reason for complaints against solicitors made to the Law Institute of Victoria. In each of the past two or three years there have been about 1,000 complaints to the Institute. The pattern is reflected in different parts of the country.

now the good news. Attacks on the legal profession are always 'good copy'. Paeans of praise generally end up on the editor's cutting floor. Yet, according to the ALRC Chairman, Mr. Justice Kirby, Australian lawyers are becoming more responsive to the changing times and to changes in the Australian community. Speaking at the New York Conference of the International Union of Lawyers on 31 August 1981, the ALRC Chairman noted a number of initiatives that had been taken by the legal profession in Australia to improve its public image and the services offered to the community:

- establishment of inner city legal services, including 'storefront' offices manned by volunteers from large legal firms;
- the development of specialist legal practices such as the Redfern Legal Centre and the Fitzroy Legal Service to deal with poor and under-privileged clients;
- the development and spread of the Aboriginal Legal Service;
- relaxation of rules against advertising, with the development of legal service directories and directories of lawyers fluent in foreign languages;
- increased teaching of legal studies in high schools;
- initiation of community legal education programs, including Law Week in Victoria. He also instanced the 'Tel-Law' service by which the public can telephone for general advice;
- establishment of experimental community justice centres.

According to the ALRC Chairman, the need for better communication between lawyers and their clients was also present at a community level:

> The legal profession must acknowledge the changing modes of public communication today. It must send forward representatives who can, with little prior notice, speak simply on behalf of the legal profession; acknowledging the need for reform where this is shown, acknowledging the mistakes of the profession where these exist and demonstrating the vital work done by the legal profession. The tendency towards reticence cultivated by the gentlemanly ethics of the past should give way to a better communication with the public, including through radio, television and the press. However, it is not good enough to promote skilful public relations campaigns. It is important that the product itself should be worth promoting. This requires the organised legal profession to examine the unmet needs for legal services in the community and to inform the community of the things being done to meet them.

Among features of the development of the legal profession in Australia mentioned were:

- much greater public discussion of the law and legal profession in Australia;
- changing patterns of work with probable future decline in land conveyancing and accident compensation work, but increase in other work, eg before administrative tribunals;
- consideration of legal insurance to cover risks of involvement in legal problems;
- development of video films to explain court and tribunal procedures to unrepresented litigants.

evidence 'progress'

> Hearsay evidence is inadmissible because the person quoted was unsworn and not before the Court. ... Yet most momentous actions, military, political, commercial and of every other kind, are daily undertaken on hearsay evidence.
>
> Ambrose Bierce.

evidence reform action. The Australian Law Reform Commission continues to make progress in its work towards evidence law reform in Federal and Territory courts in Australia. Led by Commissioner Tim Smith, the ALRC has recently distributed a number of papers containing discussion of the directions for evidence law

reform in Australia. Budgetary restrictions obliged the Commission to circulate most of the papers on a limited basis only. However, the discussion paper received a fairly wide distribution.

- In October 1980, discussion paper No 16, *Reform of Evidence Law,* was produced, accompanied by a more detailed issues paper, outlining many of the problems of principle that will have to be faced as the reference is developed;
- In August 1981, a research paper (Evidence, RP 1) was distributed containing a detailed comparison of evidence legislation applying in Federal and Territory courts. This RP collects, under familiar sub-topics, detailed information on the variety and disparity of Australian legislation affecting the law of evidence applied in those courts;
- Also in August 1981, a research paper (Evidence, RP 3), prepared by Mr. Smith, was distributed containing proposals for a comprehensive reform of the Federal law of evidence dealing with the law of hearsay. The RP contains a draft Bill drawn by the ALRC's legislative draftsman, Stephen Mason;
- Shortly, the Commission will be distributing a further RP examining the disparities in the common law of evidence from one Australian jurisdiction to another.

In the United States, reform of the law of evidence in Federal courts began in the 1930s and did not come to fruit until 1975 with the passage of the Federal Rules of Evidence. So successful have these Federal Rules been that they have now been adopted to apply in State courts in more than half of the States of the United States. The ALRC hopes to do its job in a somewhat shorter time. Although the resources available to it are small, it can benefit from the major efforts at evidence law reform that have proceeded in the United States, Canada and Britain and the Australian States. Current reform projects in a number of the Australian States are also being carefully studied.

In accordance with its normal procedure, the ALRC has engaged in a detailed process of consultation:

- The Federal Court and Family Court have each established committees of judges to consult with the Commission;
- The Law Council of Australia has established a national committee comprising practitioners from Queensland, Western Australia, Tasmania, Victoria, N.S.W. and the A.C.T.;
- A team of consultants has been appointed comprising judges, legal and medical practitioners, academics, police, representatives from the media, a psychologist and other experts;
- Private consultations have been conducted with many special interest groups, including computer users. One of the important questions raised by the reference is the admission into evidence of computer, microform and similar documentary evidence.

RP 1, prepared by an ALRC seconded officer, Ainslie Sowden, provides a fascinating display of the disparity of the laws of evidence that must be applied by Federal judges in Australia under the present regime. The Judiciary Act 1903, s.79, requires Federal courts to apply the law of evidence of the State in which they happen to be sitting. The RP provides material upon which policy options for evidence reform can be identified and selected. Furthermore, the range and complexity of the differences that emerge, even in apparently simple matters of evidence law, are relevant to one of the issues posed by Attorney-General Durack's terms of reference to the ALRC. These require the Commission to say whether there should be uniformity, and if so, to what extent, in the laws of evidence used in Federal courts in Australia.

RP 3, dealing with the law of hearsay, seeks to focus debate upon a number of issues critical

for the reform of the hearsay rule.

- The definition of hearsay evidence;
- Should a distinction be drawn between 'first hand' and 'second hand' hearsay evidence;
- Should a different rule be followed in civil and criminal trials;
- What protection (eg notice) should be given to the party against whom hearsay evidence is led?

future papers. The research papers so far produced by the ALRC are the first in a series required for the comprehensive exercise. One of the disadvantages of proceeding towards evidence law reform by topic is that it may be difficult to comment without having a total proposal expressed. Nevertheless, before completing the comprehensive draft Bill, the ALRC plans to examine a number of topics in a series of research papers. These will include RPs on the following issues:

- relevance of evidence;
- competence and compellability;
- oaths, affirmations and unsworn statements;
- the course of proceedings;
- privilege;
- admissions and confessions;
- opinion evidence;
- corroboration;
- burden and standard of proof;
- presumptions;
- judicial notice;
- reproductions: copy documents and microform;
- the role of the judge;
- discretions to exclude evidence.

state inquiries. The ALRC has been working closely with State law reform agencies which are working on evidence law reform. Detailed discussions have been had with the Commissioners of the NSW and Western Australian LRCs, each of which has a relevant current project on evidence law reform. The Chairman of the NSW Law Reform Commission (Professor Ronald Sackville) has specifically proposed close consultation between the ALRC and the NSW Commission. The latter has a general reference on evidence law and has already produced two reports and a number of working papers on evidence law reform. At a recent meeting of the Australian Law Reform Agencies Conference in Hobart, the possibility of further co-operation with other State agencies was noted. Professor Sackville made a vivid point when he referred to the disadvantages of practitioners in Sydney having to apply a different law of evidence according to whether they were appearing in a Federal or State court in the very same building. In Sydney, Federal and State courts are housed in the Joint Courts Building. Certainly, the experience of efforts to secure evidence law reform in Canada, where significantly different proposals were advanced by Federal and Provincial LRCs, stand as a warning to Australian law reformers of the need for co-operation in developing law reform proposals in this area of the law.

the dock statement. A recent State LRC report illustrates the way in which strong differences of view can emerge in particular issues of evidence law reform. In recent years the number of police, judicial and other calls for abolition of the right of an accused person to make an unsworn statement from the dock, have increased apace. In a farewell address on his retirement in December 1978, Mr. Justice R.L. Taylor, the Chief Judge at Common Law in NSW, questioned the right of the accused in a criminal trial to remain silent and urged the abolition of the right of an accused person to make an unsworn statement from the dock. Speaking after the recent Australian Legal Convention in Hobart, the Lord Chief Justice of England, Lord Lane, likewise urged abolition of the dock statement. Legislation abolishing the dock statement has been enacted in Western Australia, Queensland and New Zealand and is currently before the South Australian Parliament.

In Victoria, the Victorian Law Reform Commissioner, Sir John Minogue QC, has delivered a report recommending to the contrary. According to the VLRC, the right of accused persons to make an unsworn statement from the dock should be retained. In his report Sir John refers to the fundamental principles of the criminal justice system, including the presumption of innocence and the principle that no person should be forced to speak and condemn himself out of his own mouth. He saw the dock statement as a consequence of our way of doing criminal justice. Amongst other points made:

- assertions that many guilty persons are acquitted because they cannot be cross-examined are not supported by statistics;
- many accused persons are in their teens or early 20s, with limited education and a poor command of English. Such persons have little skill in handling hostile expert questioning.

One particular problem considered in the report is the difficulty facing an accused with a criminal past who wishes to challenge a confession without having his whole criminal past thrown in his face. The VLRC recommendations would allow an accused person to deny evidence on oath, such as a confession, without inexorably running the risk that his credibility would be destroyed by the automatic admission into evidence of his criminal past or bad character. Another recommended change is that the prosecutor should be allowed to comment, in the limited manner now allowed to judges, concerning the accused's failure to give evidence under oath and to be cross-examined. Nevertheless, the VLRC said that it should be made clear that the accused is entitled to make an unsworn statement so that no inference of his guilt may be drawn from the way in which he presents his defence.

view from witness box. Meanwhile, at a number of conferences and seminars throughout Australia, ALRC members have been calling attention to particular problems of evidence law, affecting special groups:

- The First National Congress of the Australian Private Hospitals Association, held in Sydney in June 1981, was told of the desire by the ALRC to have comments on current evidence laws, not just from lawyers but also from witnesses 'whether in the medical profession or otherwise' who came into court to give evidence and had the opportunity of seeing the procedures adopted. The ALRC Chairman said that it was vital that the Commission, in proposing changes of the rules of evidence in courts, should have the perceptions not only of lawyers and judges, psychologists and policemen but also the 'view from the witness box'.

  'It is vital we get the assistance of witnesses, including expert witnesses from the health care professions who come to court and have views about the appropriateness of what they find when they arrive. The manner in which expert testimony is received, tested and evaluated in our courts, is an obvious example. The procedures for the subpoena of witnesses is another. The way in which evidence must overwhelmingly be given by oral testimony in court, with busy witnesses waiting often long and unexplained intervals for the convenience of the court, is yet another. In Europe, much more business in the courtroom is done on written material. A written word may on average be read four times more quickly than oral testimony may be given. It also involves less inconvenience to witnesses. Yet it is impossible to cross-examine a written page'.

- At a number of conferences the problem of professional privilege has been confronted. Should the privilege that attaches to lawyers' clients and police informants be extended? In some States of Australia communications with a doctor or priest are privileged in civil trials. But the extension of privilege against disclosure in court to other groups, including journalists, might pose a risk that justice will be truly 'blindfolded'.