The Stewart Royal Commission is being given extended terms of reference to look into the illegally recorded 'Age Tapes' and indemnities are to be given to some of those involved in their production. This will necessitate changes to the Telecommunications (Interceptions) Act to allow Justice Stewart to gain access to the phone-tap material.

Meanwhile the High Court by a 3-2 decision (*Hilton v R*, 26th March, 1985) has ruled that information obtained from the illegal tapping of conversations may be admissible as evidence in criminal proceedings. The three majority judges affirmed the *Bunning v Cross* discretion to admit illegally obtained evidence. They acknowledged that acts in breach of a statute would 'more readily' warrant the rejection of evidence as a matter of the Court's discretion, but emphasised that the discretion had to be exercised in the light of the competing public interests. The Chief Justice, Sir Harry Gibbs, and Justices Wilson and Dawson combined to hold that the Telecommunications (Interception) Act 1979 did not explicitly or implicitly prohibit the tendering in evidence of information illegally or improperly obtained by telephone tapping.

Justices Mason and Deane constituted the minority. They said that it was 'scarcely plausible' that Parliament could have intended the result favoured by the majority when it passed the Telecommunications (Interception) Act in 1979. Their Honours focused upon the fact that s 7 of the Act sets out the kinds of court proceedings in which legally intercepted material can be used. From this they inferred that use in other proceedings of illegaly intercepted material was contrary to the intention of the legislature.

In view of the Attorney-General's stated attitude toward the use of illegally obtained evidence in this regard, it may well be that he and the majority of the High Court are of the same mind with regard to the use of such material. The judicial discretion to admit illegally obtained evidence will be addressed by the ALRC's *Interim Report on Evidence.*

land rights — aboriginal veto or not?

It's the only thing that matters because it's the only thing that lasts.

Clark Gable (Rhett Butler)
in 'Gone with the Wind'

The issue of Aboriginal land rights has reappeared on the front pages of Australian newspapers in recent months. Much of the coverage has centred on the Report into Aboriginal Land Rights in Western Australia by Mr Paul Seaman QC published in September 1984 and the ensuing debate between the Premier of Western Australia Hon Brian Bourke and the Federal Minister for Aboriginal Affairs, Hon Clyde Holding. At issue is whether Aborigines should have the right of veto over mining on Aboriginal land.

The Seaman Report which followed a year-long and wide-ranging inquiry strongly supported the concept of land rights for Aborigines. It recommended that certain land, in particular lands presently reserved for Aborigines, should be transferred to local or regional organisations and that other land such as unallocated Crown land, unused public land, national parks, forests and other conservation reserves and mission lands should be available for claim by Aboriginal people. It proposed the creation of a Tribunal to hear and determine claims. Once land became Aboriginal land the Report recommended that mining exploration and development should be subject to Aboriginal consent [Seaman Report 9.64-65]. It is this recommendation which has proven to be the most controversial in the Report.

Shortly after the Report was published the Premier of Western Australia announced that while the Government accepted the general tenor of the Report's recommendations there would be no right for Aborigines to veto mining or Aboriginal land, not all the categories of land recommended in the Report would be available for claim nor would there be royalties or compensation payments to Aborigines. This statement immediately brought comment as it appeared to conflict directly with the Labor

Party platform on land rights and to cut across the work being done by a panel of lawyers and Aborigines under the auspices of the Federal Minister for Aboriginal Affairs on national land rights legislation.

Over recent months a number of meetings have been held involving the Prime Minister, Mr Hawke, the Premier of Western Australia, the Federal Aboriginal Affairs Minister and other Federal Ministers in an attempt to resolve differences. The Western Australian concern is that if a Federal Land Rights Act is passed it may override any State legislation already in place. From the Commonwealth's view, there would be no need for the proposed federal legislation to apply in Western Australia provided the Western Australian legislation did not conflict with the general principles which Mr Holding has stated will form the basis of his national legislation.

Mr Holding released an up-to-date statement of these principles on 20 February 1985. A principal feature of this statement is the compromise proposal of a tribunal to resolve disputes over mining rather than a full veto power in Aboriginal hands. This is a significant change which drew strong comment from Aboriginal spokesmen. Northern Territory Aboriginal organisations are concerned that the Northern Territory Land Rights legislation which currently contains veto powers may be amended. It was reported in *The Australian* on 8 February 1985 that the Northern Land Council was planning a wide-ranging campaign to keep the Northern Territory legislation intact. Mr Rob Riley, the Chairman of the National Aboriginal Conference has also strongly condemned the proposed Western Australian legislation (*The Age*, 22 November 1984) and what he sees as a weakening of the Commonwealth position (*Sydney Morning Herald*, 25 January 1985, *The Australian*, 25 January 1985). He called together an emergency summit of Aboriginal groups to protest the Western Australian legislation and to plan strategy on the national legislation. The Western Australian Government has gone ahead and introduced legislation on 12 March 1985 but it would appear that the issue is far from settled.

compensation report

Those who have some means think that the most important thing in the world is love. The poor know that it is money.

Gerald Brenan

transcare conceived. While Medicare continues to fight for its young life, a sibling scheme, tentatively entitled 'Transcare', has been formally proposed by the New South Wales Law Reform Commission. In the noisy aftermath of the December Federal election, the release of the Commission's *Report On a Transport Accident Scheme for New South Wales* received a quiet reception from the media. Those who have followed the fierce controversy aroused by the consultative documents published earlier (see eg [1983] *Reform* 105) will be aware of the salient features of the 'Transcare' Scheme. The Commission recommends that, instead of being able to sue for damages at common law, victims of transport accidents should receive benefits from a government-run Accident Compensation Corporation on a 'no-fault' basis: that is, they should receive the benefits without having to prove that somebody else was at the fault in causing their injuries. The proposed benefits are chiefly in the form of periodical payments, which compensate the victim for loss of earnings up to a prescribed statutory ceiling – or (up to a point) for loss of the capacity to work where there are no pre-accident earnings that can legitimately be used as the basis for assessment – and provide for medical, hospital, nursing and other related expenses and for the cost of hired help in the home. In addition, a victim who suffers permanent incapacity as a result of the accident receives a lump sum payment to compensate for impairment of bodily faculties. Where the victim is killed in the accident, it is proposed that benefits, again comprising a mixture of periodical payments and a lump sum, should be paid to dependent family members. All payments under the proposed Scheme are index-linked. The Scheme is bureaucratic in the sense that all first instance decisions are made by staff of the proposed Accidents Compensation Corporation, but rights