The Campbell Report also favoured the ALRC proposal that brokers should have to disclose commission received as remuneration for insurance transactions.

passed without division. Meanwhile, shortly before the publication of the Campbell Report, and in the face of the government's announced decision not to implement ALRC 16, the Shadow Attorney-General, Senator Gareth Evans (Lab. Vic.) introduced a Private Member's Bill in the Senate based substantially on the Bill attached to the ALRC report. The government continued to oppose the measure. The Minister for Finance (Senator Dame Margaret Guilfoyle) urged that no need had been established for Federal regulatory legislation. Although broker insolvencies with losses of more than $10 million in the past few years were acknowledged, it was pointed out that these represented only a fraction of premiums handled by brokers.

When, however, the debate was adjourned on 29 October 1981, it became clear that a number of government Senators supported the Bill based on the ARLC report. Senator Missen (Lib.Vic.) indicated that he supported the Bill and proposed a vote for it. He announced a general philosophy about law reform reports:

> I believe that the Law Reform Commission reports are prima facie deserving of acceptance. This report has taken some years to compile. The Commission had before it a vast number of witnesses. With unstinting effort it has travelled across Australia and seen the people who are concerned with and affected by the problems that this Bill deals with and has made a report which I believe, failing other cogent reasons, should be accepted. The need for this legislation is well set out in the beginning of the report.

Senator Missen referred to the resolution of the Ministers for Consumer Affairs of the States in November 1980 urging Federal implementation of the ALRC report for the regulation of insurance brokers. He referred to the many insolvencies of insurance brokers and to the support of the industry for the general thrust of the proposals. The Bill was also supported by Senators Jessop and Watson of the government, Senator Bolkus (Australian Democrats) and finally passed through the Senate without a division being called.

economics of law reform. In the House of Representatives, the Second Reading Speech was moved on 17 November 1981 by Mr. Ralph Jacobi (Lab. SA). Mr. Jacobi was able to call in aid the supporting statements of the Campbell Report which, by coincidence, had been published on the previous day. He laid stress on the need to clarify, without the necessity of litigation, the responsibility of insurers for agents and brokers. The spectre of differing State regulations of insurance brokers, a process that has begun with the enactment of licensing requirements in Western Australia in August 1981, was painted by Mr. Jacobi:

> New South Wales intends to legislate. It will follow the Western Australian Act but will include life insurance. Victoria has made no official announcement but has indicated that it will be obliged to legislate. Tasmania and the Northern Territory have made no indication at this point that they will legislate. In South Australia we have the spectacle of the State Liberal Government implementing negative licensing. ...What a shambles we will have. Senator Missen in support of this much needed legislation, summed up this aspect more cogently [by reference to the State Consumer Affairs Ministers]. This is not something which has been imposed on the States. It is something which they have requested.

Shortly before Mr. Jacobi spoke, there was tabled in Parliament the Annual Report of the Law Reform Commission for 1981 (ALRC 19). Amongst other things, the report contained a comment on 'the law and economics — cost/benefit'. The report concludes that:

> More will be heard in the future about the need for and limitations of cost/benefit analysis in law reform.

criminal investigation bill

> The police do not create social deprivation, though unimaginative, inflexible policing can make the tensions which deprivation engenders greatly worse
>
> Report of Lord Scarman on the Brixton Disorders, 1981 Cmnd. 8427

most significant reform. On 18 November 1981 the Federal Attorney-General, Senator

P. D. Durack QC, introduced into the Australian Parliament the Criminal Investigation Bill 1981, based on the report of the Australian Law Reform Commission, *Criminal Investigation* (ALRC 2, 1975). Senator Durack described the measure boldly as 'the single most significant reform in Australian policing'. He said that his view of the legislation and the impact it would have on policing was shared by the Commissioner of the Australian Federal Police, Sir Colin Woods. Senator Durack said that the Bill set out in a clear and precise form the rights and duties of citizens and members of the AFP in relation to the investigation of offences against Federal and ACT laws:

> The legislation also seeks to establish a proper balance between the community's need for effective law enforcement and the need to preserve and respect basic human rights and freedom.

Listing some of the important features of the Bill, Senator Durack mentioned:

- a person in custody interviewed by the police would be given a specific right to be assisted by a lawyer and time to contact a lawyer;
- restrictions will be imposed on the use of force, including firearms, for the purpose of arrest;
- strict criteria will be laid down for arrest without warrant;
- taking of fingerprints will be permitted for identification purposes only;
- provision will be introduced to protect the identification of suspects through identification parades and other procedures;
- rules will be laid down as to the sound recording and admissability of oral confessions made to police officers;
- general search warrants will be abolished and special provisions made to cover the granting of particular search warrants;
- alterations will be made to the system of police bail, including spelling out of criteria to be applied by the police in making bail decisions; and
- recognition will be given to the need for special assistance to Aborigines, children and non English-speaking suspects when under interrogation in criminal matters.

The Federal Attorney-General pointed out that the form of the legislation followed a thorough review of the 1977 Bill (see [1977] *Reform* 27). The Government had considered submissions by police, civil liberties, legal professional bodies and others. However, although a number of changes had been made 'they did not interfere with the major reforms proposed in the 1977 Bill'. Senator Durack indicated that the Commissioner of the Federal Police, Sir Colin Woods, had told him that the provisions in the Bill were 'workable in the Federal area' of policing. Clearly, however, their introduction could have a long-term impact beyond Federal Police, if State Governments chose to follow the Federal lead. Senator Durack said the Criminal Investigation Bill represents probably the first attempt by a common law country to state comprehensively the principles applying to criminal investigation, consistently with the requirement of the International Covenant [on Civil and Political Rights].

> In a real and practical way this Bill, together with the Complaints (Australian Federal Police) Act 1981 and the Human Rights Commission Act 1981 demonstrates the concern of the Government with the protection and promotion of the rights of the individual. The Bill exemplifies the Government's appreciation that the rights of the individual, to be effective, need to be set out clearly and specifically.

Debate on the Bill was adjourned to allow public comment, and will be resumed early in 1982.

british reforms. Meanwhile in Britain, the report of the inquiry by Lord Scarman into the Brixton disorders (HMSO, Cmnd 8427, November 1981) had analysed the remarkable outbreak of violence which occurred in that London suburb in April 1981. Lord Scarman blames the police, politicians and the community for the collapse of law and calls for a 'direct and co-ordinated attack' to eliminate racial discrimination. Numerous reforms are proposed, as one would expect from the pen of the first Chairman of the English Law Commission:

- a new and more independent system for considering complaints against police;
- racially prejudiced behaviour should become a specific offence under the Police Discipline Code, with liability to dismissal;
- recruitment of more black police;
- increase in initial training from 15 weeks to six months;
- compulsory courses in community relations for the police;
- new training in the handling of public disorder.

Lord Scarman found no evidence of over-reaction, brutality or unreasonable aggression by the police and commended police tactics and dedication. However, he concluded that police must bear much of the blame for the breakdown in community relations because of instances of proved harrassment and racial prejudice among junior officers on Brixton streets.

The report attracted attention in the Australian media. The *Australian* (27 November 1981) concluded:

> One of Britain's most highly regarded judges, Lord Scarman, has now presented his report. ... The pattern of distrust and hostility towards the police is by no means restricted to Britain. ... Allegations and more than allegations, of corruption and other scandals involving the police have become so frequent as to be a commonplace. Australia has not escaped this malady, as anyone who reads our newspapers is only too painfully aware. ... It would be rashly optimistic to imagine that [these circumstances] could not come about in Australia, it is more important than ever that the police be seen as impartial and honest. If police are not respected, neither is the law, and the consequences for an orderly and democratic society are horrendous.

Lord Scarman found a lack of public confidence in the existing system for considering complaints against the police. He discusses in his report a number of possible reforms of the system and concludes that if public confidence in the complaints procedure is to be secured, the early introduction of an independent element in the investigation of complaints and the establishment of a conciliation process are vital. Each of these elements is included in the Complaints (Australian Federal Police) Act 1981 which is to come into operation in respect of the Federal Police in 1982. An early visitor to Australia in 1982 will be Sir Cyril Philips, Chairman of the Police Complaints Board in England. Sir Cyril will be visiting Australian cities in February 1982 explaining to legal and police audiences the recommendations of the English Royal Commission on Criminal Procedure, of which he was Chairman. In an article in the *Times* (22 October 1981) before the Scarman report was published, Sir Cyril Philips responded to a Private Member's Bill proposed in the House of Commons by Mr. A. Dubs MP. That Bill proposed an entirely new complaints procedure including investigation by a Police Ombudsman with his own investigation staff. Sir Cyril pointed to the added cost of such a system and concluded:

> If the system is to be seen as seeking not simply punishment of the police but rather improvement, then the experience gained, particularly by the Director of Public Prosecutions and the Police Complaints Board, ought to be passed into police training. ... If more money is to be made generally available, then it might well be better investment of scarce resources to put most of it into training rather than into the complaints system.

No doubt this conclusion will have to be weighed against the Scarman recommendation.

tape recording. On a broader front, calls continue for the implementation of the Philips Royal Commission Report. Lord Scarman himself applauds some of the Royal Commission suggestions. Lord Salmon, in a broadcast on 'The Balance of Criminal Justice', commenting on the Philips report, concludes that 'the time has come to stop talking about tape recording of confessions and to introduce it':

> It is absolutely essential that the conversations between the police and the accused should be tape recorded *now*. I doubt, however, whether the police are particularly enthusiastic about tape recording: and the [Royal] Commission thinks, in my view wrongly, that tape recording should be postponed because it would incur large expense. ... In my view, trials within a trial would virtually disappear and very large sums of money and much court time would accordingly be saved; and justice would be done in regard to

> confessions real or invented. Moreover the accused, on discovering that his confession was unassailable owing to its tape recording, would probably change his plea to 'guilty'. ... Surely no further time should be wasted. Tape recordings of conversations between the police and the accused will cut down a large part of the time now wasted in many trials and this will accordingly enable persons who have been committed for trial and who are awaiting it, to be spared much of the shocking delay which they are suffering at the moment. Justice is calling loudly for tape recording to be used now; and there is no real excuse for this to be refused.
> Lord Salmon, the *Listener*, 4 June, 1981, 729.

In response to the Philips Royal Commission, the Home Office has taken the unusual course of issuing a 'consultative memorandum'. This invites further comment on the report of the Royal Commission on Criminal Procedure and poses a series of questions to the public on the whole range of the matters dealt with by that Commission, including powers of search, investigation, detention, questioning, private prosecutions and so on. One interesting question on page 32 goes to the heart of the machinery in the Criminal Investigation Bill 1981:

> Was the Royal Commission right in taking the view that exclusion of evidence was not in general an appropriate or effective means of enforcing the rules or safeguarding the rights of suspects? Would the Commission's approach have the effect of reducing trials within trials? If so, to what extent? If the Commission's approach to exclusion is thought too restrictive, would the Australian 'reverse onus' rule, relating the discretion to exclude to the nature of the breach, the demands of the investigation and the seriousness of the offence, be a suitable alternative?

British authorities now have before them not only the report of the Australian Law Reform Commission but the Government and Federal Police-backed Criminal Investigation Bill. Significantly, this includes the 'reverse onus' discretionary rule as one means of supporting proper conduct (an effective complaint system is another). The Bill also introduces, for the first time in a country of the Commonwealth of Nations, the provision about sound recording of confessions to police. Who doubts that in the 20th century sound and video recording of police confessions will be a commonplace?

the policeman's lot. Other developments worth noting are:

- The former Commissioner of the ACT and Queensland Police, Mr. Ray Whitrod, has appealed for a 'Crime Commission' to deter police corruption. He refers to the Chicago Crime Commission and contrasts its success with the limited impact of short range inquiries, such as Royal Commissions, upon a 'cleaner police force', *Canberra Times,* 6 November 1981.
- The Victorian Chief Commissioner of Police also called for a Crime Commission. (*Age*, 26 November 1981). However, he urged it for a different purpose, namely as a standing Royal Commission on Organised Crime, with wider special investigative powers, to counter the best legal and financial advice available to top criminals. Mr. Miller reverted to his view that the inquisitorial role of a Royal Commission would be more effective than the accusatorial procedures governing police. Commenting on this call, the *Age* on 10 December 1981 acknowledges its cogency but concludes:

> The most sensible approach to the dilemma has been suggested by the Australian Law Reform Commission in its report on Criminal Investigation. While its specific recommendations are open to debate, it was basically right in advocating the removal of some of the present legal inhibitions on police investigations, balanced by a strengthening of safeguards against the misuse of police powers. In spite of objections from police associations, it is in this context that Mr. Miller's proposals should be examined (*Age*, 10 December 1981).

- Delegates to the Australian and New Zealand Police Associations in Hobart in November 1981 were told of growing problems with stress arising from modern policing. The 'very nature of police work' was claimed to give rise to stress and contribute to marital breakdown. A report in the *Australian* (29 November 1981) recorded militant calls by police associations in a number of Australian States for rapid increase in police numbers, police pay and working conditions. Sir Colin Woods, first Commissioner of the

Australian Federal Police, told the *Canberra Times* on 20 September 1981:

> Compared with continental Europe, the amount of Australian investment we put into training someone who joins as a constable (and everyone does) to help him become a top manager, is derisory.

- In South Australia, Mr. R. Millhouse QC, Leader of the Australian Democrats, has urged the Government to introduce a Bill for an independent system of handling complaints against the State Police. According to a report in the *Advertiser* (2 December 1981) he said that the Bill should be modelled on the draft attached to the ninth report of the ALRC, which already forms the basis of the police complaints law of the Federal and NSW police. Reaction to the proposal is not yet known.

aborigines and law

> The task of dispute solving should be compared with the killing of a snake in a plot of ripe rice. ... The snake should be killed but without scattering the rice
> G. van den Steenhoven, *The Land of the Kerenda, 1970*

standing to sue. On 18 September 1981, the High Court of Australia handed down a unanimous decision which affects the Aboriginal community and also clarifies the law of standing before Australian courts. That subject is under the review of the Australian Law Reform Commission. See ALRC DP 4, *Access to the Courts — I, Standing : Public Interest Suits.* A report on the topic is expected in 1982. The High Court held that two Aborigines had standing to apply for hearing to prevent Alcoa of Australia Limited building an aluminium smelter where they claim it will interfere with Aboriginal relics. The Gournditch-Jmara people of Portland, Victoria, had sought the injunction. However, it was ruled in the Supreme Court of Victoria that the applicants had no entitlement to sue.

Mr. Justice Murphy describes standing as 'a judicial invention'. He referred to the argument in the court below and to the inability of the judges to recognise a 'special interest' which did not originate from fundamental relationships known to 'Western European Judao-Christian' cultures. Mr. Justice Murphy was not impressed:

> Interests sufficient to found standing are not confined to those which arise out of the relationships which are fundamentally important in what was described as 'Western European Judao-Christian culture'. Australia is a nation composed of peoples deriving from a variety of cultures, which are not restricted to Western European. Our people also adhere to a variety of religions, many of which are not 'Judao-Christian' and many have no religion. 'Western-European Judao-Christian culture', if there is such a culture, has no privileged status in our courts. Aboriginal culture is entitled to just as much recognition. If a cultural or religious interest founded on 'Judao-Christian Western-European' traditions is enough to establish standing, then a cultural or religious interest founded on Aboriginal tradition is also enough. There is no justification for using 'standing' to introduce religious, racial or cultural discrimination to the courts.

The justices paid particular regard to the terms of the Archaeological and Aboriginal Relics Preservation Act 1972 (Vic). Mr. Justice Stephen had a few observations about law reform:

> Whatever may be thought to be the need for development in this area of the law, the present appeal provides no occasion for it. In this case, the contentions of the parties call for no reconsideration of the present law: the appellants need invoke no new principle in order to establish their right to sue. ... Moreover it may be that any general development of the law relating to standing to sue should be left to legislative action, prompted by law reform agencies. Any significant changes will necessarily involve the weighing of important considerations of policy; different solutions may be appropriate in different areas of the law or where the remedies sought by the plaintiffs differ; there exists considerable diversity in the recommendations that have emerged to date from agencies in the common law world regarding desirable reforms. All this points towards deliberate legislative action rather than judicial innovation.
> *Onus and Frankland* v. *Alcoa of Australia Limited.*

According to press reports, the land in question has now been cleared. However, it was indicated that the representatives of the Aboriginal people would begin their case against Alcoa for the alleged breach of the Relics Act and the High Court decision makes it plain that their case must be heard and determined by the courts according to law.