

greater contribution than the other. The presumption of equality should avoid wasteful arguments, especially in long marriages.

- The shares can then be adjusted to compensate for any difference, due to the marriage, in the parties' living standards after divorce. This could take account of differences in earning capacity and child care responsibilities.
- Any maintenance would be assessed in the light of the division of property.

the aim. Professor Hambly said:

Marriage breakdown almost always causes economic hardship as well as emotional distress. The resources that sustained one household must be stretched between two. The law cannot enlarge the assets available to the family but our proposals aim to treat husbands and wives fairly, and to help them to settle their property affairs with the least cost and stress, by applying guidelines that strike a balance between flexibility and predictability.

marriage contracts. The Commission suggests that couples should be allowed to make their own contracts before or during a marriage, setting out the financial and property arrangements that are to apply during marriage and in the event of marital breakdown. But there would need to be safeguards to prevent injustice from contracts that are unfair or unreasonable either when they are made or when a dispute arises, perhaps many years later,' Professor Hambly said.

property during marriage. The Commission argues against the introduction of a 'community property' system under which a husband and wife would own jointly all property acquired during the marriage. 'Such a scheme would be too rigid and complex and would not achieve greater fairness in many marriages,' said Professor Hambly. Instead the Commission is considering ways of protecting the non-owner spouse in cases where the home is not owned jointly.

other questions. Amongst other questions discussed in the paper are:

- Should there be a special strict rule of equal sharing of the house and household goods on divorce?
- Should certain assets (for example, gifts, inherited property, some business assets) be exempt from sharing on divorce?
- Should a divorcing wife have stronger rights to share in a husband's expected superannuation benefits?
- How should a spouse's interests in companies or trusts be dealt with?

The discussion paper calls for comments and submissions. The Commission will hold meetings throughout Australia later in the year to discuss the issues and assess public opinion before preparing a final report.

odds and ends

■ *victoria to establish insolvency task force.* The Victorian Attorney-General, Mr Jim Kennan, recently announced the establishment of a Task Force within the Corporate Affairs office to review the provisions of the law relating to insolvency and liquidation. The Task Force will consist of Corporate Affairs investigators and will draw on the expertise of the Insolvency Practitioners Association where appropriate. It will examine the operation of the law and in particular, the existing investigation and prosecution practices of the Corporate Affairs office. A news release issued by the Attorney-General said that the work done by the Task Force will contribute to and complement the work of the Australian Law Reform Commission in relation to its reference on the whole issue of insolvency law and administration.

■ *bankruptcy and insolvency.* During debate in the House of Representatives on the Bankruptcy Amendment Bill 1985, various Members spoke of the need for the financial counselling of debtors. The former Attorney-General of South Australia, Mr Peter Duncan, referred to the recommendations of the

ALRC in its 1977 report, *Insolvency: The Regular Payment of Debts*. Mr Duncan also referred to the South Australian legislation of 1978 which implemented the Commission's recommendations at State level. He observed that the Debts Repayment Act 1978 'still sits unproclaimed on the books in South Australia. It is a scandalous situation that something has not been done about that before now.' Mr Duncan criticised Australian bankruptcy and insolvency laws for their failure to acknowledge that economic recession, the evil of unemployment, the effects of social pressures and continued increased consumption can have an effect on the degree and extent of bankruptcy and insolvency.

■ **domestic violence inquiry** in the ACT has indirectly contributed to a lively debate in the columns of the *Canberra Times*. In conjunction with the enquiry the Women's Shopfront Information Service conducted a phone-in on domestic violence in the ACT. The questionnaire and the subsequent computer processing of the information was designed and carried out by Dr Suzanne Hatty of the Australian Institute of Criminology and Dr Rosemary Knight of the Capital Territory Health Commission (now the ACT Health Authority).

On March 20 a Canberra Times columnist, Warwick Bracken, accused the researchers of 'tendentiousness' in carrying out a biased survey which gave the misleading impression that virtually all the victims of domestic violence are women, whereas other figures quoted by Bracken showed that men were just as likely to be the victims. Bracken's article was not confined to the phone-in but attacked various aspects of what he regarded as feminist tendentiousness—a word he was kind enough to define as meaning in a derogatory sense 'having an underlying purpose (or) calculated to promote a particular cause or viewpoint.' Included in Bracken's hit list were the Human Rights Commission, womens' studies courses, Geraldine Doogue and, of course, the domestic violence phone-in.

Drs Hatty and Knight were prompt to reply and their letter was printed the very next day after Bracken's article appeared. 'The survey was explicitly designed to be gender-neutral ...' they maintained. They defended their methodology, pointed out that Mr Bracken had got one figure wrong and finished by saying that his article trivialised the plight of the victims of domestic violence.

On April 1 Mrs Bev Cains of the Family Team in the ACT House of Assembly congratulated Mr Bracken on his 'fearless attack on the humbug, dishonesty and hypocrisy which characterises every aspect of the feminist drive to impose their ugly policies on the community.' Mrs Cains did not mention specifically Bracken's attack on the domestic violence phone-in. Another letter on the same day written by Kim Wilson and David Webster took issue with Bracken's use of the figures which he said indicated that men were just as likely to be victims as women. The figures were taken from a study by the National Marriage Guidance Council. The people surveyed were those who had actively sought assistance from professional counselors. 'It is not surprising that statistics based on such a sample would differ from those resulting from a phone-in' they argued. The letter went on to show that the NSW Bureau of Crime Statistics had produced very similar results to that of the phone-in, namely that male victims were a tiny proportion of all victims, some 1.1 per cent.

■ **videos and the law**. Both the Victorian Chief Justice's Committee (1972) and the ALRC (1975) have gone on record as proposing the videotaping of identification parades. In Japan publicity has recently been given to the problems that have accompanied the videotaping of reenactments of crimes. Lawyers in Tokyo have been reported as perturbed by the use of such videos against the accused. They claim that they are often preceded by up to 14 hours a day of interrogation for days on end. The wearing down of the suspect for a confession video and a video enactment present a serious handicap

for defence lawyers in Japan and it has been queried whether such measures contravene Article 38 of the Constitution which provides that 'No person shall be compelled to testify against himself?'

Recently, an accused, charged with burglary, rape and murder was reported as having been interrogated for five days (*Sydney Morning Herald* 28 April 1985), although the police claim it was only two. To make the video he was compelled to act out the more violent aspects of the crime on a life-size mannequin. The mannequin proved unsuitable and the accused was required to act out certain aspects of the crime on a policeman and a policewoman. The accused then withdrew his murder confession and claimed that he spoke and acted only as directed by the police officers. The accused has pleaded not guilty to murder and there is considerable scientific and eyewitness evidence that suggests that another man may have been responsible for the brutal disfiguring and killing of the rape victims. When asked how a suspect could be forced to make a video, the accused's lawyer answered 'If the police can force you to confess they can force you to act it out' (*Sydney Morning Herald*, 28 April 1985). Just such concerns prompted the ALRC's advocacy of the presence of an independent third person at the interrogation of suspects in its report on *Criminal Investigation*.

■ **if it's August it must be Melbourne.** Melbourne will be the centre of attention in the Australian legal world come August. The biennial Australian Legal Convention is to be held over the week 4-9 August. The list of foreign luminaries at the Conference is formidable and will include Sir John Donaldson, Master of the Rolls, Justice Sandra Day O'Connor of the Supreme Court of the United States, Sir Denys Roberts, Chief Justice of Hong Kong and Justice Longo of the Supreme Court of Cassazione, Rome. As is customary, the Australian Law Reform Agencies Conference (ALRAC) will be held during the Convention. To be held on 7 August, the tenth annual Conference will

consider two major topics of interest to law reformers: community law reform and codification. The business session of the Conference will also discuss uniform law reform and continue discussion on the establishment of a National Law Reform Advisory Council. In addition, a workshop on law reform will be held on 4 August. The workshop will discuss techniques in law reform projects, trade-offs in the formulation of reform proposals and industrial issues relevant to law reform agencies' research staff.

■ **hancock on industrial relations.** On 20 May 1985 the Hancock Committee's Report was tabled. It was the first major review of the Australian industrial relations system since Federation. The Report:

- recommended that conciliation and arbitration should remain the mechanism for regulating industrial relations in Australia;
- however it recommended that collective bargaining outside that system be allowed if both parties agreed.

Other major recommendations include:

- abolition of the Conciliation and Arbitration Commission and substitution of a new body;
- repeal of the Conciliation and Arbitration Act 1901 and substitution of a new Act;
- abolition of the Industrial Division of the Federal Court and establishment of an Australian Labour Court;
- talks to be held between the federal and State Governments to achieve integration of their industrial relations systems and other steps to encourage integration.

Reaction to the Report was mixed. The *Hobart Mercury* (21 May 1985) called it 'an astute assessment'. It commended it for having 'resisted the temptation to throw out the baby with the bath water'. On the other hand, the *Australian Financial Review* accused the

Committee of 'shuffling the deck chairs' (20 May 1985). Its assessment was that the Committee would keep both the bath water and the baby.

■ **state of emergency in png.** Commencing on 17 June 1985 a state of emergency was declared in Port Moresby. A curfew was proclaimed, to be enforced by troops and police. Powers have been given to police to enter premises and make arrests without warrant. These measures come in the aftermath of growing concern about rape, house breakings, murder and growing violence by Raskol (pronounced 'Rascal') gangs. The state of emergency was initially declared for 21 days, but the Papua New Guinea Parliament has moved to extend it by two months. There is talk amongst Opposition politicians of a constitutional challenge. There have been calls, including by the Prime Minister, Mr Somare, for public floggings for Raskol gangs and for the death penalty for pack rape. Castration for rapists has also been called for by Mr Somare but rejected by his Party's Caucus (*Sydney Morning Herald*, 17 June 1985). Two weeks before the state of emergency was declared in Port Moresby, an Opposition Member of Parliament alleged that his village had suffered depredations for which raiding Vikings would have been proud. This had occurred when police came looking for two villagers who had escaped from prison 18 months before. The PNG Government responded that the allegations would be thoroughly investigated, and that any police who engaged in rape or other crimes would not only be dismissed from the police force but also would be subjected to criminal charges (ABC Radio Program PM, 7 June 1985).

new reports

Australia

- ALRC : Annual Report 1984, 1985. No 25
- : Summary of Discussion Paper on Matrimonial Property Law, 1985. DP 22.

NSWLRC

: Artificial Conception: Human Artificial Insemination, 1985. DP 11.

: Community Law Reform Program Sixth report. Conscientious Objection to Jury Service, 1984. No 42.

: Fourth Report on the Legal Profession — Solicitors' Trust Accounts 1984. No 44.

QLRC

: Report on a Bill to Establish Limited Liability Partnerships, 1985. No 34.

: WP on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland, 1985. WP 29.

VLRC

: Background Paper on the Role of Juries 1985.

Canada

CLRC

: WP on Criminal Law: Extra-territorial Jurisdiction, 1984. WP 37.

BCLRC

: Annual Report 1983/84, 1984. No 73. (Included as Appendices Minor (Interim) Report on Land (Wife Protection) Act, No 71 and Minor Report on the Jurisdiction of Local Judges. Stays of Execution and Instalment Orders, No 72.)

: Report on Compensation for Non-Pecuniary Loss, 1984. No 76.

: Report on Settlement Offers, 1984. No 77.

: WP on Mortgages of Land: The Priority of Further Advances, 1985. WP 47.

: WP on Personal Liability Under a Mortgage or Agreement for Sale, 1985. WP 48.

Manitoba

LRC

: Report on an Examination of the Dower Act, 1984. No 60. (Plus a Separate Summary to the Report).

: Report on Intestate Succession, 1985. No 61.