with and the 'sensible and practical' recommendations, Senator Durack said

> Governments (State and Federal) should act on this Report without delay. If they show no sign of doing so there are many Senators who will be prepared to introduce a new Bill to give effect to the Senate Select Committee's most valuable Report.

ivf practitioners. Meanwhile, IVF practitioners have had further difficulties. Under the Victorian Infertility (Medical Procedures) Act 1985, special approval from a ministerial committee is required for embryo experimentation. The legislation came into effect in August.

The chairman of that committee, Professor Louis Waller, recently said that the spirit and intent of the Victorian Act was to assist childless couples to have children and ensure the highest regard is given to the principle that human life be preserved and protected. (*Australian* 11, 12 October 1986). The Director of the Centre for Early Human Development at the Queen Victoria Medical Centre, Dr Allan Trounson, has threatened, that, as a result of the Victorian Act, Melbourne's pioneering test tube research team will leave the country. The *Weekend Australian*, October 11, 12 1986, reported that a five member IVF team from Adelaide has left to work in Los Angeles because they were not confident of being able to continue their work. Dr Trounson was reported as saying that 'part of the problem was the time it was taking to examine and discuss his team's desire for a way around the Victorian legislation.

He said that human embryo experimentation was necessary if Australia was to maintain its IVF lead.

In this regard the Senate Committee Report said

> The Committee was not persuaded that to prohibit destructive non-therapeutic experimentation would be to so disable the IVF program so as to render it inoperable. . . . The Committee accepts that, if its recommendation were carried out, there could be a limitation on some advances within the IVF programs. But it considers that the ethical principles involved are of sufficient importance to outweigh the requested use of embryos for that purpose.

alrac 1986

Fresh from brawling courts
And dusty purlieus of the law
Tennyson, *In Memoriam*

law reform methods discussed. This year's Australasian Law Reform Agencies Conference was held in Wellington, New Zealand on August 14 and 15. Hosted by the recently constituted New Zealand Law Commission, the Conference was attended by delegates from all Australian agencies except the Law Reform Committee of South Australia. Delegates included representatives from the Fiji Law Reform Commission, the Victorian Legal and Constitutional Committee and the federal Administrative Review Council. (A full list of formal participants appears at the end of this article). On their arrival at Wellington Airport, delegates were met by the Rt Hon Sir Owen Woodhouse, founding President of the NZLC. His gesture reflected the tone and degree of hospitality extended by NZLC to visiting participants. Formal proceedings took place in the Legislative Council chamber of New Zealand's Parliament House. The Conference was opened by Sir Owen and delegates and observers welcomed by the Rt Hon Geoffrey Palmer, Attorney-General of New Zealand.

commissions, departments and government. One of the dominant themes that emerged during the conference was the need for agencies to maintain good public relations with ministers and departments.

During an address on the 'Aspirations' of law reformers the ALRC President, the Hon Xavier Connor AO, QC, observed that:

> There is scope for a great disparity between the aspirations of the institutional law reformer and those of the institutional bureaucrat. It is up to

> law reformers to ensure, so far as they can, that this divergence of aspirations does not lead to their work being pidgeonholed . . . it is no secret that, so far as the Australian Law Reform Commission is concerned at any rate, the most successful exercises, in terms of law on the statute book, have been those in which strong efforts were made to involve bureaucrats, not just from law departments, but from other affected departments, at every stage in the proceedings.
>
> . . . It is our practice to appoint as a consultant for each reference relevant middle management bureaucrats and actively to seek departmental comment on and input into our proposals. It is always made clear that any individual bureaucrat so made available does not necessarily represent the view of the department and that his or her presence as a consultant is entirely without prejudice to the ultimate advice which the department tenders to the Attorney-General. Even so, a law reform commission – as well as the departments themselves – will be well served if it can induce the bureaucrats to aspire to the same reforms.

Mr BJ Cameron, a NZLC Commissioner and David Kelly, Chairperson of the VLRC observed that the relative independence and autonomy afforded to law reform agencies may cut both ways. Paradoxically, it can diminish an agency's influence on government implementation of reports.

In a paper entitled 'Public Relations In Law Reform' Mr Keith Mason QC, Chairman of the NSWLRC stressed that interaction with the government before and after reports is

> a vital aspect of public relations . . . In one sense this is the most critical 'public' which the law reform commission must deal with.

He re-iterated Justice Kirby's warning:

> The enemy of a great deal of legal reform in our country is not frank opposition, and the powerful lobbies. All too often, it is governmental indifference, the parliamentary agenda, bureaucratic inertia, or suspicion and intimidation by the technicalities, complexities and sheer boredom with much legal reform. Unless we can overcome these impediments, we shall have reached a serious *impasse.* (*Reform the Law*, 46).

Mr Mason said that:

> It is the private public of the bureaucracy that we must address more effectively . . . Pre-report, consideration should be given to involving departmental officers as consultants, or at least sending portions of a draft report for comment so that obvious bugs can be ironed out. It is most counterproductive to have a good proposal founder because some practical or administrative factor was overlooked in the preparation of the report.

Similar sentiments were voiced by Mr Cameron:

> The problem can of course be diminished by giving Departments whose policies may be affected a full opportunity to make an input while the topic is before the Commission. This ought to happen anyway, because it will make for a more thorough and better quality report. And the Commission is able to take into account what the department is likely to say to its Minister afterwards . . . .

In answer to the question: What can be done after reports are completed? Mr Mason said:

> We need to identify those in the Attorney-General's Department who have the effective carriage of the matter whilst implementation is being considered. We should endeavour to facilitate and hasten their analysis of the report. Delay may be fatal for several reasons. The bureaucrats may get the idea that one option is to do nothing rather than advise for or against adoption; any public interest may subside; key people in the law reform agency who could help iron out minor snags or concur in fine tuning of proposals may leave.

community aspirations. Mr Connor stressed, however, that it is not only a question of taking into account the needs and views of the bureaucracy and those who exercise power in the community. It is of prime importance that the aspirations of the community are reflected in the law:

> Empirical research will often be required, such as the Australian Law Reform Commission has undertaken in connection with its reference on Matrimonial Property. There, we undertook a large scale survey of divorced persons to find out exactly what divorce had meant to them, in money terms. The results, published in the Commission's Research Paper No1, a Survey of Fam

> ily Court Property Cases in Australia, (Australian Law Reform Commission, 1985) and by the Institute of Family Studies in a booklet entitled 'The Economic Consequences of Marriage Breakdown in Australia' (Institute of Family Studies, 1985), confirmed the unequal impact of divorce on husbands and wives and the critical importance for future living standards of the allocation of child care. But the important thing for us to note is this: the response to the surveys far exceeded our expectation. People want to be involved. Generally speaking, those who are affected by proposals for a particular reform are interested and eager to help law reform commissions develop their proposals. They want to see the law reflect their own aspirations: they are willing to help us develop proposals to achieve that. . . . Finally, we need to consider the aspirations and hopes of the community as a whole. What does the community hope for from a law reform commission? The high public profile of the Australian Law Reform Commission over the past ten years has led, I believe, to a shift in community perceptions of the law. There is less of the assertion that the law is an ass. There is more of an expectation now that, if the law is faulty, we should change it so that it truly accords with our aspirations and is more responsive to the community's aspirations.

other topics. Other matters discussed during the conference included in-house planning and private-sector management techniques, reform of courts and court structures, and the role of the media.

Mr Pat Downey, editor of the New Zealand Law Journal and founding Chairman of the NZ Human Rights Commission, expressed his belief in the importance for agencies to involve the media in their public relations exercises. He said that in so doing it was necessary for law reformers to recognise that their concerns are not identical to those of journalists. Journalists are concerned with a form of drama. Mr Downey pointed to the example of Justice Michael Kirby who had proved willing and able to assume a media persona.

The Hon JK McLay, Member of New Zealand Parliament, presented a paper on Harmonisation/Uniformity. Focusing on the Closer Economic Relations agreement between New Zealand and Australia, he asked agencies on both sides of the Tasman to actively contribute to greater uniformity of laws between the two countries particularly in areas such as trade practices, food and drugs, credit, contracts, and company law.

general business. Two motions were passed at the Conference. The first was moved by Mr Bruce Piggott CBE, Chairman of the TasLRC and was carried unanimously:

- That the ALRC seek discussions with the Commonwealth Attorney-General concerning proposals for collaboration between the Law Reform Agencies' Conference and the Standing Committee of Attorney-Generals on the subject of appropriate and progressive uniform law reform in Australia.
- That each agency approach their State or Territorial Attorney-General to support such collaboration.

The following motion was moved by Mr Keith Mason QC, and carried by acclamation:

> This Conference notes the retirement from the bench this month of the Hon Mr Justice Zelling, AO CBE, the Chairman of the Law Reform Committee of South Australia, and records its gratitude for his outstanding contribution to law reform.

The Victoria, New South Wales and New Zealand agencies agreed to collaborate on a joint publication of the papers and proceedings of this year's and the previous two years' conferences. The venue for ALRAC 1987 is Perth, Western Australia.

formal participants: *New Zealand Law Commission*: The Rt Hon Sir Owen Woodhouse (President), Ms S Elias, Professor K Keith, Messrs BJ Cameron and JE Hodder (Commissioners); *Australian Law Reform Commission*: The Hon Xavier Connor AO, QC (President), Ms Ann C Riseley (Senior Law Reform Officer); *New South*

Wales Law Reform Commission: Mr Keith Mason QC (Chairman), Ms Helen Gamble (Commissioner), Mr WJ Tearle (Director of Research); *Victorian Law Reform Commission*: Professor David Kelly (Chairperson); *Tasmanian Law Reform Commission*: Mr JB Piggott CBE (Chairman), Mr WG Briscoe (Director of Research); *Western Australian Law Reform Commission*: Mr Charles Ogilvie (Commissioner), Dr PR Handford (Director of Research); *Queensland Law Reform Commission*: Mr FJ Gaffy QC (Commissioner); *Northern Territory Law Reform Commission*: Mr Stephen Herne (Executive Officer); *Fiji Law Reform Commission*: Mr Warren Sisarich (Director of Research); *Administrative Review Council Canberra*: Mr WJL Tucker (Chairman); *Legal & Constitutional Committee, Victorian Parliament*: Mr LJ Hill MP (Deputy Chairman), The Hon H Storey QC MLC.

plain english

> . . . trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. (Commonwealth Constitution s 92).

victorian dp. Previous issues of 'Reform' have reported on the push for plain English, led by the Victorian Attorney-General Mr Jim Kennan. Now the VLRC, in its first discussion paper, published in August, has come out strongly in favour of a concerted effort for plain legal English.

The paper notes the history of the plain English movement which it says has now been in existence for some 12 years.

In discussing the problems of legal writing and the plain English movement, the paper makes little distinction between commercial legal writing, legislative drafting, forms and administrative documents. It points to the effort that has so far gone into redrafting general commercial and administrative documents such as insurance policies, leases, tax returns and claim forms.

> More and more however the need has been felt to tackle legislative documents not just for their own deficiencies but also because they wield such an influence on other official writing.

legislative drafting. In this area the paper takes a bold and radical path. Even though 'Bills are made to pass as razors are made to sell, the discussion paper says that legislation should not be written for legislators. It should not even be written for the courts.

> Acts, Regulations and other official documents *are functional.* Their purpose is either to give someone information or to have someone do something. Their primary purpose is not to have judges interpret them. Our object is to have the public understand so that matters do not end up in court!

In this regard the paper seems to ignore the inevitable creative misunderstanding that will be lavished on any piece of legislation where the stakes are high enough. ([1986] *Reform* 83).

cost benefits. So far as forms and other kinds of legal writing are concerned, the paper notes the significant cost benefits that can be achieved if plain English writing is used. The United Kingdom experience is instructive in this regard. Redesigning customs declaration forms, for example, saved the UK Department of Customs and Exercise some 33000 pounds a year. In the Victorian context, rewriting the summons form will eliminate wasteful paperwork and ineffectual procedures offering the prospect to redeploy more than 26 members of staff including 15 police, equivalent to approximately six hundred thousand dollars a year at a conservative estimate.

proposals. The proposals advanced by VLRC to encourage plain English drafting start with the Victorian Chief Parliamentary Counsel's office. Training of parliamentary counsel, early involvement of parliamentary counsel in the preparation of policy, training of departmental instructing staff and greater use of computer facilities are among the