of payment to surrogate mothers. Forty percent would pay the surrogate mother her medical expenses plus an agreed fee. Seventy four percent would be prepared to pay her medical expenses only. Only 17% thought there should be no payment at all. Commissioner Scott said:

> We are beginning to see the emergence of hard information about community attitudes to surrogate motherhood. This should assist informed public debate and enable us to move away from conjecture and uninformed speculation. The more that information of this kind can be produced, the more likely it is that parliaments and the public will develop confidence about the right paths to follow in dealing with unprecedented medical and scientific developments in human reproduction.

The extensive analysis in the report shows the trend of opinions within age groups, within groups of married and unmarried persons, across a variety of religions, by reference to federal voting intentions and by reference to personal experience of infertility. Special attention was paid to the opinions of residents of New South Wales and young persons. A total of 2 476 people aged 14 and over were surveyed in all states of Australia.

On the most controversial question of all, namely whether a surrogacy agreement should be enforced against a surrogate mother who changes her mind and refuses to surrender the child, over one-third of the population took the view that the commissioning couple should have first claims to the child. Support for the surrogate mother was slightly less at 26% while 25% considered that a court should decide the matter.

The Commission's Report forms part of its project on on surrogate motherhood which in turn is part of its major inquiry into all aspects of human artificial conception. The Commission's Report on human artificial insemination was published in July 1986. It expects to publish a major public discussion paper on in vitro fertilisation in a matter of weeks and a similar paper on surrogate motherhood in the near future. After a period for public consultation, reports on both subjects will be produced by the Commission.

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correction

In the previous issue of *Reform*, the following sentence appeared in the second column of p 63:

> The former Opposition spokesman on Communications Mr Ian McPhee also wants a more regulatory controlled approach to media ownership.

It should have read:

> The former Opposition spokesman on Communications Mr Ian Macphee attempted to secure a more controlled approach to media ownership.

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letters to the editor

This letter was received from Mr Tim Rattenbury, Co-ordinator of Legal Research, Law Reform Branch, Office of the Attorney General, New Bruswick, Canada.

> Before making two very small points of criticism of your publication, I would like to congratulate you on the consistently high quality of 'Reform'. I find it interesting and informative, and consider it in many ways the most useful document that I receive on a regular basis.

Now for the two small criticisms, which are purely presentational. Looking at p 10 of No 45, I find the reference to '$US264276' and find myself struggling to insert commas in appropriate places to make this figure something I can recognise. On the next page I find a paragraph headed 'rumbles in the uk,' and am disoriented as I try to work out what or where an 'uk' might be, and whether the condition is painful. May I suggest a reversion to a more conventional form of punctuation, with perhaps a judicious sprinkling of capital letters in your headings and subheadings?

sexual offences. The following letter was received from Dr Sandra Egger, Senior Policy Advisor, Ministerial Advisory Unit; NSW Premier's Office.

I write in response to a short article in *Reform* ([1986] *Reform*, 142) on the monitoring of the Crimes (Sexual Assault) Amendment Act (NSW), 1981. The article contains several incorrect and unjustified assumptions and conclusions regarding the evaluation study of the 1981 amendments, which I feel require correction in *Reform*.

It is asserted that s 61D of the Crimes (Sexual Assault) Amendment Act, 1981 is the 'statutory replacement' for rape (s 63 of the Crimes Act, 1900) and that when these two sections are compared there are 'no significant change[s] in the levels of pre-trial lapsing, not guilty please, and acquittals'. (p 143)

This statement misrepresents the findings and is based on certain incorrect assumptions.

1. The comparison between rape and s 61D is not the correct or even the most appropriate comparison to make in assessing the changes associated with the introduction of the new law. Section 61D is not the statutory replacement for rape. The former offence of rape includes offences now charged under s 61B, s 61C and s 61D. The differences between rape and s 61D are as great as the similarities. The category rape is comprised of offences which involve actual penis-vaginal penetration and *includes* cases where the penetration is accompanied by grievous bodily harm (or the threat) or actual bodily harm (or the threat with a weapon). The category s 61D is comprised of offences which involve penis-vagina penetration, anal intercourse, fellatio, cunnilingus, the insertion of objects or parts of the body to the anus or vagina, or the continuation of sexual intercourse and does *not include* cases where bodily harm (grievous or actual) is inflicted or threatened. The latter are usually charged under s 61B or s 61C, although s 61D may be charged as well. (*R v Smith*, (1982) NSW Law Reports, 569).

   Section 61D and rape represent different but overlapping sets of acts. The extent of overlap cannot be ascertained from the Bureau report but it may be quite small given that only 54.9% of the total offence population studied under the 1981 amendments were charged under s 61D and only 50.5% of this total population of cases involved penis-vagina penetration.

2. Even if the comparisons are made according to this criterion it is not correct to say that 'there has been no significant change'. Section 61D differs from rape in the percentage of cases lapsing before trial (20.8% vs 28.2%) not guilty pleas (51.7% vs 71.1%) acquittals (52.2% vs 56.6%) and convictions (74.2% vs 59.8%).

3. It is claimed that these differences are not 'significant'. Such a conclusion is unwarranted, given that no tests of statistical significance were reported by either the

Bureau or in the *Reform* article, and incorrect. A series of chi-square analyses on each variable reveals the following:—

(a) The difference between s 61D and rape in the proportion of cases lapsing before trial was not significant (X2 = 1.66, NS).

(b) The difference between s 61D and rape in the proportion of cases pleading guilty was significant (X2 = 6.44, p less than 0.01)

(c) The difference between s 61D and rape in the proportion of cases convicted was significant (X2 = 3.875, p less than 0.05)

(d) The difference between s 61D and rape in the proportion of cases acquitted where a plea of guilty was entered was not significant (X2 = 0.21, NS)

Thus there were significantly more guilty pleas entered and significantly more convictions under s 61D than under rape.

4. The proper test of the changes brought about by the amendments is the comparison between rape (and attempt rape) under the old law, and between s 61B, s 61C and s 61D (and attempts) under the 1981 amendments, as reported by the Bureau. Research of this nature cannot remove the influence exerted by the legal system in analyzing, constructing and classifying certain acts as criminal offences.

The article contains several other misconceptions largely due to the tendency of the author to quote the Bureau study out of context and to read 'down a table rather than across'. It is stated that the increase in guilty pleas under the 1981 amendments does not represent 'an increase in the number of defendants pleading guilty to what would have been traditional penis/vagina rape or carnal knowledge charges. Only 31.4% of the guilty pleas entered in the study group [post 1981 sexual offences] involve penis/vagina penetration compared to 73.1% of the guilty pleas in the control group'. (p 143)

The fact that only 31.4% of the guilty pleas heard under the 1981 amendments involved penis-vagina penetration is hardly surprising: the amendments significantly broadened the definition of sexual intercourse and thus many other acts were charged under the provisions. These other types of penetration were not defined as acts of sexual intercourse sufficient to found a rape charge under the old law. Thus the figures quoted largely reflect the relative proportions of certain types of intercourse in the two samples. It appears that the author intended to 'read across the table rather than down' and ask the question: of all cases involving penis/vagina penetration how many pleaded guilty under the new law as compared to the old law.

A similar error occurs in relation to pre-trial lapsing. It is concluded that there is no significant change in the level of pre-trial lapsing for s 61D as compared to rape. Part of the data in support of this conclusion is: 'rape in the control group and s 61D . . . in the Study group represents the highest proportions of cases which lapsed before trial . . . Fifty per cent of both those offences lapsed because no prima facie case was established, or, one was established but the magistrate declined to commit the case for trial. Similar proportions of the two offence categories resulted in a discontinuance of the prosecution — a nolle prosequi — after the case had been committed for trial'.

This data demonstrates very little about the respective pre-trial lapsing rates for the two offences. It reflects the relative proportion of s 61D offences in the total population of cases heard under the amendments and the relative proportion of rape offences heard

under the old law. For example, the data shows that of cases lapsing prior to trial under the old law, 89.8% were rape cases. This is not surprising since 80.4% of all cases heard under the old law were rape cases. Pre-trial lapsing rates should be calculated by asking the question: of all rape cases what proportion lapsed at committal?

The pre-trial lapsing rates according to this method are: s 61D = 20.8%; Rape = 28.2%.

Although the author refers to this rate in the previous paragraph, the selective quoting of sentences from the Bureau report gives the reader the impression that 50% of s 61D cases and 50% of rape cases lapsed at committal.

In conclusion, if the intention of the author in making these assertions regarding 'no significant change' was to point out that even under the new law the prosecution of sexual assault offences is more difficult when there is no evidence of actual or threatened violence, then it should be expressed in these terms. It is not correct to say that there has been no significant change.

The changes have been substantial and complex, some positive and some negative. It is necessary to examine the total population of offences classified by the law as serious sexual offences under the old law and under the new law. The transformation of certain acts by the law into serious sexual offences is an important and inseparable part of the research.

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new reports

Australia
ALRC

: Report on Contempt, 1987, No 35

: Report on Spent Convictions, 1987, No 37

: Report on Evidence, 1987, No 38

: Discussion Paper on Occupiers' Liability, 1987, DP 28

NSWLRC

: Discussion Paper on Rape and Allied Offences: Procedure and Evidence, 1987, DP 5

: Annual Report, 1986

: Second Report on Sale of Goods, 1987, No 51

: Research Report: The Jury in a Criminal Trial, 1987 RP 1

: Research Report: Artificial Conception Surrogate Motherhood: Australian Public Opinion, 1987, RR 2

: Discussion Paper 2 on Artificial Conception: In Vitro Fertilisation (DP 15, 1987)

VLCC

: Report on the Desirability or Otherwise of Legislation Defining and Protecting Human Rights, 1987

Canada
CLRC

: 15th Annual Report, 1985–1986

: Report on Recodifying Criminal Law, Volume 1, 1986, No 30

: Working Paper on Workplace Pollution, 1986, No 53

: Working Paper on Classification of Offences, 1986, No 54