the threshold. The Law Institute has proposed the following threshold:

- A person may recover damages at common law for pain and suffering, loss of enjoyment of life, impairment of earning capacity and probable future economic losses, only if that person sustains a serious injury in a motor vehicle accident.
- 'Serious injury' means a personal injury which results in death, loss of a foetus, fracture, partial or total loss of a body member organ, function or system, permanent or temporary disfigurement that subjects the injured person to mental or emotional suffering, permanent and consequential impairment of a body member, organ function or system of temporary limitation on the use of a body member, organ, function or system such that one's ability to resume a not insignificant number of one's activities is affected to a large degree over a period of not less than six months following the accident.

the view of the victorian bar. The Victorian Bar also made a full submission to the Government. It supported the proposals put forward by the Law Institute and strongly opposes the abolition of the common law right. The Bar argued that a no-fault system would not remove the problems caused by fraudulent or exaggerated claims and would provide compensation to a significantly larger number of people. The Bar submission further argued that lump sum compensation was not more expensive than paying by a pension.

the hidden agenda. Legal costs and lawyers's fees lie just below the surface of the ongoing debate about new accident compensation schemes not only in Victoria but in other States of Australia. In a recent publication of the Law Institute of Victoria the following figures were published in an attempt to dispel some of the 'myths' circulating about legal costs.

- in the year ended 30June 1985 some 10.3% of payments were for legal costs which includes payments for medical reports, expert witnesses and government fees;
- if there were no legal costs and that is unlikely even in an administrative system, the reduction would be approximately $20 per vehicle, based on the 1985 figures;
- the legal profession's income for motor accident compensation for 1984/85 was $46.5million, though this figure includes disbursements.

The Institute argues that if its threshold proposals were adopted there would be a sharp drop in the legal costs for 1987 onwards.

the no-fault solution. The Government Statement on transport accident compensation and the submissions by the Law Institute agree on one point: the third party insurance scheme is in crisis and the key problem is the cost of the system. What is being sought is a way of controlling costs and at the same time providing an equitable system for injured persons. The Victorian Government has opted for the no-fault approach which carries with it the abolition of the right of an individual to bring a common law action in negligence where motor vehicles are involved. It will be interesting to see which, if any, other States follow suit.

the courts and the community

> For either of these crimes I would wish to confine the criminal till an opportunity offered of delivering him as a prisoner to the natives of New Zealand, and let them eat him. The dread of this will operate much stronger than the fear of death.
> Arthur Phillip, *Historical Records of New South Wales*, 1787

On 21 May 1986, the Hon Sir Richard Blackburn OBE delivered the inaugural Blackburn lecture in Canberra.

televising court proceedings. Sir Richard covered a number of controversial topics including the role of television and radio in relation to the courts. He said that it has sometimes been thought that judges are 'obstinately hide-bound and restrictive about facilities for television and photography' in the courtroom. He said that it was his view that there can be no objection in principle to the televising of court proceedings. He said that the very real and cogent objection to televising of court proceedings is that, so far as he knew, no courtroom has built-in facilities for it and without such facilities their apparatus and operation must inevitably bring about a totally unacceptable distraction in the courtroom. He concluded:

> Build a court-room which has facilities for television such that the lights, cameras, and other apparatus, are for practical purposes invisible, and the movements and speech of those operating the apparatus are inaudible and I, for one, would not have the least objection to the televising of the proceedings in that court-room. Exactly the same applies to still photography in the court-room.

expert evidence. Referring to the volume of public comment on the *Chamberlain* trial, Sir Richard dismissed the suggestion that conflicts of expert evidence should be removed from the scope of the jury's responsibility and given to a panel of more experts to determine, the report of the panel being brought back to court to be accepted by the jury as legally indisputable fact. Sir Richard characterised such law reform proposals as the result of 'naive confidence'.

trust the jury. Sir Richard went on to criticize the system of challenges to individual jurors in the ACT. He suggested that it could be made more effective by allowing both prosecution and defence to see, and, if required, copy, the jury lists, for a longer time before the trial than is commonly allowed now. He suggested that both sides should be able to make enquiries about the names on the lists so that the opportunity is there for challenging jurors on the ground of some actual knowledge or reputation, rather than, 'as often seems to happen, their appearance and occupation'. He suggested that challenges at present are 'mostly on a "hope for the best" basis'. In response to the suggestion, though, that individual members of the jury panel should be subject to questioning to discover whether they hold opinions or prejudices which might make them unsuitable to act as jurors, Sir Richard responded 'Trust the jury'. He commented:

> The community expects that when its members are summoned for jury service, a task which nobody likes, there will be the least possible demands on their time and also that they will not be subjected to such personal enquiries which are uncomplimentary to their intelligence and their integrity.

jury deliberations. Sir Richard also proposed that a transcript of the evidence be available to juries in extended trials. His Honour deplored the tendency for the deliberations of the jury to be investigated after the trial, revealed and made the subject of comment. He said that, it was worth noting that in Tasmania the form of juror's oath prescribed in the Criminal Code includes the following:

> And further that you will not *at any time* ... disclose to any person anything touching or concerning the deliberations of this jury upon the verdict.

He pointed out, too, that similar words are included in the oath which jurors in Tasmania are required to take before they are allowed to disperse at an adjournment of the trial. Sir Richard said that in his view the law should be quite strict in this matter and that the only exception should be that proper provision should be made for bona fide research.

criminal justice. Sir Richard also deplored the time taken between committal for trial and the trial itself. He contended that the community should have a reasonable chance of recalling the commission of the crime and the circumstances of it, and of linking the crime with a result of the trial, thereby seeing

for themselves that a complete operation of criminal justice has taken place. Sir Richard suggested that the attainment of that ideal would probably require the abolition of committal proceedings in Magistrates' Courts. He suggested that that would be 'a great step forward'. However, in view of the existence of committal proceedings, Sir Richard called for it to be the aim of the criminal justice system, 'both for the general purpose of community satisfaction and for the particular purpose of deterrence, that a person committed for trial should be tried within six weeks.

administrative review in the west

How small of all that human hearts endure
That part which laws or kings can cause or cure.
Oliver Goldsmith, *The Traveller*, C 1750

walrc report. The Law Reform Commission of Western Australia has now published its second report on Judicial Review of Administrative Decisions. This report concerns procedural aspects and the right to reasons. In 1981 the WALRC published a working paper on the subject. In 1982 an earlier report dealt with existing statutory rights of appeal from administrative decisions. It had recommended a rationalised appellate structure based around the Administrative Law Division of the Western Australian Supreme Court. The second report notes that the Western Australian Government has announced that the recommendations in the first report have been agreed to in principle and there will be some delay before the necessary legislation can be drafted.

The present report does not deal with the grounds for review (as distinct from the procedure), standing rules and exclusions of remedies by statute. As to the first, the Commonwealth Administrative Review Council is considering these matters in the federal sphere and the ALRC recently published a detailed report on standing and public interest litigation (ALRC 27) (see [1986] *Reform* 37).

recommendations. The key recommendations of the WA Report included:

- Procedures for obtaining the prerogative writs should be replaced with an ordinary civil action commenced either by a writ of summons or an originating motion for relief in the nature of these remedies.
- The Supreme Court should continue to have a discretion in granting such relief.
- The Supreme Court should be given power at any time to determine whether affidavits or pleadings should be used.
- A single judge of the Supreme Court should normally be sufficient to constitute the Court and there should be a right of appeal to the Full Court of the Supreme Court.

instant dismissal. One significant recommendation is that the Court should be empowered to dismiss proceedings against Government bodies on the ground that no matter of substantial importance is involved or that, in all the circumstances, dismissing the proceedings would impose no substantial injustice on the plaintiff. Further, there should be power for referring quashed administrative decisions back to the administrator concerned for further consideration.

sweet reasons. So far as reasons for decisions are concerned, WALRC recommended that any person with a 'sufficient interest' in a decision should be able to obtain reasons, much along the lines of the reasons provision in the Administrative Decisions (Judicial Review) Act 1975 (Cth). Like the ALRC in its Standing Report, the Commission considered the restriction on the right to reasons to persons with sufficient interest appropriate although it did not regard the term 'sufficient interest' as having its normal legal meaning: 'the term should not be equated with standing requirements for commencing judicial review proceedings. This is because the reasons could be required for purposes other than ju-