy options for modifying the common law relating to personal injury actions taking into account the possibility of introducing no-

fault schemes in specific areas.

■ ***sound recordings.*** The New South Wales Law Reform Commission has released an issues paper in connection with its reference on recording the proceedings of courts and commissions. The Commission has already produced a report in response to this reference (See [1984] *Reform* 108). The terms of reference encompassed more issues than those covered in the report which was deliberately limited to the use of sound recorders in courts, Royal Commissions and Special Commissions of Inquiry by certain people including journalists, authors, parties to proceedings and their lawyers. The issues paper raises four further issues for discussion. These are:

- whether members of the public should be permitted to use sound recorders to record the proceedings of courts and commissions;
- whether the broadcast of sound recordings of the proceedings of courts and commissions should be permitted.
- whether the televising of the proceedings of courts and commisions should be permitted; and
- whether sketches and photographs of the proceedings of courts and commissions should be permitted.

The issues dealt with in this paper are likely to arouse greater controversy than the recommendations contained in the report. The Commission considers that the issues should be the subject of public debate and consideration before any recommendations are made.

■ ***domestic violence.*** On 29 May 1984 the Attorney-General signed a reference on domestic violence in the Australian Capital Territory which requires the Australian Law Reform Commission to enquire into the laws in force in the Australian Capital Teritory with respect to domestic violence and any related matters. This reference is confined to violence between de jure or de facto married couples.

The Commissioner in charge is Professor David Hambly. Nicholas Seddon, a consultant on ACT law reform on leave from the Law Faculty of the Australian National University, is managing the project.

A discussion paper is being prepared with the assistance of a number of consultants both within the ACT and in the States. The paper is designed to be a comprehensive statement of the many issues and arguments which arise in connection with domestic violence. The paper will include mental violence in its coverage and provide a range of strategies and options for dealing with the problem of domestic violence. It is not restricted only to legal issues. It examines the victim's various needs and the alternatives for meeting them. The paper raises fundamental issues in connection with police response to domestic violence, police power of entry, arrest, bail, prosecution and compellability of spouse witnesses. The Family Law Act injunction and the keep-the-peace procedures in the Magistrates' court are examined and deemed inadequate to deal with all cases of domestic violence. A new procedure is proposed, encompassing various options, which will be available in the magistrates' court.

The paper goes on to examine what services by way of support and counselling are available to the victims of domestic violence in the ACT. Suggestions are made for tailoring services specifically to the needs of those victims.

The problems of short and long-term accommodation and financial support for the victims is examined with a view to providing specifically for their particular needs.

To try and eliminate the problem of domestic violence at its source, the feasibility of programmmes for treating and counselling the attacker is examined. In conjunction with this the need for extensive publicity programmes, both for the attackers and the victims, is highlighted so that available services are brought to their attention. At the same time the 'hidden' problem of domestic violence is brought out into the open.

Finally, the paper examines the success or otherwise of reforms in other jurisdictions.

A domestic violence 'phone-in' is being planned in conjuction with the Australian Institute of Criminology, the Capital Territory Health Commission and the Women's Shopfront Information Service.

■ ***child welfare.*** On 1 August 1984 a Bill was introduced in the Norfolk Island Legislative Assembly to provide for the closing of the Norfolk Island Court of Petty Sessions when proceedings concerning a child are being heard. The Bill also prohibits the publication of press reports of proceedings concerning a child. The Bill is based on the corresponding provisions of the draft Bill attached to the Australian Law Reform Commission's report on Child Welfare. In her speech on the intoduction of the Bill, the Minister referred to the Commission's Report. It is understood that other recommendations made in the Report are being considered by the Norfolk Island Administration and further legislation may follow.

■ ***class actions.*** With little publicity, the Supreme Court Act in Victoria was amended in May to permit representative proceedings for damages. Victorian Attorney-General, Jim Kennan, said that the Government was 'anxious not to trumpet the news' in case the new procedure was interpreted along the lines of the US-style 'class' action (*Australian Financial Review,* 10 July 1984). The amendment abrogates the effect in Victoria of a 1910 English decision which held that where damages were sought a representative action could not be brought. Such action can now be brought subject to any direction by the Court as to the procedure to be followed. But all plaintiffs represented in the action must be specifically identified. In the US decisions in class actions may benefit and bind people in the relevant class even though they have not been specifically identified. The new provision does not address the amount of damages which may be awarded in a representative action. It contains no treble damages provision often found in the US. Speaking at a seminar in Melbourne on 30 July 1984 organised by the Australian Product Liability Association, ALRC Chairman, Justice Kirby, welcomed the change as a 'step in the right direction'. But he noted that the Victorian reform

> fails to provide for the costs of class actions. In the United States class actions are 'fuelled' by the contingency fee system. Under this system the lawyer secures a proportion of the verdict if he is successful and nothing if the claim fails. Without some provision for motivating costs, few lawyers would be willing to take on the significant additional responsibility and work of litigation for damages brought on behalf of many people. Accordingly, without attention to reform of cost principles, the mere provision of a facility for representative actions for damages may be a paper tiger.

Meanwhile the ALRC is soon to resume work on its examination of class action procedure. Commissioner in charge of the inquiry, Professor Michael Chesterman, hopes to complete a report on the subject accompanied by draft Federal legislation in 1985.

■ ***royal commission announced.*** The Western Australian Government has announced a Royal Commission into Parliamentary Deadlocks. This occurs at a time when the Australian Constitutional Convention is examining section 57 of the Australian Constitution which provides for the resolution of deadlocks between the Houses of Parliament. The Commission's terms of reference require it to respond on whether Western Australian laws should prescribe a means of overcoming or resolving deadlocks or disagreements between the two Houses of Parliament in relation to proposed legislation. It has also been requested to report on how much disagreements could be overcome. The Commission will hold open hearings later this year. However written submissions are also invited. They should be made no later than 31 October 1984. Further information may be obtained from the Royal Commission's Executive Officer, Mr Rod Wahl (telephone (09) 425-2414).

■ ***are equal shares fair?*** In an extract from their forthcoming book, *For Richer, For Poorer: Money, Marriage and Property Rights* published

in the *National Times* (No 709 August 31/September 6, 1984) Dr Docelynne Scutt and Ms Di graham argue for the introduction of equal legal shares and matrimonial property on divorce. According to the authors, the discretionary nature of our present system, which requires judges to weigh up both financial and domestic contributions to property, systematically results in the submergence or undervaluing of the wife's contribution as housekeeper or care-giver because of the solid tug of the husband's financial contribution. The authors argue that this is partly due to the socialisation of judges: "Our society is schooled in the belief that money means important". They illustrate their contention with a selection of cases with thinly disguised case-names which allegedly show the presiding judge's diminution of the housewife's role during the marriage as a contributor to property.

The way property is shared during marriage and to be divided on divorce is the subject of the Australian Law Reform Commission's Matrimonial Property Inquiry. In Australia recent figures show that in only 4.6% of divorces does a contested property hearing come before a judge. In about 30% of divorces a property application is commenced, demonstrating a high settlement rate. In 70% of divorces no property application is commenced at all in the Family Court.

Mindful of the problems associated with narrow reliance on reported cases to assess the adequacy of our present system, survey work is being conducted by the joint efforts of the ALRC, the Family Court and the Institute of Family Studies, on a scale unprecedented in Australia or overseas (see [1984] *Reform* 35, 94). In the meantime the inquiry has had to come to grips with whether a system which does not provide a system of fixed equal shares and has no presumption of equal sharing, discriminates against wives.

Professor David Hambly, Commissioner in charge of the Matrimonial Property inquiry posed the question at an International Conference of Women laywers held in Sydney in August in the following manner:

> Is the principle of equality adequately served if property is divided at the end of the marriage according either to the parties' contributions or to a rule or presumption of equal division? Such an approach treats property division as the settling of the accounts of the matrimonial partnership, and it is accepted in many recent reforming measures which have adopted the community model. But those who are impressed by the evidence of the economic plight of many former spouses (usually women with children) would argue that such an approach maintains the appearance of equality while aggravating the economic inequality that typically arises from a wife's commitment to her family. Rather than seeking a formal equality in the rules for property division, they would argue for an equality of result by dividing property in a way which compensates for any imbalance, attributable to the marriage, in the parties' ability to meet their future reasonable requirements.

To argue in favour of an equal sharing system because the housewife's contribution is lost in the legal crush, is really to say that housewives get less than half of the matrimonial property under our present law. Yet in many of the cases quoted by the authors the housewife contributor got more than half of the matrimonial property. Indeed from the early findings of the Commission's survey of court files, it is apparent that the inclusion of the *future needs* factor in the operation of discretion increases the entitlement of the wife from the low-income marriage to a greater than 50% share on divorce. These findings reinforce the complexity of arriving at a system which is equitable not only in relation to gender but also according to class and economic background. And what is to be done where there is a typical division of labour within the marriage? What of the wife, for example, who contributes both domestically and financially? Is she also to be restricted to a half-share?

new reports

Australia

ALRC	*: Service & Execution of Process, RP 3*	: Tribunals, 1984
	: Service & Execution of Process, RP 4	: Enforcement of Judgments, 1984
	: Service & Execution of Process, RP 5	: Service of Other Process, 1984
	: Admiralty RP 2	: Admiralty Jurisdiction in Australia: The Courts exercising Original & Appellate Jurisdiction, 1984
	: Contempt of Court RP 2	: Improper Behaviour in Court 1984
	: Contempt of Court RP 5	: Public Criticism of Judge, 1984
NSWLRC	*: IP*	: Proceedings of Courts and Commissions – Television Filming, Sound Recording and Public Boradcasting, Sketching and Photographs, 1984.
	: RP	: Accident Compensation: Proposals to Modify the Common Law (by MR Chesterman), 1983.
QLRC	*: WP 26*	: Bill to Prevent the Avoidance of Civil Liability in Case of Death or Personal Injury caused by Negligence, 1984.
	: WP 27	: Bill to Establish Limited Partnerships, 1984.
SALRC	*: 80*	: Report relating to the Inherited Imperial Law, 1984.
	: 81	: Report relating to the Demise of the Crown, 1984.
	: 82	: Report relating to Administrative Appeals, 1984.
	: 83	: Report relating to Civil Actions for Perjury Committed in Criminal Proceedings and to the Tort of Malicious Prosecution, 1984.
	: 85	: Report with the Inherited Imperial Law Between 1751 and 1780, 1984.
Tas LRC	*: RP*	: Private Rights of Access to Neighbouring Land (by WG Briscoe), 1983.
VLCC	:	: Preliminary Report on Delays in Courts, 1984.
VLRC	*: WP 8*	: Murder: Mental Element and Punishment, 1984.
	: DP	: Intoxication and Criminal Responsibility, 1984.
WALRC	*: DP Prog # 55*	: Courts of Petty Sessions: Constitution Powers and Procedure, 1984.

Canada

CLRC	*: 22*	: Disclosure by the Prosecution, 1984.
	: WP 33	: Criminal Law: Homicide, 1984.
	: WP 34	: Investigative Test, 1984.
	: SP	: Political Economy of Environmental Hazards, 1984.

Alberta

ILRR	*: 39*	: Defences to Provincial Charges, 1984.
	: 40	: Judicial Review of Administrative Action: Application for Judicial Review, 1984.
	: 41	: Compensation for Security Interests in Expropriated Land, 1984.
	: RfD 1	: Report for Discussion Protection of Trade Secrets, 1984.
BCLRC	*: 70*	: Report on Statutory Succession Rights, 1983.
	: 74	: Report on Covenants in Restraint of Trade, 1984.
	: WP 45	: Settlement Offers, 1984.
	:	: Response Booklet to WP No. 45 Settlement Offers, 1984.
	: WP 46	: Performance Under Protest, 1984.

Fiji

FLRC	*: 5*	: Background Paper to a Review of the Prisons Act and Subsidiary Legislation, 1984.
	: 6	: Discussion Paper on the Revision of Laws Relating to Copyright in Fiji, 1984.

Hong Kong

HKLRC	*: Topic 5*	: Report on the Law Relating to Contribution Between Wrongdoers.

New Zealand

NZPALRC	:	Eighteenth Report, 1984.

South Africa

SALC	*: Proj 29*	: Report on Mens Rea in Statutory offences, 1982.