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)

New Zealand Law Commission — Professor Ken Keith (Deputy President), Alison Quentin-Baxter (Director) and Prue Oxley (Principal Research Officer)

Northern Territory Law Reform Committee — The Hon Sir William Kearney (Chairman)

Papua New Guinea Law Reform Commission — Dr Tony Deklin (Deputy Chairman)

Queensland Law Reform Commission — Frank Gaffy QC, Alun A Preece (Members) and John Dwyer (Principal Legal Officer)

South Australian Law Reform Committee — The Hon Mr Justice Christopher Legoe (Deputy Chairman)

Tasmanian Law Reform Commission — Bruce Piggott (Chairman) and Wayne Briscoe (Research Director)

Victorian Law Foundation — Mark Herron (Research Co-ordinator)

Victorian Legal and Constitutional Committee — Spencer Zifcak (Director of Research)

Victorian Law Reform Commission — David Kelly (Chairperson), Jude Wallace (Member) and Loane Skene

Western Australia Law Reform Commission — Charles Ogilvie (Chairman), Dr Jim Thomson, Malcolm Lee QC and Peter Johnston (Members), Jerry Packington (Senior Assistant Crown Solicitor), Dr Peter Handford (Executive Officer and Director of Research), Michael Boylson and Robert Broertjes (Senior Research Officers) and Alex Head (Research Officer)

theme of the conference. The Conference focussed on co-operation between law reform agencies. Three addresses were given on this subject. One was by David Kelly, Chairperson of the VLRC and one by Helen Gamble, the Chairman of the NSWLRC. Dr Jim Thomson, a member of the WALRC and for some years an officer of the Standing Committee of Attorneys-General, presented a third paper on co-operation between law reform agencies from the viewpoint of the Standing Commitee of Attorneys-General.

david kelly's paper. David Kelly's address listed a number of areas where duplication has already occurred in Australasian law reform efforts:

- *commercial arbitration* had been considered in the ACT, New South Wales, Victoria (twice), Queensland, South Australia and Western Australia

- *the application of Imperial legislation* had been considered in the ACT, New South Wales, Queensland and Victoria

- *limitation of actions* had been considered in New South Wales (three times), Queensland, South Australia, Tasmania, and eight times since 1955 by two different Agencies in Victoria

- *testators' family maintenance* had been considered in New South Wales, South Australia and Western Australia and three times in Victoria

- *compellability of spouses* as witnesses had been considered in Victoria (twice), South Australia, Tasmania and Western Australia

- *occupiers' liability* had been considered in New South Wales, South Australia and Victoria
- *succession rights of illegitimate children* had been considered in Queensland, South Australia, Tasmania and Western Australia
- aspects of *defamation* had been considered in Queensland, Victoria and Western Australia before the ALRC undertook its work in this area.

costs of balkanization. He went on to talk about the costs imposed on the community by duplicating law reform efforts.

> The 'balkanization' of Australian law was also noted as a problem by the Senate Standing Committee in its 1979 report. Certainly the Australian Constitution recognises the ability of the States to legislate independently of each other on a wide range of matters. But the pursuit of local political goals by each jurisdiction without regard to what is happening in other parts of Australia imposes substantial costs on the community, particularly in relation to those activities which transcend jurisdictional boundaries.

David Kelly's paper recounted the history of efforts to achieve uniform law reform agencies, from a possible national commission debated by SCAG in 1973, through the establishment of the ALRC, having ALRAC itself be responsible for approving or putting forwards recommendations to SCAG (twice rejected by SCAG), the Senate Standing Commiteee on Constitutional and Legal Affairs report in 1979 on *Reforming the Law* and the suggestion by the then Attorney-General Senator Evans in July 1983 for by the establishment of a National Law Reform Advisory Council.

decentralisation. David Kelly concluded that the prospects for formal central structure for imposing co-ordination vertically on various LRCs could well be regarded as a lost cause. Instead, a more decentralised co-ordination model should be adopted which David calls horizontal co-ordination, relying on the existing capabilities of LRCs to liaise with each other. This would include a capacity to agree to assist each other in uniform activities, the capacity to constructively comment on each other's work and the capacity to make a commitment to uniform law reform and strive to achieve it.

Helen Gamble's paper. This theme was taken up by Helen Gamble in her paper on Co-operation Between Law Reform Commissions in Australasia. She proposed that co-operation between LRCs be formalised. Information services provided by ALRC through *Reform*, the *Commonwealth Law Reform Bulletin* and the agency reports provided annually to ALRAC provided the basis for this kind of co-operation. Helen went on to say:

> Because of our shared legal history it is likely that the law reform needs of all Australasian jurisdictions have much in common, even in the late Twentieth Century. It is also likely that the same body of law which is causing problems in one jurisdiction will also be causing problems in others. It is not an unusual experience therefore for a law reform commission embarking on a new project to know that other agencies have trodden the ground before.

Helen Gamble's paper goes on to discuss ways in which this idea can be put into practice. Informal arrangements between agencies are considered and more formal means of implementation, involving a lead LRC publishing

a co-operative joint report, is also explored.

VLRC standing reference. The VLRC has been the first to move formally in this area. It has received a standing reference to monitor other law reform agency reports with a particular view to establishing a formal mechanism for improving co-ordination between the work of the VLRC and other Australian LRCs.

The VLRC reference reads:

> Consequently, I am giving the Commission a standing reference under which it is required to report to me on the suitability for Victoria of reforms proposed in reports of other law reform agencies which I specify from time to time.
>
> When I specify a particular report, the Commission should examine its proposals, identify the precise changes to Victorian law which would be involved and consult with relevant persons and bodies within Victoria. In each case, I will set a deadline for completion of the Commission's report.
>
> I should be grateful if you could regularly draw my attention to reports which are made by the relevant agencies. I should also be grateful for advice on whether the proposals they contain are of sufficient importance and relevance to warrant their formal examination by the Commission.

implementation. The first fruits of this reference have already appeared. As noted elsewhere in this issue, the VLRC has been given a companion reference to the ALRC's product liability reference. In addition, the VLRC, the NSWLRC and the ALRC are joining together in a 'joint venture' on a project being mounted by the VLRC under its standing reference on medicine and the law. That project concerns informed consent to medical procedures. The VLRC's discussion paper is being published in conjunction with the other two LRCs and will be distributed by them in their respective jurisdictions.

the scag viewpoint. A lively debate took place at ALRAC in conjunction with Jim Thomson's paper on co-operation from a SCAG viewpoint. The interaction between the political realities of the way in which SCAG operates and the policy orientation of a number of LRCs were explored in some detail. This was the first time that delegates to an ALRAC Conference had had a chance to hear, from the horse's mouth as it were, the SCAG viewpoint. Dr Thomson summarised his paper as follows:

> By its very nature and composition the Standing Committee must be and is aware of and sensitive to prevailing political nuances and practical, including economic, realities in respect of each matter it considers. Scorching finely tuned erudite Commission reports with the blunt pragmatism of changing policy objectives and commitments may, for some observers and participants, occur too frequently. When that happens — and it will continue unabated even if the Gamble proposal 'that co-operation between the agencies should be formalised' activated a series of joint references and amalgamated agencies' inquiries, research and publications — the value to the Standing Committee of co-operation between law reform commissions is not wholly dissipated. Benefits do enure. New ideas, proposals and recommendations, for example, are not lost and can emerge in different shapes and guises to influence other Standing Committee decisions. Continuing the dialogue — among law reform agencies and between the Standing Committee and law reform agencies — is, therefore, not only inevitable but, more importantly, necessary.

judicial review. ALRAC was opened by the Honourable Justice

Toohey of the High Court of Australia who is a Western Australian. The keynote address was given by the Right Honourable the Lord Ackner, Lord of Appeal in Ordinary on the English procedure for a judicial review. Lord Ackner's entertaining delivery recited the history of the way in which, in the English context, the court's supervisory jurisdiction has been able to be invoked over administrative acts or omissions. The history outlined by Lord Ackner displayed the typical careful English approach to law reform, characterised by modifying existing rules rather than starting again afresh. The difficulties with the pre-1977 English rules, the plethora of difficult and often hard to reconcile bases for seeking different remedies and the highly procedural orientation of the pre-1977 rules well demonstrated in Lord Ackner's speech. Following on recommendations of the UK Law Commission, O 53 was amended to provide for 'an application for judicial review'.

australian view. In a commentary on Lord Ackner's paper, Mr PW Johnson of the WALRC, reminded delegates of Maitland's dictum that the forms of action are not dead: they rule us from their graves. He summarised the pre-1977 position as Lord Ackner saw it by saying

> In the result, English litigants prior to 1977 confronted something in the nature of a forensic lottery in which, if they chose the wrong procedure, they could lose their opportunity for redress.

mouse & co. The post-1977 developments are just as interesting as the earlier developments. Issues of standing have figured prominently. Indeed, the first case under O 53, the *National Federation of Self-Employed v Small Business Limited* [1982] AC 617, which concerned Fleet Street casuals evading their tax obligations by signing their pay sheets under the names of Mickey Mouse, Karl Marx and Donald Duck focused clearly on the standing requirements in O 53. The ALRC report on Standing in Public Interest Litigation (ALRC 27) benefited greatly from the impact of cases like this.

More significant was the case of *O'Reilly v Mackman* [1983] 2 AC 237. According to Lord Ackner

> In *O'Reilly v Mackman* there occurred what I might respectfully call a highly significant example of judicial legislation. I have already pointed out that the Law Commission in terms recommended the remedy by way of judicial review should not be treated as an exclusive one. Neither the Rule Committee nor even parliament when enacting the Supreme Court Act 1981 made any such provision. This did not, however, inhibit the courts from inventing it.

Lord Denning in *O'Reilly's* case held that if any other relief was sought other than an order for judicial review under O 53, and the court would not have granted relief under O 53, the application for other relief should be struck out as being an abuse of process.

> It is an abuse to go back to the old machinery instead of using the new streamlined machinery. It is an abuse to go by action when he could never have been granted leave to go for judicial review.

criticism. Lord Ackner dealt with a number of criticisms that had been levelled at this kind of judicial activism. The substance of these criticisms is that, so long as the other forms of procedure remain open, the plaintiff's chance of success are too heavily dependent on form rather than the substance of the action. Lord Ackner concluded

> Can the principle in *O'Reilly v Mackman*, even carried to its logical conclusion, cause difficulties in practice? . . . Order 53 has built within it a power to direct that an action started by way of judicial review should be able to be continued as though begun by writ. Although there is no reverse escape route this is to prevent by-passing the safeguards provided for in the order by commencing an action by writ when it should have been commenced by judicial review. In cases of doubt the applicant should proceed initially by judicial review just in case leave is necessary.

* * *

odds and ends

□ *queensland inquiry.* The Fitzgerald inquiry in Queensland, being conducted by former ALRC Commissioner, Mr Tony Fitzgerald QC, into allegations of corruption in the Queensland Police Force has run into difficulties with interstate witnesses. The *Sydney Morning Herald* (6 October 1987) reported that the Queensland Attorney-General Mr Clauson announced amendments to the Commissions of Inquiry Act to enable the inquiry to compel interstate witnesses to appear before it.

The announcement follows approaches by Mr Fitzgerald to the government for assistance in requiring prospective witnesses overseas and interstate to appear.

Mr Clauson had admitted that without fresh legislation the Queensland government appeared to be powerless to force witnesses return from overseas or from interstate for the inquiry.

The ALRC report on service and execution of process is presently with the printer and is expected to be tabled within the next few weeks. The question of interstate extradition was specifically dealt with in the ALRC's terms of reference and it can be anticipated that the ALRC will be recommending amendments to the Commonwealth Service and Execution of Process Act which would meet Mr Clauson's and Mr Fitzgerald's needs.

□ *Australian Bicentennial International Congress on Corrective Services.* A major international Congress on Corrective Services is to be held in Australia in Sydney, from January 24–28, 1988. The Congress will cover topics ranging from the traditional custodial issues, prison based programs and criminological research, to community based corrections and the wider aspects of the criminal justice system incorporating the role of the media, the legal profession and community organisations in corrections. It will also debate home detention and intensive supervision, AIDS, drug abuse in prison, prisoner rights and grievance procedures, victims, the future of parole, prison architecture, standards and accreditations and professional development in corrections. Further information can be obtained by writing to the Bicentennial Congress Secretariat, PO Box K390, Haymarket, Sydney, NSW 2001 Australia.

□ *police powers of arrest and detention.* The New South Wales Law Reform Commission has proposed a wide range of reforms to the law governing police powers of arrest and detention. The suggested changes, contained in a Discussion Paper released by the Commission recently, reflect the need to bring ancient rules of criminal procedure into line with the needs of contemporary society.