English to be members of juries in the Northwest Territories raises a number of practical problems. First there is the question of determining in which cases a jury involving jurors speaking only aboriginal languages should be permitted. Should the consent of the parties to a trial be required? The right to a fair trial of an accused person must be balanced against court and public interests in the administration of justice. To allow an accused person to have the right to be tried by a jury comprised only of persons speaking an aboriginal language may not be appropriate or justified in all cases. One example of this might be where a non-aboriginal person is accused of committing an offence. A second issue is whether an interpreter be allowed to enter the jury room. While there is no major practical problem to be overcome by allowing interpreters to translate evidence in the courtroom different considerations apply in the jury room and certain safeguards would need to be introduced if such a proposal was to be implemented. A third practical issue is whether special jury lists would need to be prepared which would be more extensive and perhaps state the linguistic abilities of persons specified on the lists.

australian proposals. In the ALRC's report on *The Recognition of Aboriginal Customary Laws*, tabled in federal Parliament in June 1986, a number of issues concerning Australian Aborigines and juries was discussed. The Report observed:

> It is a matter for concern that Aborigines are so disproportionately represented in the criminal justice system, but so seldom appear on juries.

The Report did not specifically consider the question of allowing non-English speaking Aborigines to sit on juries but it urged that better selection procedures for juries should be adopted to ensure that Australia's multi-racial society is better reflected in the composition of juries. It also recommended that in certain cases where evidence of Aboriginal customary laws need to be presented to the court single sex juries may be appropriate. To achieve this, it was proposed that the court should have the power to make an order that a jury of a particular sex be empanelled. This power should be exercised on the application of a party made before the jury was empanelled. However such a jury should be permitted only in those cases where it is necessary to enable all the relevant evidence to be given.

* * *

plain english

> that was a way of putting it — not very satisfactory: a periphrastic study in a worn-out poetical fashion, leaving one still with the intolerable wrestle with words and meaning
>
> TS Eliot, *East Coker*

vlrc report launch. The Victorian Law Reform's Commission plain English Report was published on 13 October 1987.

Speaking at the launching of the report, the Victorian Attorney-General, the Honourable Jim Kennan MLC, drew attention to the resurgence in Australian creative life now presently taking place. He went on to say:

> however, I think the responsibility must fall heavily on politicians who have legal responsibilities and on legal academics to ensure that the sort of brilliantly creative and effective endeavour which characterises many other aspects of Australian intellectual life also informs the law.

Referring to the work of the many law reform commissions in the last decade has 'some cause for congratulations', Mr Kennan pointed to the vital importance of ensuring that the communication of the law to its users can be made easier — something which has to date been overlooked.

He is not alone in doing so. For many years complaints about legal language have flourished. Previous pages of *Reform* have been given over to this catalogue of complaints (see for example [1984] *Reform* 68, [1983] *Reform* 64, [1986] *Reform* 191). The VLRC report focuses on these problems and presents a structured series of recommendations to overcome them at all levels.

Mr Kennan indicated that the Victorian Government had already committed itself to the plain English policy espoused in the Report. But he went to say

> it is important that the universities and the legal profession read and understand that significance of this report. Ultimately, it is only by changing the legal culture in this regard that we will be able to throw off the worst habits of the past and break with the oppressive tautology of legalese.

report that launched a thousand quips. Mr Kennan was not the only speaker at the VLRC launch. In a speech chacterised by a depth of thought and understanding, and a degree of down to earth commonsense, unusal on these occasions, Mr Campbell McComas, a well-known Melbourne identity, dealt with a number of examples of legislative drafting.

> The first example is s 36 para 10 of the UK Finance Act 1951 which quite seriously provides that:
>
> > a body corporate shall not be deemed for the purposes of this section to cease to be a resident in the United Kingdom by reason only that it ceases to exist.
>
> Example 2 is the UK National Insurance Bill 1959:
>
> > For the purposes of this Part of the Schedule, a person over pensionable age, not being an insured person, shall be treated as an employed person if he would be an insured person were he under pensionable age and would be an employed person were he an insured person.
>
> Speaking for myself personally, I think I'd rather be a body corporate. At least I'd be a resident somewhere even if I didn't exist.

Mr McComas' address also devoted some attention to the considerable ingenuities of the English Local Government Act when he quoted

> For the purposes of this Part of the Schedules [and praise Allah that it doesn't go any wider than that] a standard penny rate product for an area for any year is the sum which bears to the product of a rate of one penny in the pound for that year for the whole of England and Wales and same proportion as the population of that area bears the population of England and Wales but in ascertaining the standard penny rate product for a County or County borough the population of any County in the case of which the ratio of the population to the road mileage of the county is less than 70 shall be increased by one half of the additional population needed in order that the population divided by the road mileage should be 70.

And by crikey if its not 70 you're jolly well done for. To eliminate any remote jot or tittle of lingering uncertainty, para 2 reads, and this is priceless, 'in

this paragraph population means estimated population'. Thank God for that.

takeovers without tears. The centrepiece of the VLRC report is an exercise in practical plain English redrafting of the relatively complicated companies takeover code. This is presented as a separate appendix (Appendix 2) with the provisions of the existing code set beside their plain English counterparts. The report makes it clear that the object of the redrafting exercise was not to simplify or render more efficient the policy embodied in the takeovers code. Rather, it was to reproduce exactly that policy, in all its detail, but in a plain English structure so as to improve the readibility, comprehensibility and usefulness of the Act. Because of the need, for the purposes of the report, to be able to compare the existing legislation with its plain English rewrite, the changes of layout and format which the VLRC recommends could not fully be appreciated.

drafting manual. Another appendix (Appendix 1), also published separately, to the VLRC Report is a drafting manual. This was specifically called for by the VLRC's Terms of Reference and is designed to be used, not just by parliamentary drafters, but by anyone who drafts legal documents. Many useful suggestions are made, including the unequivocal use of 'must', where possible active instead of passive voice and positive instead of negative form and the avoidance of doublets ('null and void'), overlapping ('due and payable') and inflation ('transmit' instead of 'send').

forms and substance. Finally, and possibly more importantly, the VLRC's attention was directed to the production of forms and other day-to-day legal documents. A revised summons form for criminal offences in the Victorian Magistrates Court is reproduced in a separate appendix to the report. The changes to the form have been designed to eliminate unnecessary information and to direct the defendant's attention to the charge which has been laid, and the courses which are available to the defendant to deal with the matter. The redesign of the form has enabled a great deal more information to be made available, through the form, to the defendant. Combined with changes in listing procedures in the Victorian Magistrates Courts, the use of the form should enable a considerable saving and increase in efficiency.

* * *

alrac meets

. . . a free and frank exchange of views

Any diplomatic communique

The 12th Australasian Law Reform Agencies Conference was held on 19 September 1987 in Perth, hosted by the Western Australian Law Reform Commission.

Delegates to the Conference were:

Australian Administrative Review Council — Denis O'Brien (Director of Research)

Australian Law Reform Commission — Xavier Connor (President), Stephen Mason (Secretary and Director of Research), Peter Cashman (Member) and Pauline Kearney (Senior Law Reform Officer)

New South Wales Law Reform Commission — Bill Tearle (Research Director) and Helen Gamble (Chairman)