# Miscellaneous

## Some Notes

Australia

**Organ Transplants**

The Federal Attorney-General has referred the law relating to organ transplants to the Law Reform Commission for examination and report by June 1977.

Among the questions that the Commission has been asked to examine are whether —

(i) legislation should be enacted to deal not only with removal of parts of the human body but also with the preservation and use of the whole body;

(ii) the wishes of the deceased donor should be overriden by the person in possession of the body;

(iii) provisions should be included to ascertain quickly if the deceased had authorized the removal of parts of his body; and

(iv) certain relatives of the deceased should be able to object to the transplantation of organs from the deceased's body.

**Mental health**

The Third National Mental Health Nursing Congress was held in Sydney in September 1977. The four day Congress was attended by over 300 psychiatric nurses, psychiatrists, social workers and medical practitioners from Australia, New Zealand, New Guinea, India and Thailand.

In an address to the Congress entitled 'The Civil Rights of Mental Health Patients', the New South Wales Attorney-General said that the utmost care should be taken to ensure that the treatment of mental illness did not unduly override commonly accepted standards of individual liberty, particularly where involuntary patients were concerned.

The Attorney-General disagreed with the view of the State's Mental Health Act Review Committee that the forced administration of shock treatment to involuntary patients was justified provided certain safeguards were met, and stated that there should be more stringent legal checks and balances on the admission of involuntary patients into psychiatric hospitals.

**Poverty**

Various Reports prepared by the Commission of Inquiry in to Poverty have now been published.

The Commission was appointed in 1972 to—

(i) determine the extent of poverty in Australia;

(ii) to determine the extent and effectiveness of existing measures and services, and the responsibility of Federal, State and local governments in matters associated with poverty;

(iii) ascertain the factors which cause poverty in Australia; and

(iv) make recommendations on ways of reducing poverty.

The various Reports include studies on matters such as law and poverty in Australia, social-medical aspects of poverty, poverty in education, community welfare services, consumer views on welfare services and rented housing, food consumption patterns, long term unemployed persons under conditions of full employment, a model system of welfare service planning, poverty among Aboriginal families, the effectiveness of community aid centres, a survey of young workers, the problems of the aged, the utility of Australia's income security policies, and the welfare of migrants.

In relation to the Report on law and poverty in Australia, there are specific studies, conducted by Professor R. Sackville, Professor of Law at the University of New South Wales, on the legal needs of the poor, homeless people and the law, legal aid in Australia, migrants and the legal system, and poverty and residential landlord-tenant relationships.

Still to be published are studies relating to a number of other topics, including bail and social security, poverty and the legal profession in Victoria, debt recovery in Australia, poverty and mental illness, and consumer protection and the incidence of consumer problems.

**Mandatory reporting of child abuse**

According to the Chairman of the Australian Law Reform Commission the claim that legislation compelling the reporting of cases of child abuse deterred parents from seeking help had not been proved. The Chairman said that he was aware that the Victorian Government had decided not to introduce a system of compulsory reporting (see page 1152 of this issue), as other Australian States had. However, he added that, "The claim that compulsory reporting legislation deters parents from seeking medical help has never been established by statistical information. There is no doubt that compulsory reporting is no panacea for the problem of child abuse. But no problem of this kind can be tackled if its variety, incidence and frequency are all but unknown."

The Chairman, who was addressing a La Trobe University Seminar on Child Welfare Law Reform, said that it was difficult to

estimate the national incidence of child abuse because of the shocking state of crime statistics.

He said that all American States had laws of varying scope and impact which required physical abuse of children to be reported. "The consequence of this legislation has been, at the very least, a better appreciation of the size and difficulties of the problem and the proliferation of a number of novel experiments in child abuse facilities", he said.

The Chairman said that the Australian Law Reform Commission was planning procedures for compulsory reporting in the Australian Capital Territory.

**Drugs**

The Australian Government has appointed Mr. Justice Williams, a Judge of the Supreme Court of Queensland, to act as a Royal Commissioner in a national inquiry into the use, etc., of drugs in Australia.

All state Governments, except those of New South Wales and South Australia which are holding their own inquiries into drugs, have agreed to support the national inquiry.

The Royal Commission's terms of reference are as follows—

(i) the extent of, and the methods used in
  (a) the illegal importation of drugs,
  (b) the illegal exportation of drugs,
  (c) the illegal production of drugs,
  (d) the illegal trafficking in drugs;

(ii) the places where drugs mentioned in paragraph (i) are produced or from which they are obtained and the places to which they are sent;

(iii) the extent to which
  (a) drugs are illegally used,
  (b) drugs lawfully obtained are diverted to illegal trafficking or illegal uses,
  (c) drugs are misused in so far as such misuse is relevant to the illegal use of drugs;

(iv) the extent (if any) to which the illegal activities mentioned in paragraph (i) or the illegal use or the diversion mentioned in paragraph (iii) are engaged in, directly or indirectly, by persons who engage, on an organised basis, in other illegal activities, whether or not related to drugs;

(v) the adequacy of existing laws (including the appropriateness of the penalties) and of existing law enforcement (including arrangements for co-operation between law enforcement agencies) in relation to the prohibition, restriction or control of the importation, exportation, production, possession, supply or use of, or trafficking in, drugs;

(vi) whether new law should be enacted or other measures taken (including the taking of initiatives for the making or revision of international agreements) to remedy any inadequacies found to exist under paragraph (iii).

Interpretative provisions—

(vii) the expression "drug" means a narcotic or psychotropic substance and includes every drug or substance specified in any of the schedules to the single convention on narcotic drugs or the convention on psychtropic substances;

(viii) a reference to a drug includes a reference to an article or substance containing a drug;

(ix) a reference to the production of a drug includes a reference to the manufacture of a drug by any means and also includes a reference to the cultivation or production of any plant substance from which a drug is capable of being derived;

(x) a reference to the importation or exportation of, or to trafficking in, a drug includes a reference to the importation or exportation of, or to trafficking in, a plant or substance referred to in paragraph (ix) or of a seed from which such a plant can be cultivated.

Direction to Commissioner—

To the extent that alcohol may be regarded as a narcotic substance, the commissioner is to be directed to have regard to it only in so far as it is necessary to do so for the purpose of establishing the extent of the illegal use, or of the misuse, of other drugs in accordance with paragraph (iii).

**Combatting illicit drugs**

At the hearings of the Federal Royal Commission into Drugs evidence has been given before the Royal Commissioner, a Judge of the Supreme Court of Queensland, that has caused him to conclude that one person in Sydney is controlling the whole of the trafficking of heroin throughout Australia.

Senior police officers giving evidence before the Royal Commission have stated that the importation and trafficking of heroin in Australia is on the increase, and they called for powers to enable them to institute border checks of vehicles travelling between the Australian states, as well as increased powers of search, including telephone tapping.

The Federal Minister for Business and Consumer Affairs has visited four South East Asian countries to meet with politicians and government officials in order that he might obtain more information on the role such countries are playing in attempting to control the trafficking in hard drugs.

Following the Minister's visit, a second Australian narcotics bureau has been opened in South East Asia, thus giving Australia

one bureau in Malaysia and another in Thailand.

The Minister stated that he was impressed with the development of Thailand's law enforcement agency, and the methods the agency was employing, and with that country's determination to reduce the production of opium.

**Drug abuse**

A Report on the extent and nature of the inappropriate use of alcohol, tobacco, analgesics and cannabis has been prepared by the Senate Standing Committee on Social Welfare.

When tabled in Parliament, it was stated that this Report would make a significant contribution to one of the most important debates now taking place in Australia. This is the first, national, parliamentary report into the use and abuse of alcohol and tobacco in Australia, and the first attempt to state a national strategy for coping with drug abuse.

The Committee's Report notes that Australians are compulsive and heavy drug users, and have always been so. National tradition has lent towards intoxication, rather than towards sobriety.

A total of 84 recommendations were made in the Report, many of which are highly controversial. Among these are the recommendations that —

(i) personal use of marihuana be decriminalised;
(ii) that all analgesics carry an appropriate cautionary warning on their containers;
(iii) that a total ban be placed on the advertising of tobacco products in all areas under the Australian Government's control; and
(iv) that the Government ban the advertising of alcoholic beverages.

**Use of Drugs and Crime**

The Australian Institute of Criminology is to conduct an inquiry into the connection between the use of drugs and the incidence of violent crime in Australia.

The Federal Treasurer told Federal Parliament that the Federal Taxation Department will be asked to supply the New South Wales Royal Commission into Drugs with details of the income of persons suspected of being involved in drug trafficking. The Treasurer added, however, that it would be up to the discretion of the Commissioner of Taxation whether such information would be furnished, and there could be no question of the Commissioner being ordered to supply the information involved.

## Drug use and crime

Between 30 and 40 per cent of the money spent on illegal drugs in Australia is derived from crime other than drug offences, according to a Report "Drug Use and Crime", issued by the Australian Institute of Criminology. The offences referred to included property crimes, gambling offences and prostitution.

The Report bases its findings on a study of the criminal histories of 1,000 Australians convicted of drug offences, and states that estimates of the amount of drug-related crime in Australia should be treated with caution. It finds that drug-related criminal behaviour is particularly influenced by social and economic factors. For most narcotic addicts, criminal behaviour preceded addiction.

A significant number of narcotic addicts commit crimes to support their habits. Of these crimes, the majority involve property offences of goods which can be sold to derive money for the purchase of drugs. There was an increasing tendency, however, for addicts to indulge in crimes against persons to obtain money directly, as the risk of arrest and conviction for drug-related criminal activity is very low.

The Report says that, although the conclusions are largely based on American data, there is no reason to suggest that the same is not also true for Australia. Comparing these conclusions with the study of Australian offenders, the Report says the population of narcotic users is composed of individuals with "widely varying habit sizes and frequencies," implying that aggregate estimates of habit sizes, and analyses based thereon, may be inappropriate.

A significant percentage (probably between 30 per cent and 50 per cent) of the income needed to support large habits is generated within the drug distribution network itself (that is, by buying and selling illegal drugs).

The Report found that, although those convicted of cannabis offences came largely from the same group as those who committed narcotics offences, fewer cannabis offenders had criminal backgrounds.

The Report recommends that –

(i) the Police Commissioners establish and maintain a "heroin-user crime index";

(ii) an intensive study of the heroin distribution system, preferably in Sydney, should be made; and

(iii) the Commissioners take the initiative in analysing drug policies, with a view to setting realistic goals for drug enforcement.

### Alcohol, tobacco, analgesics and cannabis

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(iii) a total ban be placed on the advertising of tobacco products in all areas under the Government's control; and
(iv) the Australian Government ban the advertising of alcoholic beverages.

**Dangerous drugs**

The Federal Minister for Business and Consumer Affairs has announced Cabinet approval of legislation imposing harsher penalties for the offence of trafficking in narcotics and other dangerous drugs.

It is proposed that the penalties for drug offences involving the illegal importation or export and possession of the relevant drugs will be increased to a maximum fine of $A100,000 or 25 years' imprisonment.

The only drug excluded from the increased penalties will be cannabis, in leaf form. The penalty for possessing this drug will remain at a $A4000 fine and 10 years' imprisonment, or a $A4000 fine or 10 years' imprisonment.

**Abortion debate revives**

Members of Parliament are reported to be sharply divided over measures which have been introduced to amend abortion legislation enacted as recently as last December [noted at (1978) 4 C.L.B. 239]. A petition signed by more than 250,000 electors (about 20 per cent of the electorate) has also been presented, calling for total repeal.

Many women are now flying to Australia to obtain legal abortions there.

Some see the issue as becoming a dominant one in the General Elections scheduled for November, despite the MPs' voting on a "conscience" and not on a party basis.

**Pornography**

The respective Australian State and Federal Governments have agreed to place tighter controls on the publication of materials depicting paedophelia and sadism.

The various ministers whose portfolios cover censorship are to discuss the matter at another meeting.

**Social services and the family**

The federal Department of Social Security has published a Report on families and social services in Australia.

The 581-page Report is in two parts: Volume I contains the foreword and summary of recommendations and six chapters covering the introduction and the information concerning the current and future structural forms the family takes in Australian Society; Volume 2 contains the analysis of the Committee's work explained in Volume I, and appendices relating to much of the information collected.

The Report examines the services that are directed, or should be directed, to assisting the social functioning of individuals and groups of individuals in families concerned with the child rearing process.

The Report does not canvass services the objectives and nature of which are primarily related to such matters as education, housing, adult corrections, health, and recreation.

Special appendices deal with income security and housing policy as they affect families. Also covered are the range of personal social services affecting many different types of employed personnel, administrative systems, public financing and legislative or statutory bases. The personal social services include —

(i) all those services that assist disadvantaged groups, such as the disabled, handicapped and retarded, to live as normally as possible;

(ii) the services that assist the day to day social functioning of the aged, children and families: the services that facilitate and support the involvement and participation of people in their communities and in society;

(iii) the services that enhance and maintain employability; and

(iv) the linkage and referral services that join people with services and thereby assist in meeting individual and community needs.

**Genetic engineering**

A Professor at the Australian National University's School of Medical Research, who is also the Chairman of a Committee established by the Australian Academy of Science to monitor world-wide developments in genetic engineering, has advised Members of Federal Parliament that he is not convinced that there is a need for any legislation on genetic engineering in Australia and that, if introduced, such legislation could become inflexible because science was changing and scientific techniques developing so rapidly.

**Report of the Australian Royal Commission on Human Relationships**

The Royal Commission on Human Relationships was established by the Australian Federal Parliament after an unsuccessful attempt in 1973 to pass a private member's Bill to liberalise abortion laws in Australian Federal Territories. The motion to establish the Commission (approved on a free vote by 85 votes to 11) encompassed broad terms of reference, the aim of which was to "enquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships" insofar as they could be improved by Government funding and facilities. The three Commissioners—Justice Elizabeth Evatt, Chief Judge of the Family Court of Australia, Dr. Felix Arnott, Anglican Archbishop of Brisbane and Anne Deveson, broadcaster and journalist—began their work in 1974 and were expected to produce a report by mid-1978. Their funding was cut in 1976 (a decision criticised by the Commissioners) and the Report was finalised and released in November 1977.

The three years' investigation by the Commission has produced one of the most comprehensive studies of social issues in Australia's history. Its conclusions are based on 1,264 written submissions, oral evidence at public hearings by 374 people, informal discussions and research done by and for the Commission. Every individual or organisation with expert knowledge or point of view relevant to the enquiry was consulted or given an opportunity to contribute, and the list of submissions shows that a wide range of views was represented. The Report is in seven parts, printed in five volumes and includes 511 unanimous recommendations covering the broad areas of education in human relationships; health and medical education; sexuality and fertility; the family; equality and discrimination; and rape and other sexual offences.

The Commissioners point out that the enquiry itself is a product of profound personal and social changes in the area of male and female relationships—changes which have occurred at a pace "previously unparalleled in human history". They saw their task as exploring these changes and making recommendations which would be an aid to understanding and assist institutions to reflect the reality and meet the needs of contemporary Australian society. The constraints of space preclude the possibility of dealing with all the recommendations or even subject headings (52 topics are listed in the table of contents), so the reaction of the community has been used as a guide in selecting specific recommendations for comment.

The Commission's findings that young people are ill-prepared to deal with the pressures of a rapidly changing society; that there is insufficient support for the family structure when it is over-stressed and a paucity of social planning in areas affecting the family; that the changing roles of men and women in the family and society are inadequately dealt with in education programmes; that inequality and discrimination still exist in relation to sex, marital status, ethnic

background, minority groups and education; that the needs of groups such as the handicapped, migrants, solo parents and Aboriginals are inadequately met; that the training of professionals dealing with human relationships problems is deficient; and that there is an urgent need for social and legislative changes to remedy these problems have received widespread community support and praise from political and church leaders. However, recommendations resulting from the Commissions' belief that "the law should not be the arbiter of moral values" and that ignorance about sexuality and fertility control should be rectified by education programmes and by information being freely available, have provoked strong criticisms from some sections of the community. The recommendations which have proved contentious are the lowering of the age of consent to sexual intercourse to 15; the encouragement of the free display and advertising of contraceptives; the availability of contraceptives and abortion to girls of 14 and over without parental consent; the availability of abortions up to the 22nd week of pregnancy at the request of the woman, or later if mental or physical abnormality is probable; the decriminalisation of homosexuality and the teaching of acceptance of it in schools; the decriminalisation of incest between consenting couples over 17; the decriminalisation of prostitution and brothels; the abolition of the offence of rape and its replacement with appropriate assault charges; and the removal of criminal sanctions against teachers where intercourse occurs with a student of 17 years or over.

While recognising that many people have sincere moral objections to many of these proposals, it is regrettable that the response of some public figures and of some sections of the media has not been conducive to rational debate. The controversial recommendations were leaked during an election campaign and what one newspaper described as "cheap political point-scoring" followed. Press statements describing the Report as "horrific", "appalling", "abominable" and "fairly revolting" were issued, and many newspapers responded by labelling the Report as 'The Sex Report'. The community's reaction, as evidenced by letters and public comments, ranged from describing the Report as "an extravaganza of licence" to "the most important social document ever produced in Australia".

In summarising the ramifications and examining the likely implementation of the Report, the unfortunate nature and timing of its release are seen as inhibiting reasoned discussion in both the community and parliament. It was to be expected that an enquiry into such delicate and morally sensitive areas of human behaviour would produce some controversial conclusions, but in a calmer, non-election atmosphere it is hoped that they will be reconsidered in the context of the whole Report. With perception and enlightened judgment the Commissioners have framed recommendations to

protect the individual and the family, and the social and legal implications of their finding may have a significant effect on the course taken by Australian society for decades to come.

It is probable that considerable time will pass before parts of the Report are implemented, but the serious social issues raised merit study by all sections of the community. Despite the wide parameters of the Report, the mass of data contained within it, and the number of recommendations finally made, the essence of the Royal Commission on Human Relationships is best captured by the Commissioners' own statement that "throughout the enquiry we have been guided by a belief in the right and integrity of the individual to make free choices in the context of human relationships, and to have access to the knowledge and skills which give such a free choice meaning".

Lesley Vick

**Mental health**

The Chairman of the Australian Law Reform Commission has called for legislation to prevent people being wrongly committed to mental hospitals. He said that existing laws in this area were outdated and failed to protect people from arbitrary and "oppressive" commitment.

Delivering the 20th Barton Pope Lecture for the South Australian Association for Mental Health, Mr. Justice Kirby said that the law should be brought into line with medical and social developments. He said that mental illness was rarely defined, even in psychiatric textbooks.

"The apparent faith in psychiatry is not always borne out by the results of psychiatric treatment", he said. "Many psychiatrists would surely agree with this. Within psychiatry there are differing, and sometimes competing, conflicting schools of thought. Without specific criteria and a real prospect of useful curative treatment, commitment to a mental hospital in a particular case may be oppressive and even arbitrary. There is no doubt that the mentally ill and intellectually handicapped suffer additional disadvantages in the state of our law," he said. "It is my hope that lawyers, law-makers and law reformers will play their part to improve this situation."

Mr. Justice Kirby said patients disputing mental ill-health should have compulsory, free, legal representation. "This is not a matter of forcing lawyers and other representatives on confused, disturbed, or dangerous mental patients", he said. "It is a matter of providing checks against the needless loss of freedom by people whose conduct, though it may be unusual, does not typically endanger themselves or society."

He also called for decriminalisation of suicide in all States (this has been done in Victoria) and said that the survivor of a suicide pact in which the other person had died should not be guilty of murder, but guilty of the lesser crime of manslaughter. There should be a specific offence of inciting or aiding a suicide or attempted suicide, he said. Proper support facilities should be provided for people who survived a suicide attempt.

Mr. Justice Kirby also called for—

(i) attention to the separate and special problems of intellectually handicapped people;

(ii) facilities for mental health problems created by drugs of addiction;
(iii) a review of the rights of people held "at the Governor's pleasure";
(iv) automatic review of the status of involuntary patients in mental hospitals;
(v) a reduction in the number of patients in mental hopsitals; and
(vi) a reduction in the average period of a mental patients' period of compulsory commitment before it was reviewed.

He said that it was important to recognise that the system of involuntary admission to a mental hospital was second only to the criminal justice system in the impact it could have on the civil rights of the individual. "Imagine what an outcry there would be if a person were sentenced to imprisonment in Australia without a trial, or for a generalised purpose such as the protection of others," he said. He also quoted New South Wales' figures which estimated that over half those admitted to Sydney's Callan Park Hospital were not suffering mental illness "in any strict interpretation of that term".

He believed that the grounds for involuntary commitment needed to be more clearly specified. Between 25 and 30 per cent of admissions to Australian mental hospitals were by involuntary patients—about 15,000 people each year. The law should question closely the sending of people to mental institutions as it did the sending of people to prisons, he said: "What we are dealing with is the personal freedom and individual liberty of a large and probably growing section of the community. One can see the problem in better perspective if it is remembered that, on average, the number confined in Australian prisons at any time is in the order of 10,000 people."

**Suicide and mental health**

The Chairman of the Australian Law Reform Commission has recommended that the crime of suicide, though rarely prosecuted, should be abolished. He said that if there was a real risk of prosecution, the depression of the attempted suicide might be intensified and could provide a basis for further attempts.

He also recommended that the survivor of a suicide pact who had killed the deceased party should be guilty of manslaughter, and not, as at present, of murder. Instead there should be a specific offence of inciting, counselling, aiding and abetting the suicide or the attempted suicide of another.

Delivering the 20th Barton Pope Lecture to the South Australian Association of Mental Health, the Chairman said that mental-health laws needed to be reformed to keep pace with medical and social developments. "More than 60,000 people enter Australian mental hospitals every year", he said, "Between 25 and 30 per cent of this number are committed as involuntary patients".

He recognised that a person suffering from mental illness might also suffer social harm in the nature of embarrassment or ridicule, or in the nature of lost employment prospects, or even harm of a financial nature for himself or his family. However, while in some cases it might be appropriate to make attempts to persuade such a person to accept voluntary treatment, harm of a social, moral or financial nature should not justify detention without consent.

The Chairman predicted that mental-health law reform would involve measures to provide effective scrutiny of medical decisions to commit unwilling people to mental hospitals and a stricter definition of the criteria justifying involuntary commitment. In this regard, he said that there should also be legal provisions and other representation to mental patients, automatic review of the status of involuntary patients in mental hospitals, and a reduction in the average period of compulsory commitment before review.

He said that institutions were "frequently oppressive to the individual, destructive of self-reliance and sometimes brutalising both to the institutionalised and those who guard them. In the criminal justice area, it is recognised that some, including some mentally ill persons convicted of criminal offences, must be confined under close scrutiny. But the search is now commenced to find, for many who do not require such oppressive treatment, control which will be less costly and which will help to instil greater self-control and appreciation of the obligations that attend living in a modern independent community".

## Australia — A.C.T.

### Public Health

The Australian Capital Territory Health Commission is in the course of preparing new, comprehensive, food laws for the Territory.

The laws, which are based on standards recommended by the National Health and Medical Research Council for incorporation in Australian State and Territory legislation, will apply to the purity of food and to the preparation and sale of food in the Territory.

### Abortion

The Australian Government has rejected the recommendation of the Australian Capital Territory's Legislative Assembly that a free-standing abortion clinic should be built within hospital grounds and administered by the Territory's Health Commission.

The Government has also declined to accept the Assembly's recommendation that the Government incorporate the ruling of Mr Justice Menhennitt of the Supreme Court of Victoria (which enabled an abortion to be performed if medical practitioners considered the woman's mental or physical health to be in jeopardy) into the Territory's law relating to abortions. Instead of accepting the Assembly's recommendation for a permanent Termination of Pregnancy Ordinance for the Territory, the Government has extended indefinitely its present ban on private abortion clinics.

The Assembly's recommendations to the Government arose out of a 103-page Report to the Assembly by the Assembly's Standing Committee on Education and Health which recommended 45 proposals for abortion law reform in the Territory.

**Mental Health Advisory Committee**

Two members of community groups will have places on an eight-man advisory committee on mental health which has been recommended by the Australian Capital Territory Health Commission.

The Commission approved a recommendation by its Legislation Committee that provision be made in the proposed Mental Health Ordinance for such an advisory committee.

The membership of the committee would consist of the Commissioner or his nominee, the Director of Mental Health or his nominee and six other people nominated by the Commissioner and include a health administrator, a doctor, a clinical psychologist, a social worker and two members of community groups or agencies working in the field.

One of the Committee's duties will be to advise the Commission on standards of care and treament of people with mental dysfunction so as to ensure the preservation of their human rights.

The Commission also approved a recommendation that the treatment of alcoholics and drug dependents be removed from the scope of the proposed Ordinance.

The recommendation also said that after the introduction of the Mental Health Ordinance, new legislation to cover alcholics and drug dependents would be a matter for consideration.

## Australia – New South Wales

**Drug trafficking**

The Royal Commission of Inquiry into Drug Trafficking appointed by the New South Wales Government is calling for public submissions on its third term of reference.

The terms of reference of the Royal Commission, are now as follows –

(i) the cultivation, production, manufacture, distribution, supply, possession and use of
  (a) drugs that are, for time being, drugs of addiction or prohibited drugs within the meaning of the Poisons Act, 1966 (N.S.W.),
  (b) other drugs (other than tobacco and alcohol) that are drugs of dependence or of dependence potential;

(ii) the identity of persons involved in
  (a) the cultivation, production, manufacture, distribution or supply, where contrary to the laws of the State, of drugs of the kinds referred to in paragraph (i), or in the possession or use by others when contrary to those laws, of those drugs, or
  (b) illegal or improper activites in connection with the matters referred to in sub-paragraph (a); and

(iii) whether, in the light of the findings of the Commission on the above matters, changes are desirable in

(a) the manner in which the laws of the State relating to the possession and use, cultivation, production, manufacture, distribution and supply of drugs of the kinds referred to in paragraph (i) are administered by the authorities of the State, whether acting alone or in co-operation with the authorities of other States or the Commonwealth, or
(b) those laws referred to in sub-paragraph (a).

**Child abuse**

The New South Wales Child Life Protection Unit, established under the Child Welfare (Amendment) Act 1977 (N.S.W.), has reported a 500 per cent increase in the incidence of child abuse in the State [see also (1979) 5 C.L.B. 445].

Under the amending Act medical practitioners are protected from civil litigation if they report incidence of child abuse, as are members of the public acting in good faith.

The State's Department of Youth and Community Services, which administers the Act, has stated that there is a growing trend for self-referral in cases where parents who are abusing, or on the point of abusing, the children contact the Unit themselves.

**Patients' rights**

The Medical Consumers' Association of New South Wales has drafted a Patients' Bill of Rights. One of the main features of the Bill is a provision that would give patients the right to have information on matters relating to their health and medical treatment stated in plain language. Other provisions in the Bill would—

(i) enable a patient to, in effect, make a "living will" stating what they would like to be done to them if they became unconscious;
(ii) give a patient a right to seek alternative means of health care and treatment, such as acupuncture, herbalism, hypnotherapy and naturopathy;
(iii) entitle a patient to refuse any specific treatment, drug, examination or other health care procedures; and
(iv) provide a patient with a right of access to his medical records.

Copies of the Bill have been sent to all hospitals in New South Wales and to the State and Federal Attorneys-General.

**Hazardous children's toys**

The New South Wales Minister for Consumer Affairs has introduced regulations that enable the State's authorities to ban the sale of toys in the State which are found to be hazardous by the State's Products Safety Committee.

**Child abuse**

The New South Wales Minister for Youth and Community Services has introduced a Bill to amend the State's Child Welfare Act to make it compulsory for medical practitioners and other persons having a professional contact with a child to notify the Director of the Department of Youth and Community Services of any cases of the child being abused.

Under the legislation, parents who leave small children alone in motor vehicles for an "unreasonable length of time" will be liable to fines of between $A200 and $A1000.

**Marihuana**

The Attorney-General for New South Wales is to introduce legislation into the New South Wales Parliament to amend the State's present laws against the use or possession of marihuana.

The proposed amendments will, if enacted, mean that anyone arrested for smoking or possessing small quantities of the drug will be subject only to a minor fine and not to imprisonment. However, the amendments will not apply to persons charged with selling marihuana or with having amounts considered to be excessive for personal use.

At present, the law provides for a maximum penalty for possessing or using marihuana of a fine of $A2000 and two years' hard labour. However, statistics show that magistrates are imposing fines of between $A60 and $A80, and not imprisoning offenders.

The Attorney-General stated that it was his personal view that persons who smoked marihuana should not be sent to prison, as the effects of the drug were shown by medical evidence to be less harmful than the consumption of alcohol and tobacco.

**Victimless crimes**

A special committee has recommended to the New South Wales Government sweeping changes to the law regarding drunkeness, vagrancy and prostitution. The committee has recommended the repeal of prison sentences for prostitution and vagrancy. Drunkenness, it said should no longer be an offence. It recommends that police be able to take a person suspected of being drunk before a court, which could admonish him or require him to undertake medical treatment. The courts could require vagrants to attend rehabilitation centres for up to one month for appropriate treatment. The committee recommends that the fine for prostitution be reduced from A$400 to A$200 and that the six months' gaol sentence be abolished.

**Rights of the mentally ill**

The Institute of Criminology at Sydney University has conducted a Seminar on the Rights of the Mentally Ill at which, inter alia, the rights of mental patients to such things as legal representation was discussed by lawyers, doctors, psychiatrists and welfare workers.

**Consumer protection**

The New South Wales Government has introduced a Bill to make it illegal for retailers of bread in the State to return any bread which they are unable to sell to the bread's manufacturers.

The New South Wales Government has also introduced a Bill that requires many perishable products which are likely to perish after a period of three months to two years, such as chewing gum, peanuts, chocolate, cosmetics, biscuits and cereals, to carry a plainly expressed, and prominently displayed, date of manufacture on their labels. The State's Minister for Consumer Affairs has announced that, after the Bill is enacted, manufacturers will have one year to ensure that their products comply with the new law. The State's Minister for Health is preparing similar legislation that will apply to food which perishes more quickly, such as milk, bread and eggs.

**Psychosurgery**

The New South Wales State Government is considering the Report of an inquiry panel that was appointed to investigate psychosurgery techniques at the State's leading psychiatric hospital.

The panel recommended that all future cases of psychosurgery be referred to a special board for approval. This board, comprising medical experts, lawyers and private citizens, would require proof that the patient had given "informed consent" before an operation involving psychosurgical techniques could be performed.

"Informed consent" would be based on evidence of the patient's capacity to make a rational decision and proof that his own medical practitioner had detailed the procedure and any associated risks. The inquiry felt that no person who refused such operations should ever have an operation performed on him against his will unless a Judge of the Supreme Court found the patient to be incapable of making a rational decision. In such a case the Judge could authorise the operation if it was proved to his satisfaction, on medical evidence, that the operation was required to relieve "severe and intractable suffering".

**Medical practitioners**

The New South Wales Attorney-General has appointed a committee, under the chairmanship of the Chief Justice of the Supreme Court, to investigate the difficulties medical practitioners have in giving evidence in court proceedings.

**Licensing of hostels**

The New South Wales Government is investigating the licensing of hostels and boarding houses with a view to increasing their social status and well-being. The Government's decision arose out of the Report of the Federal Government's Commission on Poverty which found that many people who were discharged from psychiatric hospitals lived on or below the poverty line.

The State Minister of Health also stated that the State Health Commission was already reviewing the operation of the State Mental Health Act 1958, including its sociological aspects.

**Chiropracty**

The New South Wales Minister for Health has announced that he will introduce legislation later this year to require all persons practising manipulative therapy in the State to be registered.

**Consumer protection**

The Department of Consumer Affairs is conducting an investigation into the pest exterminator firms operating in the State.

**Victimless crime**

The New South Wales Government has sponsored an international seminar on "victimless" crime.

The seminar, which was opened by the State's Premier, is being used as a basis for assisting the State Government to prepare legislation to decriminalise many victimless crimes.

**Child neglect and abuse**

A New South Wales senior pediatrician has stated that there is a reluctance on the part of Australian doctors to diagnose and report instances of child abuse and that they helped to hide the extent of the problem. The pediatrician was speaking at a conference held at Sydney in September 1980 on child neglect and abuse that was jointly sponsored by the State Department of Youth and Community Services and Kuring-gai College of Advanced Education. The senior pediatrician told the conference that the medical profession had a significant responsibility to the community in the prevention of child abuse. However, this responsibility was sometimes neglected because of the unwillingness or the inability of practitioners to recognise the symptoms of the abuse or the potential child abuse in parents.

The "baby-bashing syndrome" had not been publicly acknowledged until 1962, he said, and, because of this late recognition, Australian medical schools had not developed adequate teaching in this area. Practitioners frequently did not diagnose or report cases of child abuse because they feared becoming involved in subsequent legal proceedings. He said that legislation had been introduced into New South Wales in 1977 making it compulsory to report cases of child abuse, and that in every year since 1977 about 850 cases had been reported by private prac-

titioners; only 2.9 per cent of these cases had been reported by private practitioners.

A former President of the Council for Civil Liberties described to the conference the difficulties experienced by advocates appearing for children at the Childrens' Courts on complaints of neglect or abuse. She said that it was essential that advocates have sufficient access to independent researchers to enable them to put impartial cases to the courts.

**Children born through artificial insemination**

In July 1980 the Attorney-General for New South Wales announced that the Standing Committee of Australian Attorneys-General has agreed on a proposal to ensure full legal status for children born through artificial insemination donor sperm.

The Attorney-General said that it was estimated that at present there were about 10,000 children in Australia already born or about to be born as the result of artificial insemination by the sperm of a donor. He added: "At law these innocent children suffer grievous handicaps because they cannot be regarded as legitimate. Such children suffered legal disabilities mainly when it came to inheritance and maintenance. The very real danger is that in a contest over inheriting property of their sociological father (the husband of their mother at the time of their birth) these children will come off second best compared to any legitimate children or other beneficiaries. Similar problems threaten in the area of claims for maintenance from the sociological father."

The Attorney-General said that the Standing Committee had also agreed to recommend to their respective governments that they introduce legislation to provide that a husband who consents to his wife having artificial insemination shall be deemed to be the father of the resulting child. The Standing Committee had also agreed to recommend that provision be made that a sperm donor shall have no rights or liabilities in respect of any child conceived through use of his semen, and that any child so conceived shall have no rights in respect of its donor father.

## Australia—Queensland

**Child bashing**

The Minister for Health for Queensland has announced that he will be introducing a Bill to amend the State's Health Acts 1937-1952 so as to require the State's medical practitioners to report cases of child bashing or suspected child abuse to the State's Director-General of Health and Medical Services.

**Organ transplants**

Draft legislation to permit organ transplants to take place in Queensland was discussed at the Australian Health Ministers' Conference held at Brisbane in June 1979.

The Queensland Minister for Health said that the Conference would hear about the draft of the Human Tissue Transplant Bill in Queensland.

He said it was against the law under the Criminal Code of

Queensland now for an organ, such as a kidney, to be donated by a living person for transplant purposes. The draft legislation would cover donations by living and dead people, and this would significantly increase the number of kidneys available for people presently on dialysis machines.

Ministers of Health from all States and the Federal Minister of Health attended the Conference with their senior advisers from 27 to 29 June.

Other topics that were discussed included the Harrisburg nuclear accident, Indo-Chinese refugee health schemes, the drafting of a Model Food Act covering packaging and handling, and uniform controls over electro-medical equipment. The Queensland Minister for Health said that large amounts of new electronic medical equipment were now available. Uniform legislation was needed to evaluate these machines before they could be used.

**Child abuse**

Special anti-child abuse teams will be established in 33 centres throughout Queensland.

The teams have been formed following the passing of special anti-child-abuse laws by the State Government, which makes it compulsory for doctors to report child-abuse cases.

The State's Minister for Health stated that three basic members of the team would be a doctor, a policeman and a Children's Services Child Care officer. He said that the teams would be established in 15 major centres in the State, and that there would also be teams in 18 regional centres.

The Minister said that although the incidence of child abuse in Queensland is not known, the State Government was concerned by the apparent extent of the problem and the complexity of handling it.

The new legislation made it mandatory for medical practitioners to notify the Director-General of Health and Medical Services of an instance where they suspect a child has been abused or neglected.

He stated that "child abuse" is any act or omission which endangers or impairs a child's physical or emotional health and development, and included physical abuse and corporal punishment,emotional abuse, physical neglect and inadequate supervision, emotional deprivation, sexual abuse and exploitation.

## Australia—South Australia

**Non-medical use of drugs**

A research paper tendered in evidence to the South Australian Royal Commission into the Non-medical Use of Drugs has concluded that the maximum penalties in many cases were unrealistic in relation to the harm actually caused by the drugs, and calls for a reclassification of all drug offences and penalties.

The paper, written by a law lecturer at the South Australian Institute of Technology and a research officer attached to the Royal Commission, examined in detail the principles and statistics of drug prosecutions and sentencing in South Australia between June 1974 and June 1977.

The authors of the paper concluded, inter alia, that—

(i) more than 93 per cent of drug offences prosecuted in the first half of 1977 involved the use of cannabis and only a small number involved the use of heroin;

(ii) judges and magistrates increasingly relied on the imposition of fines rather than on prison sentences to discourage drug use, and approximately half the number of persons convicted for the illegal use of cannabis were fined only;

(iii) South Australian courts differed from those in other Australian States in taking into consideration the type of drug involved, the amount of drug used, the motives of the trafficking in and using drugs, and other circumstances;

(iv) the State's judges and magistrates were aware of the effects of different drugs, and tended to impose more lenient sentences on offenders using less harmful drugs; and

(v) between 80 – 85 per cent of people charged with drug offences in the State were convicted.

The authors also questioned the view that the users of cannabis must be severely penalised because otherwise they might progress to using opiates. They considered that it could not be assumed that most users of cannabis came into contact with dealers in hard drugs, since many of them obtained the drugs from their friends.

**Sport Insurance**

The South Australian Minister for Labour and Industry has tabled a Report recommending the establishment of an insurance scheme to cover sportsmen and sportswomen against injury.

Under the proposed scheme, which would cover some 250,000 sportsmen and sportswomen, a death benefit of $A25,000 would be paid to the dependants of a deceased sportsman or sportswoman. Full time professional sportsmen and sportswomen would be excluded from the benefits of the scheme, together with persons involved in the horse racing and trotting industries.

The Report recommends that —

(i) the only sporting activities covered should be organized competitive sports involving a degree of skill and physical prowess;

(ii) the participants for whom accident cover should be provided are those paid to play, other than full-time professionals, and persons who are not paid to play, except primary and secondary school students engaged in school competitions; and

(iii) the scheme should cover official club training sessions and

journeys to and from training sessions and matches, and include all players, whether paid or not, who are registered with the club.

**Non-medical use of drugs**

The South Australian Royal Commission into Drugs has published its third discussion paper on the non-medical use of drugs.

In its 125-page Paper the Royal Commission calls for an end to criminal punishment for the use and possession of drugs in the State and concludes that it is wrong to assume that there is a substantial consensus in Australia opposed to the non-medical use of drugs. The Commission's Paper argues that it is wrong to think that most people are opposed to the non-medical use of drugs simply because many of them use alcohol, tobacco and pain-killers but pretend that these are not in fact drugs.

The Royal Commission notes that the Proprietary Association of Australia, which represents manufacturers of over-the-counter medicines, has admitted that Australia's analgesic consumption is 160 per cent higher than in Western Europe, 85 per cent higher than in the United States of America and 50 per cent higher than in Britain. Accordingly, the Royal Commission recommends stringent control over the sale of drugs to members of the public but adds that the criminal law in this area should be administered in a way that emphasises not the punishment or deterrence of drug users but the provision of appropriate assistance to persons requiring help because of the nature of their drug use.

The Royal Commission also challenged 12 major assumptions about the use of drugs in Australia—

(i) that drugs steadily destroy a person's capacity to control his personal behaviour;
(ii) that drugs are abused only be deviant groups and other undesirables;
(iii) that those who use illegal drugs are necessarily ill and that medical treatment will cure them of their drug-taking habits;
(iv) that the sanctions of the criminal law and the threat of punishment will prevent people from taking drugs;
(v) that the country's education system should teach people not to use drugs;
(vi) that no-one should risk their health by taking mood-altering drugs;
(vii) that it is improper to use drugs to alter mood or mental outlook;
(viii) that the non-medical use of drugs, as distinct from their medical use, is disapproved of by the community and should be eliminated;
(ix) that no-one can be trusted to make prudent decisions concerning their own drug-taking habits;

(xi) that government action, including use of the criminal law, can of itself control the non-medical use of drugs; and

(xii) that non-government action cannot be effective in controlling the non-medical use of drugs.

The Royal Commission discovered that surveys of school children suggested that experiments with tobacco or alcohol were still far more common than the use of cannabis, and that the theory of progression from the use of cannabis to harder drugs was more applicable to the early use of alcohol and tobacco. Also, the Royal Commission concluded that the extent to which drugs are believed in Australia today to have an uncontrollable influence on the behaviour of individuals and even on groups or whole classes of people is exaggerated.

## Australia – Tasmania

### Mental incapacity and the criminal law

A State Supreme Court Judge has been invited to chair a Commission comprising the Crown Advocate, a nominee of the Bar Association and a representative of the Mental Health Commission to consider a reference with is in the following terms –

(i) to investigate and report on whether there should be any changes in the law, or in pre-trial, trial, or post-trial, procedures in respect of acts allegedly committed by a person said to be suffering from –
  (a) any mental disease, or other mental incapacity or disability,
  (b) an impulse alleged to be irresistible, whether as a result of provocation or otherwise
  (c) intoxication, or
  (d) the effects of any drug;

(ii) in the making of such investigation and report the Commission shall have power to consider whether there should be any changes to any of the provisions of Chapter IV of the Criminal Code as a result of any recommendations made under paragraph (i) above.

### Liberalising of criminal law recommended

A Select Committee of the Tasmanian Houses of Assembly has tabled a Report in the State Parliament that recommends liberalisation of the State's laws governing the cultivation of marijuana, abortion, homosexuality, prostitution, vagrancy and drunkenness.

The Select Committee's Report has promoted a great deal of discussion both in Parliament and the Press, and the Report's proposals concerning the cultivation of marijuana and the decriminalisation of homosexual acts between consenting adults have been strongly criticised by certain sections of the community.

## Australia—Victoria

**Handicapped persons**

The Spastic Society of Victoria and the Victorian Hospitals and Charities Commission have received a Report that recommends that handicapped people should have both privacy and responsibility in deciding what sort of relationships they formed, be they heterosexual or homosexual, and that advice on contraception and sterilisation should be made available to such people.

The Report is the first attempt to examine the sexual rights of handicapped people in Australia.

**Massage parlours**

The Victorian Chief Secretary has agreed to the conduct of a departmental investigation into massage parlours in the State. He added that the State Government would not legalise prostitution.

**Autopsies**

Following a disclosure that a number of Victorian hospitals were conducting autopsies on the bodies of deceased persons without the knowledge or consent of the deceased's next of kin, the State's Minister for Health announced that the provisions relating to autopsies in the Medical Act 1958 would be reviewed and that he had called for his Department to furnish him with a report on autopsy laws in other parts of Australia and in overseas countries.

**Organ transplants**

The Premier of Victoria has announced that he has requested the State's Minister of Health to investigate the establishment of a State register of people resident in the State who are willing to donate their organs after their death for use in organ transplant operations.

**Drug-trafficking**

The Victorian Government has announced that it plans a major review of the State's drug laws, including the imposition of steep increases in penalties, following a two year inquiry into drug problems in the State.

Traffickers in hard drugs, such as heroin and cocaine, will face prison terms of 25 years and fines of $A200,000, compared with the present maximum penalties of 15 years' imprisonment and fines of $A100,000.

New offences and penalties will be introduced for unauthorised trafficking in widely prescribed drugs, such as barbituates. A new system of prescription pads, with serial numbers and colour coding, will be introduced to prevent forging of prescriptions.

The Government also plans to ban the advertising of a number of non-prescription drugs sold only by pharmacies in an attempt to prevent their misuse.

The new legislative proposals are included among 47 recommendations made by an inter-departmental working party appointed by the Government in 1978 to investigate the drug problem and whose 219-page Report has been tabled in the Victorian Parliament.

**Programme to combat child abuse**

The Victorian Government has announced a new programme to combat child abuse in Victoria. The State Premier said that the Government had decided to maintain voluntary reporting and wait to see the effects of compulsory reporting moves in other States.

The new programme will include the establishment or expansion of four child protection units this year. Other units will be established next year.

The main step in the programme is that all policies and services related to child maltreatment will be handled by the Minister for Community Welfare Services. Other moves include the reorganisation of government committees involved with child maltreatment and the development of community information and education programmes.

The inter-departmental committee on child maltreatment will be expanded to include representatives of the Departments of Community Welfare Services, Police and Emergency Services, Law, Education and the Health Commission. Local and regional community groups will be developed with an interest in child maltreatment and will be supported and sponsored by Government Departments. More Government money will be supplied to the Children's Protection Society.

The Premier said that the Government's programme was based on—

(i) the child's right to his own family where there is love, care and protection for the child;

(ii) no child should be unnecessarily separated from his or her family if the family can be helped to provide adequate care;

(iii) parents should receive all possible help in fulfilling their parental role to the best of their ability and in meeting the needs of their society; and

(iv) in the rare cases where children are in real danger, firm but sympathetic action will be taken.

The Premier issued a policy statement on the topic which said that, "The Government is deeply concerned that the initial emotional reaction to instances of physical abuse of children tends to obliterate the need for a wider approach which recognises all the basic needs of the child."

The Premier added "The Government will continue to implement a policy on child protection which will prevent instances of child maltreatment in the broadest sense and support family life. The Government has directly rejected the punitive approaches of the past. It has recognised that family supportive services are an essential element in reducing the stress that so often leads to instances of child maltreatment."

The Government's policy came out strongly against unnecessary separation of children from their families. The statement rejected the

compulsory reporting and external intervention in family life which, it said, increases stress rather than offering support in times of stress. The Government has accepted that the state should intervene legally in family life only as a last resort and in the best interests of the child. "Where state intervention is the only responsible alternative, however, it must take account of the wellbeing of all family members as well as its obligation to protect the child", the policy statement said. People must be able to feel that they can reach for support services without inhibition or fear. Where children are at risk of maltreatment, high quality services must be rapidly available to families. Those services must come from all sections of government and caring agencies operating as a network, providing a real safety net for times of crisis."

## Bangladesh

**Population control**

The Institute of Law and International Affairs in Bangladesh has completed a study of the legal aspects of population control and has submitted it to the Government. The report, which was financed by the World Bank, examines laws on abortion, contraception, sterilisation, age of marriage, registration of vital statistics and the employment of women and children, and will be used by the government to formulate more "pragmatic programmes and policies", according to the newspaper.

## Barbados

**Survey of abortion law attitudes**

A national survey of doctors, nurses and social workers on liberalisation of the Barbados abortion law carried out by the University of the West Indies has found that 85 per cent of doctors and social workers were in favour of liberalisation, while only a third of nurses supported liberalisation. On the question of abortion being freely available at the request of the patient, doctors and social workers showed reservations and sixty per cent of them were against this. Sixty per cent of the nurses as compared with 25 per cent of the doctors and 6 per cent of the social workers felt that there would be lest interest in contraception if abortion were more easily available. The findings of this survey have been published in the West Indies Medical Journal (1977) XXVI. (Noted in IPPF "*Law file*").

## Canada

**Protection of life**

A separate research project entitled "Protection of Life" has developed from the fundamental ethical and legal problems encountered in the Canadian Law Reform Commission's study of criminal law. Because of the common problems and relationship to social values of such issues as definitions of death, euthanasia, and human experimentation, it was thought best to treat these subjects together.

The main objective of the Project is to enable the Commission to present a report or reports to Parliament evaluating the way in which present Canadian law projects life and the quality of life and make proposals for reform where deemed necessary.

The Project is adopting an interdisciplinary approach, and will be conducting extensive empirical and attitudinal research. It also recognizes the importance of thorough consultation and steps are being taken to ensure maximum input from interested groups and individuals.

Research will proceed in three fronts. The first will be the strictly legal approach that will examine issues such as individual rights, consent and the limits of the law. The second approach will be a medical-legal one. This facet of the project will concentrate on four areas including definitions of death, euthanasia, human experimentation and personality and behaviour modification. The final approach will involve considerations of an ethical-sociological nature. Within the ambit of this part of the project will be an examination of medical practice research and an ethical and philosophical overview of the Protection of Life issues as a whole.

In terms of output, the Project sees the publication of study and working papers in various stages, culminating in a Report to Parliament. The study papers and working papers, due to come out in the summer of 1978, will present the Commission's views, at that time on the three main research areas—i.e., legal, medical-legal, and ethical-sociological. Considerable time will then be given to discussion and consultation of the tentative proposals of those papers. In the light of the reactions, the Commission will then publish its Report to Parliament containing its final proposals.

**Possession of marijuana**

A resolution passed at the recent Annual Meeting of the Canadian Bar Association also calls for decriminalising the law against possession of marijuana and cultivation of it for personal use. The nonprofit transfer of the drug between adults will also be decriminalised, and all laws affecting marijuana usage will be moved to the Food and Drugs Act from the Narcotics Control Act.

In editorial comment on the passage of this resolution it was said that the resolution and problems in implementing it had not been properly thought through.

## Canada – British Columbia

**Heroin Addicts**

The Province's Heroin Treatment Act has now been passed by the Legislature, but some amendments to the proposal as introduced were made following representations by the local branch of the Canadian Bar Association. It had mounted a strong campaign suggesting that certain provisions denied access to due process and offended fundamental principles. The legislation establishes a three

year compulsory treatment programme for heroin addicts. Lawyers had objected to provisions which would have "promoted the State to take control of an individual and required his confinement" without this being done "within a process that affords that individual complete access to the due process of law and fundamental principles of natural justice".

## Canada—Ontario

**Mandatory reporting of child abuse**

One particularly interesting aspect of the Child Welfare Act, highlights of which were previously reported at (1979) 5 C.L.B.566, is the mandatory reporting of child abuse. The new law attempts to balance the right of a child to be protected from abuse, with the right of a suspected abuser to be protected from unproven detrimental allegations against character or reputation.

This new law, contained in the Child Welfare Act 1978, and which came into force on 15 June 1979, requires that—

> every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse...

report the abuse to a Children's Aid Society. "Abuse" has been defined as:

—physical harm,

—malnutrition or mental ill health of a degree that if not immediately remedied could seriously impair growth and development or will result in permanent injury or death, or

—sexual molestation.

Failure to comply with the new provisions is an offence punishable by a fine of up to one thousand dollars.

The requirement to report abuse overrides the provisions of any other legislation in Ontario and applies to physicians, school authorities and others who were formerly protected by statutory provisions that would otherwise have required them to keep such information confidential. The legislation however specifies that the common law privilege between solicitor and client shall be preserved, thereby granting the legal profession an exemption from the above requirements.

Anyone making a report is protected by the new legislation from civil suit even though the information reported could otherwise be privileged or confidential, and the central register must not contain information that would identify the reporter.

The new legislation requires that information reported to the Children's Aid Society be transferred to a central register maintained by the Provincial Government after the information has been verified by the child protection agency. The information contained in the register would include the name of the suspected abuser, if

known. The chief purpose of the register is its function of "tracking" child abuse. Any child protection agency which receives a report of suspected child abuse may, by checking with the register, discover whether the suspected abuser has been previously reported to the register by a child protection agency in another jurisdiction of the province.

A suspected abuser who is reported to the central register must receive notice that his or her name has been placed in the register, and be provided with an opportunity to examine the register and to seek expungement or correction of the information therein. The suspected abuser may require a hearing before the custodian of the register and may appeal the custodian's decision to the Supreme Court.

Although, the new law has been in force for a short period of time, it has already caused controversy within the legal profession and among the public at large.

The Legislature has found it necessary to curtail some of the traditional civil rights of suspected abusers in order to give greater protection to children from abuse.

The contents of the register must be kept confidential, subject to the exception that certain individuals and agencies may have access to the register. The exception includes any person identified in the register, child protection agencies, coroners and, where approved by the custodian of the register, a legally qualified medical practitioner.

It is worth noting that a person's name may be added to the register where there are reasonable grounds to suspect that he or she is a child abuser and where the information has been verified, although the facts of the information may not have been proven in civil or criminal proceedings. The information must be kept in the register for at least 25 years unless that is expunged earlier pursuant to a request from the suspected abuser.

It is understood that several requests for expungement received from persons who have been identified in the register as suspected child abusers, are under consideration.

## India

### Prohibition

The Central Prohibition Committee, which includes representatives of all states, has decided that India will outlaw drinking within four years. The representatives of states agreed to make prohibition subject to the Constitution, or a subject under the Central Government. At present only the state governments have the power to pass laws outlawing drink.

Delhi, the capital, will be the first to have total prohibition. The state government has announced that it will bring in legislation to ban liquor advertisements.

## Kenya

**Sexually transmitted diseases**

The Minister of Health has asked Professor U. U. Uche of the University of Nairobi to make recommendatons for amendments to the law relating to sexually transmitted diseases.

## New Zealand

**Royal Commission on Contraception, Sterilisation and Abortion reports**

In June 1975 a Royal Commission on Contraception, Sterilisation and Abortion was appointed. It consisted of six, three men and three women, and was required to examine the legal, social and moral issues raised by the law and practice relating to contraception and voluntary sterilisation, and to examine the present law on abortion, its interpretation, practice and adequacy in meeting society's needs. Study of issues involved in abortion were to include the rights of the pregnant woman and the status of the unborn child. The Commission was required to recommend any changes in law or practice relating to these three broad areas and assess the likely effects on the present health, hospital and medical services.

The Commission presented a 450-page report in March 1977. This has excited strong reactions from many quarters, mainly over the recommendations relating to abortion. The Commission took the view that the status of the unborn child "although not absolute, should receive protection from the law". Following this principle it recommended extending the grounds of abortion, at present preservation of the mother's life or health to instances where there would be serious danger to the life or the physical or mental health of the pregnant woman or serious physical or mental abnormality of the child, or where pregnancy is caused through incest, or in cases where the pregnant woman is severely abnormal.

The Commission did not recommend that pregnancy resulting from rape, the extreme youth or age of the pregnant woman or socio-economic factors as such should be, taken by themselves, sole grounds for abortion.

The Commission recommended that a Statutory Committee should have over-all supervision of the administration of the abortion law. A number of panels, consisting of two doctors and a social worker should be set up to hear applications for abortion, would be responsible to this Committee. The social worker should be in an advisory capacity only, and in the event of deadlock, another doctor would be called in. The applicant's own doctor or specialist should be able to make a written statement to the panel, but not take part in making the decision.

It is explicitly predicted in the Commission's introduction to its Report that ". . . . . if effect is given to all the recommendations . . . . . the number of abortions performed in this country will be reduced".

The Commission's recommendations on contraception and steril-

isation were less controversial. There is an emphasis on the need for courses on human development and relationships to be provided in all schools, on the need for the expansion of family planning clinics and centres helped by finance from the Government, and on an increase both in Government and non-Government social workers and counselling facilities.

Under the Police Offences Amendment Act 1954 it is an offence not only to sell or provide contraceptives to children under 16 but also to give any information or instruction in the use of contraceptives. The Commission recommends that this be modified to allow doctors to supply contraceptives to those under 16, and to allow certain classes of people to give children under 16 information on the use of contraceptives. Broadly these classes cover those approved by the Education and Health Departments or those approved by the principal of any school.

The legality of voluntary sterilisation for men and women should be put beyond doubt, counselling services made available to both parties, and facilities for sterilisation established in all public hospitals. The consent of the partner was considered to be desirable but not mandatory. One recommendation that has raised criticism is that an application for the sterilisation of a handicapped person could be initiated by the Superintendent of any institution or home, a doctor or a social worker.

Any doctor or related worker should in the Commission's view be able to opt out, on grounds of conscience, of providing contraceptive, abortion or sterilisation services, but there should be an obligation on that person's part to refer the patient to another doctor or agency. The Report stressed the importance of giving medical students adequate instruction in family planning and of providing doctors with regular refresher courses in contraceptive techniques. The Department of Health is enjoined to produce up-to-date reliable booklets on contraceptives and their use, and films on sexually transmitted diseases.

The Minister of Health has said that the Government will bring down legislation in the near future embodying the recommendations of the Commission. There will be a "conscience" vote upon them in Parliament, and the debate will therefore not follow any party lines.

**Discipline in professional bodies**

The ninth Report of the Public and Administrative Law Reform Committee, presented to the Minister of Justice in December 1976, has recommended that the disciplinary provisions of a number of professions and occupations be amended, where necessary, to provide –

(i) for lay representation on disciplinary bodies;

(ii) for the review by a lay representative of the treatment of complaints;
(iii) for the separate membership of the investigative and disciplinary bodies, adequate appeals rights to both parties, and compliance with the principles of natural justice; and
(iv) for the grounds of cancellation or suspension of membership to be appropriate to the profession or occupation.

A working paper on disciplinary and complaints procedures of the legal profession is summarised in the report and a full report on this topic is expected in mid-1977.

**Negligence, incompetence, and professional misconduct**

The New Zealand Law Society has expressed the view that although negligence and incompetence may be ingredients of professional misconduct, it is opposed to declaring negligence to be a ground for disciplinary action. It has called on district societies to make sure that solicitors are available to sue other solicitors for negligence. Although penalties could be imposed for incompetence, the answer really lies in the field of education. The Society added that it seemed wrong for an otherwise blameless practitioner, perhaps of high standing, who made a mistake in a complicated deed, to be for that reason the subject of disciplinary proceedings.

**Guidance rule for custody and access psychiatric reports**

The New Zealand Branch of the Royal Australian and New Zealand College of Psychiatrists has formulated a "position statement on the role of the consultant in matters relating to custody and access of children." It reads as follows—

> The RANZCP accepts the following principles as guiding the role of the psychiatric consultant in matters relating to custody and access of children.
>
> *General principles*
>
> (i) The emotional and physical well-being of the child should be the paramount consideration of those persons involved in matters of custody and access.
> (ii) The best interests of the child are served when provision is made for its uninterrupted care by an adult(s) to whom it is psychologically bonded.
> (iii) Principles of reconciliation and conciliation within marital dissolution consolidate rather than compete with the above principle.
> (iv) When conflicts cannot be resolved and custody and access are disputed, the concept of the least detrimental available alternative should prevail as guidelines to serving the child's best interests.
> (v) There is no general principle that can be invoked to suggest that, considered on the basis of gender alone, one parent or the other is the more appropriate custodian.
> (vi) There is no general principle that can be invoked to suggest that biological ties alone make an adult the most appropriate custodian, although it is recognised that most frequently a biological parent is also the psychological parent.

(vii) Any procedures which diminish the adversary process and foreshorten the time involved in litigation, will tend to favour the well-being of the child and the family as a whole.

*Specific recommendations*

The following recommendations are offered as guidelines to the psychiatric consultant in cases of disputed custody and access of children—

(viii) That the College upholds the legal position that the best interests of the child are served when the Court, upon receipt of all available evidence and opinions, makes a decision on matters of custody and access.

(ix) That the College firmly upholds the principle of child representation and encourages its members to support this principle by responding whenever possible to requests for psychiatric evaluation which issue from the child's counsel or solicitor.

(x) That the College advises members to avoid partisanship in their role as expert witnesses. Members need to be aware of the pitfalls attendant upon responding as a witness called by one party within the framework of the adversary system. Although the College does not recommend that its members should avoid such a role, it advises that members may face risks to their credibility as advocates of children when they agree to accept a brief.

(xi) That the College affirm its confidence in the validity of detailed clinical investigations. Formal test procedures in the hands of a skilled clinical psychologist may augment and complement such detailed clinical assessment, but they do not replace it, nor can they stand lone.

(xii) That the College advises its members to follow certain psychiatric procedures known to be of proven value in the assessment of parties to custody and access disputes.

(a) Psychiatric evaluation of a child.
This is best done by seeing the child individually, and by an experienced child psychiatrist, child psychologist or child psychotherapist. If the child is able to verbalise a stated preference regarding custody and access this should be given due weight.

(b) Psychiatric evaluation of each parent and the associated spouse or de facto of each new household.
This evaluation should be routine.

(c) Conjoint assessment of the ex-marital pair and conjoint family assessment.
Since this is one of the most sensitive and productive instruments of psychiatric evaluation in family work, its implementation should be attempted wherever possible.

(xiii) The College advises that in a written report to the Court, the expert witness includes a basic format stating—

(a) The general principles upon which he or she operates.

(b) The clinical and test observations made during the process of assessment.

(c) The observations which could not be made because of limitations imposed by realities of the situation.

(d) The inferences which he or she, because of knowledge and expertise in the speciality drew as a result of these observations.

(e) The opinion which he or she offers to the Court.

(xiv) That College members recognise that their reports; no matter how expert, full and painstaking, are to be regarded as opinions, to be placed alongside the evidence and opinions of others, in a process that will ultimately lead to decisions reflecting the best interests of the child.

(xv) That College members regard their reports as educative, adding to the growing awareness among the judiciary and others of the value of the contributions that the behavioural sciences can make in such matters."

## Papua New Guinea

**Sorcery among the Tolai people**

Mr. William Kaputin, a Commissioner of the Law Reform Commission of Papua New Guinea has prepared a paper on this topic, now published by the Commission as Occasional Paper No. 8. The Report embodies the collective views of prominent Tolai people who were interviewed individually, and who have in fact experienced the existence, effect and fear of sorcery. These were government officials such as magistrates and policemen, ministers of religion, village elders, ordinary people and sorcerers. The author notes that it is interesting that people with different occupations and influence should be unanimous in acknowledging the existence and effect of sorcery as a reality. The paper does not cover all forms of sorcery or magic known among the Tolai people, only the major ones.

## Trinidad and Tobago

**Abortion law and public opinion**

Controversy over abortion is mounting in Trinidad and Tobago, sparked off by a survey carried out by a doctor at the University of the West Indies, Dr. Syam Roopanrinesingh, which indicated that public opinion is in favour of liberalisation of the abortion law. Currently the law is the same as the prohibitive United Kingdom legislation on abortion of 1861, except for the fact that penalties imposed have been considerably reduced. The Archbishop of the Port of Spain, Mr. Antony Patin has spoken out against liberalisation and the Prime Minister has spoken against abortion and sterilisation. However the Presidet of the Family Planning Association, Mr. Emile Elias, has said that any move which takes abortions "out of the back room" would be welcome. Data provided by the FPA indicates that there were an estimated 12,500 illegal abortions in 1963 (noted in IPPF "*Law file*").

## United Kingdom

**Wearing of seat belts may be compulsory**

After experiencing difficulties with national legislation to make the wearing of seat belts mandatory, the Government is believed to be considering using its special powers to introduce the measure to Northern Ireland for an experimental period. The chances of being killed in a road accident there are double those of anywhere else in Britain; driving standards are low, the intake of alcohol is high, and the civil unrest is also thought to contribute to the province's notorious road toll.

**Drivers prescribed drugs**

A medical officer has recommended that professional drivers of buses, trucks and taxis should not be allowed to drive if they are taking medicine which might impair their ability. As they drive longer hours, the risk of adverse drug reaction or interaction is

greater, and loads carried by their vehicles are often hazardous. The safest course is for doctors to give such drivers medical certificates to enable them to have time off from work. (Times newspaper, 17 September 1977.)

**Battered children**

In its annual report (*For the children's sake,* from 1 Riding House, London W1) the National Society for the Prevention of Cruelty to Children estimates an average of two deaths a week as a result of parently-inflicted injury, and that nearly another 8,000 children receive non-accidental injuries. It labels the "cold, calculated torture" of children as a "tragic and shameful reflection" on present-day community attitudes, but notes that central registers can help detect non-accidental injury and monitor the safety of an abused child. The NSPCC's own special units had produced encouraging results, and should be extended to all major urban areas as a matter of urgency.

**Vibration**

The British Society for Social Responsibility in Science has called for legislation to limit the amount of vibration that workers suffer. Vibration can cause or contribute to backache, "dead finger", piles, hernias, varicose veins and muscular aches and pains. The Society also brought out the need for scientific evidence on which to set "safe" exposure levels. The present safety standards are based on healthy young men whereas the evidence is that women, who make up a third of the engineering labour force, are more susceptible.

**Centres for drunkenness show value**

The first experimental detoxification centres in England seem to be making an impact on drunkenness. Government statistics show that the number of findings of guilt for offences of drunkenness by males in West Yorkshire fell by 2 per cent last year.

The first centre for males opened in May, 1976, in the West Yorkshire Police Force area. That year, there was a 1 per cent fall in findings of guilt for offences of drunkenness by males in the country.

However, the combined number of findings of guilt and admissions to a detoxification centre in 1977 in West Yorkshire was 5,234, an 11 per cent increase over 1976.

The report says that the opening of a second centre in Greater Manchester in October 1977, did not significantly affect the figures there for that year.

The police can take to the centres offenders, particularly habitual ones, as an alternative to prosecution.

The total number of findings of guilt by the courts in England and Wales was 108,871, only 173 more than in 1976.

**How to combat drunkenness?**

The Secretary of State for Social Services subsequently invited the public to suggest the action which should be taken to counter increasing drunkenness. He posed eight questions —

(i) should people be allowed to drink themselves to "death or disintegration" and damage those around them, with the Government not concerning itself with personal behaviour or having a duty to seek to contain a growing ill?

(ii) should a bigger tax on alcohol be imposed or was that unfair to sensible drinkers?

(iii) should tax policies to ensure that the price of drink remained constant in relation to income, as recently advocated by his advisory committee, be used or not?

(iv) should the law on drinking and driving be made severer, perhaps by random breath tests, increased penalties and/or a lower limit of alcohol in the blood than the present 80 milligrams to a 100 millilitres which now incurred conviction?

(v) should the age at which alcohol was legally available be changed, or should there be more rigorous enforcement of the law?

(vi) what was the best way to halt the apparent increase in heavy drinking among young people?

(vii) should a more restrictive code on advertising be introduced, presenting a less one sided picture about drinking, especially to young people?

(viii) what short of publicity about the dangers of drinking was most effective? Should bottles be labelled as are packets of cigarettes, with a health warning?

He said it was time the British people faced the fact that there was a very serious drink situation, which was growing year by year. In the past 20 years beer consumption had increased by about half and nearly three times as much spirits and more than four times as much wine per person was being drunk. Convictions for drunkenness had doubled in the same period; convictions for driving under the influence of drink or drugs had doubled from 25,000 in 1970 to about 50,000 last year.

There was growing evidence of alcohol abuse among young people generally and there were also difficulties because of drinking while at work.

To what extent could the appalling increase in crimes of violence, hooliganism and football violence be blamed on too much drinking? There was no simple answer. It was a matter concerning the police and the courts, doctors, the family and everyone. "Is it a problem which should be tackled more vigorously by the Government?" he asked.

**Hormone imbalance found in violent offenders**

A link between aggression and body chemistry in psychopaths has been discovered by research at Broadmoor Special Hospital.

The discovery could possibly be used in future to help decide whether and when a prisoner can safely be released.

The key is the psychopath's hormonal balance. When people feel fear, there is an increase in the level of adrenalin, one of two hormones of the adrenal gland. But the amount of noradrenalin, the other hormone, increases with aggression.

Among psychopaths tested, 24 per cent had an excess of noradrenalin over adrenalin.

That hormonally-imbalanced 24 per cent contained 57 per cent of the patients convicted of crimes resulting in death.

The hormone imbalances appear to have links with social class and personality.

"These findings are particularly interesting when you consider that children from poorer backgrounds have harder living conditions and get more physical punishment", the researchers say. "Studies on aggressive social behaviour caused by parents' discipline suggest that this physical punishment is allied to aggression outside the home.

"A person's predisposition to aggression can therefore be changed by his childhood environment—but aggression also relates to whether there is more noradrenalin than adrenalin."

Thus concludes that there is strong evidence that environment in childhood can alter the basic biochemical processes and bring out the aggressive side of an individual's personality.

**Independent review of hospital complaints in the National Health Service**

In the First Report (Session 1977–1978) of the Select Committee on the Parliamentary Commissioner for Administration (HMSO: £5.60) the Committee felt that there should be a more flexible, faster and more confidential and tactful form of inquiry in this area, provided that it is scrupulously carried out and commands respect.

The mechanism which recommended itself to the Committee is the Health Service Commissioner's office. The Report notes that he would require appropriate professional advice, that he would need to be scrupulous in protecting staff from unwarranted dangers based on unrealistic expectations and on hindsight, and that one of his main concerns would be to help the National Health Service as a whole, learning from each incident investigated, while minimising the distress to those immediately involved.

Recognizing the problem of double jeopardy, and the possibility of the complaint procedure being used as a "dry run" before litigation, the Committee saw no complete solution. It rejected the concept of a statutory bar to the courts when the complainant elected

to ask the Commissioner to investigate his case, and saw it as one of the main difficulties of the Health Service Commissioner's task to minimise this danger.

The most controversial question faced by the Committee was whether complaints relating to clinical judgment should be included in any new form of independent review of complaints. It sympathises with the dangers seen by the medical profession—that hindsight would render judgments made with the utmost care and skill but necessarily on the balance of probabilities (which involves of necessity a probability of occasional error) the appearance of malpractice. However the Committee noted that the Secretary to the Mental Welfare Commission for Scotland had observed that "if clinical judgment is sound it should bear investigation by those competent to evaluate it." The Committee's recommendations are as follows—

(i) there should be a simple, straightforward system for handling complaints in every hospital with emphasis on listening carefully to the patient's or relative's concern and dealing with it promptly;

(ii) when the complainant is not satisfied by the answer he obtains from those immediately involved and wishes to pursue the matter, it should be dealt with by the District Administrator (or a senior officer specified by him) on behalf of the Area Health Authority;

(iii) Health Authorities should not set up ad hoc inquiries into complaints;

(iv) for the most serious cases the Secretaries of State should continue to set up inquiries under s. 84 of the 1977 Act (formerly s. 70 of the Act of 1946) or under s. 69 of the National Health Service (Scotland) Act 1947;

(v) all other cases not resolved as in (ii) above should be referable by the complainant or the Area Health Authority to the Health Service Commissioner, including complaints concerning clinical judgment. The Commissioner's role should not be to criticise actions or judgments which, even if they turned out to be mistaken, were reasonable at the time in the light of current knowledge and information and of circumstances then ruling. On the other hand, if someone had suffered injustice through actions or judgments which were unreasonable in all the circumstances, the Commissioner should recommend whatever action seemed to him appropriate and should attempt to ensure that useful lessons for the future were drawn from past experience.

**Second Report on the System of Ombudsman in the U.K.**

The House of Commons Select Committee on the Parliamentary Commissioner for Administration has published a Second Report on the system of Ombudsmen in the United Kingdom (Session

1979–80:HMSO £3 net). The Committee considers the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioners for England, Scotland and Wales. There are, in addition, a number of other Ombudsmen in the United Kingdom and the Committee in this report examines the extent to which together they provide a comprehensive, accessible and effective ombudsman service for the citizens of the United Kingdom.

The report notes in a short background history the functions of the multiplicity of Ombudsmen that exist in the United Kingdom as compared to countries like Sweden, Israel and New Zealand where a central Ombudsman office deals with complaints against a wide range of public authorities. The report notes that the following Ombudsmen exist in the United Kingdom—

(i) The Parliamentary Commissioner for Administration, created in 1967 to investigate complaints against central Government Departments;

(ii) Health Service Commissioners for England, for Wales and for Scotland created under the National Health Service Reorganisation Act 1973 to investigate complaints against health authorities (although since their inception all three posts have also been held by the Parliamentary Commissioner thereby insuring a degree of uniformity in the handling of complaints);

(iii) The Commissions for Local Administration in England, in Wales and in Scotland. In the case of England and Wales there are three and two Commissioners respectively, each of whom investigates complaints against local authorities, police authorities and water authorities in their areas. In the case of Scotland there is a single Commissioner who investigates complaints against local authorities and similar bodies;

(iv) The Parliamentary Commissioner for Administration for Northern Ireland, who investigates complaints against Departments of the Government of Northern Ireland;

(v) The Commissioner for Complaints for Northern Ireland, who investigates complaints against local authorities, health authorities and other public bodies in Northern Ireland.

The Report notes from the evidence given as well as the written memoranda submitted to the Committee by a representative cross-section of the Commissioners and others, that the procedure for access to the Commissioners is not uniform. In some it is direct while in others it is indirect. It also notes that the limits of the functions of the various Commissioners is not sufficiently clear in people's minds which, together, have contributed to the misdirection of complaints. However, any obstacle to fruitful co-operation between some of the Commissioners which the absence of a statutory link might have caused has been overcome by goodwill and free consultation whenever the need was seen.

The Committee notes that administrative arrangements have been

made among the various Ombudsmen's offices for the redirection of wrongly addressed complaints but considers that these, although apparently satisfactory, are not a complete solution. It therefore considers the possibility of devising a method of access common to all Ombudsmen. The two possibilities which they consider are direct access and the suggestion that, in addition to the existing methods of access, Members of Parliament should be able to refer complaints to any of the Ombudsmen.

However, the Committee felt unable to recommend unqualified direct access as a uniform method, having previously rejected it in 1978. As regards the second alternative, the Committee heard evidence indicating that this proposal did not find general support. Although it notes that the present arrangements for access were not ideal the Committee did not feel disposed to press the suggestion that Members of Parliament should be able to refer complaints to the Local Ombudsmen, having regard to the fact that the Commission for Local Administration in England was keeping the matter under review.

The evidence given before, and memoranda submitted to, the Committee form part of the Report.

**National Health Service complaints**

The "Fifth report from the Select Committee on the Parliamentary Commissioner for Administration" (H.C. paper 616) expresses complete confidence in the Ombudsman's handling of a National Health Service complaint. Sir Idwal said the hospital authority's initial response to the complaint was deplorable. It had given an inadequate reason for discharging a patient in the middle of the night and based its action on a premise that there was a shortage of beds, which was later found to be without foundation. Sir Idwal described the incident as a shocking case of maladministration.

Doctors complained that the Commissioner had said that he could not comment on clinical judgment by the junior doctor in charge yet he had concluded that the doctor's decision was 'inhuman', although that decision was part of the doctor's clinical judgment.

The report gently chides the commissioner for not getting in touch with the doctor, who had left the country to work in America.

Whether the commissioner was right to describe the decision to discharge the patient as 'inhuman' was a matter for his judgment, but the committee fully supported the view that the decision merited strong criticism, and in the words of a consultant at the hospital, lacked common sense.

**Blood and a criminal's profile**

Research at Aldermaston suggests that in the not too distant future it may be possible for police investigating a violent crime to give

forensic scientists a blood stain left by a criminal and receive back a fairly detailed profile of age, sex, travelling habits and diet.

When the criminal is caught his blood will be matched like a fingerprint to the stain, which the scientists will be able to prove was shed at the time of the crime.

**Report of the Royal Commission on Civil Liability and Compensation for Personal Injury**

The Report of the Commission, appointed in 1973, has now been published (Cmnd. 7054: HMSO: Price £7.60 Volume I £3.60, Volume II £3.60, Volume III). Running to over 1,100 pages, the Report suggests —

(i) a new 'no fault' compensation scheme for motor vehicle accidents on the roads, paid for by a levy of about 1p a gallon on petrol and administered by the State. It would be modelled on the Industrial Injuries scheme but would cover the whole family;

(ii) an improved Industrial Injuries scheme providing higher benefits and extended to cover (a) the self employed (b) commuters and (c) additional cases of occupational diseases; and

(iii) a new benefit of £4 a week, tax free, from the age of two, as an addition to child benefit, for all severely handicapped children, whatever the cause of their handicap. Attendance allowance and mobility allowance would still be payable where applicable. Mobility allowance, now paid from the age of five, to be paid from the age of two.

The first volume is the main volume. It describes the main features of compensation in the United Kingdom, common criticisms of those systems and features of particular interest in overseas systems. The second volume contains the necessary information on statistics and costings and the results of a household survey undertaken for the Commission. The third volume contains information as to overseas systems of compensation for personal injuries and results mainly from visits made by the Commissioners, or groups of them, to overseas countries, and it is believed that there is no comparable collection of such information.

The Commission conducted a detailed study of other systems of compensation (which perhaps renders Volume III the most valuable part of the Report so far as other jurisdictions are concerned), but concluded that the much-criticised common law action for damages should be retained while at the same time arguing that there should be a shift in the emphasis of providing compensation — away from tort towards social security. Social security should be recognised as the principal means of compensation. The function of tort would become that of supplementing the no-fault system of social security.

**Tort and assessment of damages**

The Commission does not recommend the abolition of tort but suggest a number of modifications, including the ending of double compensation; inflation proofed periodic payments in the most serious cases; elimination of minor claims and a change in the assessment of damages.

*Double compensation to end*

The Commission recommends that double or overlapping compensation should be eliminated by fully offsetting social security benefits against the assessment of the corresponding tort damages. The social security benefits provide, and provide quickly, the basic compensation for the injured person without his having to prove that his injury was caused by any other person's fault. The current provision for offsetting social security benefits against tort awards to the extent of 50 per cent of those benefits for up to five years was a compromise between two principles (a) that the injured person should not be compensated twice for the same loss and (b) that social security benefits represent the fruits of the individual's own thrift and should be disregarded.

It is considered that the social security system could no longer be regarded in this way as a form of first party insurance. If no one was to receive, as total compensation, more than 100 per cent of his loss, it must follow that of two persons, if one received a higher percentage of his loss in benefits, he must receive a lower percentage in damages. The low earner would receive a higher percentage of his loss in benefits and so must receive a lower percentage in damages. The same would be true of the married man with children compared with the single man with the same income loss.

*Inflation-proofed periodic payments*

The Commission recommends that provision should be made for damages to be normally in the form of inflation-proofed periodic payments in the most serious cases. The court should be obliged to award periodic payments in such cases unless satisfied that a lump sum was more appropriate. An injured person should still be at liberty to settle his claim by agreement for a lump sum if he wishes to do so, but his professional advisers should be under a duty to point out the advantages of periodic payments. (There is a dissenting opinion by two members, opposing the introduction of periodic payments).

*Elimination of minor claims*

There should be a three months' "time threshold" for damages for non-pecuniary loss. This means that there would be no damages for pain and suffering and loss of amenity in the first three months after the occurrence of the injury. This would eliminate the very numerous minor claims for non-pecuniary loss and so save administrative costs as well as minor compensation payments.

*Change in the assessment of damages*

Numerous questions as to the assessment of damages are dealt with in the Report. Of special interest and difficulty is the problem of arriving at a suitable lump sum of damages to compensate for the lost flow of income over a long future period of years, having regard to the problems created by high and fluctuating rates of inflation and high and possibly changing rates of taxation of investment income.

The present multiplier method was simple and well understood and it could readily be operated by practitioners. The Commission thinks that this method should continue to be used but there were two views on the actual method of calculation.

The majority view was that the calculation of lump sum damages for future pecuniary loss should continue to aim at year by year replacement of the plaintiff's loss. Real values should be reflected by taking fuller account of the effects of tax and inflation.

The minority view (represented by the Chairman and three other members) was that a lump sum was different in kind from a lost income; it was a substitute compensation not a replacement. Due regard should be paid to real values and awards should be reasonable, not excessive

**Work Injuries**

The Commission says that there was a remarkable unanimity among their witnesses that the structure of the Industrial Injuries scheme had stood the test of time. It could see no better alternative in overseas models, nor any way of devising one themselves. It concludes that the scheme should remain essentially as it is but that it should be extended and improved. Among the changes proposed are benefits based on the new pension scheme, which came into force in April 1978; the inclusion of the self employed; cover for commuters and additional cases of occupational diseases.

*Benefits based on the new pension scheme*

As those who obtain tort compensation for work injuries would also have been entitled to industrial injury benefit, the ending of duplication of compensation, without anything to balance it, would have implied a sharp drop in the money they receive.

Improved long term industrial injury benefit should therefore be paid immediately. These would be the maximum benefits (ordinarily paid after 20 years contributions) under the Social Security Pensions Act 1975. Slightly higher short term benefits for the first six months would also be paid.

In addition to loss of earnings benefits, disablement benefit may be paid, as may attendance allowance and mobility allowance.

"Although each element in the total is in our view justified", says the Commission "there can be little doubt that there will be problems over incentives to return to work". The Commission says that the

Government should consider total benefit levels in the light of their long term plans for social security.

Corresponding improved benefits would be paid to widows. Widowers would be treated in the same way as widows.

The existing provision for partial incapacity is unsatisfactory and the Commission recommends a study of the operation of European provisions for partial incapacity with a view to the early introduction of a scheme in this country.

*Self-employed*

The Commission considers that the self employed need compensation for a work accident just as much as employed persons, and should be covered by the Industrial Injuries scheme. Thus they would, for the first time, become eligible for disablement benefit. Until earnings related supplement becomes payable to them under the social security scheme, benefit for them and their widows must be on a flat rate basis.

*Commuters*

The Commission recommends (by a majority of one) that commuters should be covered by the Industrial Injuries scheme. About 60 per cent of them would be entitled to compensation under the "no-fault" road scheme if not covered by the industrial injuries scheme.

*Occupational diseases*

The conditions for compensation for occupational diseases should be less restrictive. A mixed system should be introduced so that, in addition to the existing schedule of prescribed diseases, benefit should be paid where the claimant can prove that his disease was caused by his occupation and that it was a particular risk of his occupation.

The Commission felt unable to recommend that a special compensation scheme, similar to the National Coal Board Pneumoconiosis Compensation Scheme, should be set up for workers in the slate and quarrying industries.

*Financing the scheme*

The scheme should continue to be financed through the existing system of national insurance contributions and Exchequer supplement. The cost for employed persons should be met by an increase in the employers' social security contributions but there should be no increase in employees' contributions. [ Professor Prest, dissenting from this recommendation, says one alternative would be to levy a surcharge on employers' liability premiums. ] For the self-employed the cost should be met by an increase in their contributions. The decline in tort would mean a fall, in real terms, of about 25 per cent in employers' liability insurance.

The Commission believes that its proposals would lead to improve-

ment in provision for work injuries. It says that the system "is fundamentally sound. The TUC told us that their approach had been to see what might be done to improve the Industrial Injuries scheme and the tort system rather than abolish them. That has been our approach too."

*Tort*

The Commission recommends that the right of an injured workman to pursue tort action for personal injury against his employer should be retained. [Professor Schilling dissents and supports the views expressed by the Robens Committee that action in tort is counter-productive to accident prevention.].

It also recommends that there should be no change in the basis of tort liability; and no formal reversal of the burden of proof in tort actions for work injury.

**Road injuries**

The "no-fault" compensation scheme recommended for motor vehicle injuries should be modelled on the scheme proposed for work injuries, with benefits at broadly the same level.

Special provision should be made for children and non-earners including housewives and retirement pensioners.

The scheme should be administered by the Department of Health and Social Security and should be financed by a levy of about 1p a gallon on petrol.

The Commission's decision to recommend a "no-fault" scheme for road injuries stemmed largely from its review of the operation of the tort system in this field.

The improved Industrial Injuries scheme was the obvious choice for a model in that it provides inflation proofing and adequate benefits for long term incapacity. There was one important modification — the inclusion of non-earners — who are not covered by the Industrial Injuries scheme.

*Scope of the scheme*

The scheme would be confined to injuries caused by motor vehicles and incurred on roads or other land to which the public has access.

It should not be necessary to establish that a motor vehicle was in motion. For example, an injury sustained by a cyclist who crashed into the back of a vehicle in an intermittently moving queue of traffic should not be excluded. The test should be whether a motor vehicle was involved.

The Commission decided that claims by those whose injuries result from their own serious misconduct should be dealt with at a central point. It recommends that the Secretary of State for Social Services should have a discretionary power to discontinue benefit for those injured by motor vehicles on their way to or from committing an

offence for which they were subsequently convicted on indictment, or in the course of committing such an offence. But this power should be exercised only in exceptional circumstances when the payment of benefit would clearly be repugnant to public opinion [ Mr Marsh and Professor Stevenson dissent from the recommendation that there should be power to discontinue benefit ].

The Secretary of State's discretion should not extend to benefits paid to widows and dependants of those who die in the course of criminal activities.

*Financing the scheme*

Among the alternatives considered were levies on driving licence fees, road fund licence fees, motor insurance premiums and a levy on petrol. The method of petrol levy was decided upon because it was the most practical way, contributions being easily and cheaply collected. The Commission recognised that the levy would involve hypothecation (earmarking) of revenue and would thus be a departure from the usual approach to raising revenue. Motorists' contributions would relate closely to the amount they used their cars as well as to engine size [ Professor Prest dissents and is in favour of a levy on insurance premiums ].

The extra cost of the scheme, over and above the cost of social security sickness and other benefits now paid including administration costs, is estimated at £28m after five years rising to £54m a year at maturity. The total cost, including sickness benefit and other benefits, would be about £64m after five years, rising to £90m a year at maturity after 40 years. The cost would be met by a levy of about 1p a gallon on petrol.

Against this, the cost of tort compensation would fall by £40m a year, including savings on administration and £1m for occupational sick pay. In view of the keen competition in the motor insurance market the Commission has no reason to doubt that this saving would be passed on to motorists. But if it became apparent that real savings were not being passed on, the Government should not hesitate to intervene.

*Tort*

It is recommended that there should be no change in the basis of tort liability and no formal reversal of the burden of proof in tort actions for motor vehicle injury.

**Air transport**

Because liability is largely governed by international conventions the scope for change as regards the liability for carriers is limited.

But the present level of limits — between £25,000 and £37,450 — should be revised. The Montreal Protocol No. 3 provides for a

limit of about £70,000. The United Kingdom should ratify it as soon as the U.S.A. have done so.

In the meantime the United Kingdom would be justified in taking steps unilaterally to end anomalies and to provide a minimum limit to carriers' liability on all flights to, from and touching the United Kingdom. This should be equivalent to the special contract limit of £37,450 applying to British airlines.

Further consideration should be given to the possibility of imposing third party insurance for private aircraft.

**Sea and inland waterways**

In an area traditionally governed by international agreements it would be inappropriate to recommend a new system of liability for the United Kingdom alone. The idea of imposing strict liability was rejected but the United Kingdom should take steps to implement the London Convention which it is hoped will soon be brought into force thus increasing to £30,000 the limits of liability.

The provisions of the London Convention should be applied to inland craft.

Pending the implementation of the Montreal Protocol No. 3 the limit on international hovercraft journeys should be equivalent to the special contract limit applying to British airlines and the limit for hovercraft journeys within the United Kingdom should be increased to £37,450.

**Rail**

A "no-fault" scheme is ruled out as not being appropriate for rail but the introduction of strict liability is recommended for injuries caused by the movement of rolling stock. Railway undertakings should not be strictly liable for injuries or death to trespassers.

**Products**

The number of injuries caused by products is relatively small and the risk of death is lower than for other categories of injury. There are no published statistics, but the Commission's own survey suggests that between 30,000 and 40,000 injuries a year may be caused by defective products other than drugs. Of these, something over 10,000 occur at work, and a further 10,000 involve services as well as defective products.

There was no justification at present for introducing a "no-fault" scheme for injuries caused by defective products.

The imposition of strict liability would, however, meet most of the objections to the current law. A scheme based broadly on the Council of Europe Convention and the EEC draft directive should be introduced.

Products liability was considered in the context of public concern to protect the interests of the consumer and among the

Commission's detailed recommendations are —

(i) both producers of finished products and component producers should be strictly liable, but in general distributors should not;
(ii) importers should be treated as producers;
(iii) it should not be a defence for a producer to prove that he had withdrawn or attempted to withdraw his product [ Mr Marshall dissents so far as it applies to aircraft ];
(iv) the producer should not be allowed a special defence for development risks. The production of a new drug is a particularly striking and important example of the kind of development risk which might be covered by such a defence;
(v) there should be no financial limits on the producers' liability;
(vi) the producers' strict liability in tort should be subject to a cut-off period of ten years from the circulation of the product;
(vii) movable products incorporated in immovables, such as building materials incorporated into a house, should be regarded as "products".

*Drugs*

Special mention is made of the difficulties arising from the decision to apply strict liability to drugs. The pharmaceutical industry is opposed to strict liability. The Commission considered that no special treatment could be justified, notwithstanding their decision not to recommend either a special defence for development risks or a financial limit on liability.

**Services**

Liability in negligence should be retained for services and there should be no formal reversal of the burden of proof. Included are personal services such as hairdressing, the supply of professional, managerial or labour services in person or otherwise, and information and advisory services, as well as those services related to products.

While recognising that different treatment of services and products would result in some anomalies, the Commission thought that this would be preferable to the problems which could arise if strict liability for services were imposed.

**Medical injury**

The Commission concludes that a "no-fault" scheme for medical accidents should not be introduced at present and the negligence action should remain. It recommends, however, that strict liability should be imposed on any authority to whom a volunteer for research or clinical trials has consented to make himself available and who suffers severe damage from those trials.

It also recommends that the progress of the "no-fault" schemes in New Zealand and Sweden should be studied and assessed so that the

experience could be drawn upon if, because of changing circumstances, it was decided to introduce a "no-fault" scheme for medical accidents in this country.

**Vaccine damage**

The Commission did not think it right to try to distinguish one severely disabled child from another to produce a situation where two children have the same needs, but one is compensated and the other is not. Vaccine-damaged children were therefore considered with other severely disabled children irrespective of the cause of disablement.

The Commission concludes that vaccine-damaged children should be entitled to the benefit they propose for severely disabled children but they should have an additional remedy in the field of tort.

There is a special case for paying compensation for vaccine damage where vaccination is recommended by the State and is undertaken to protect the community. The Government or local authority concerned should thus be strictly liable in tort for serious damage suffered by anyone, adult or child, as a result of such vaccination.

The Commission says that it had concluded that there was a special case when the Government asked for its views last year but it was unable to produce an interim report until it had looked at the problem of vaccine damage in the light of its remit as a whole.

In the light of this conclusion the Secretary of State for Social Services had said last year that the Government had decided to accept in principle that there should be a scheme of payments for the benefit of those who were seriously damaged as a result of vaccination, and that it should apply to existing as well as to new cases.

The Commission was conscious of the view that special compensation provision for vaccine damage might act as a deterrent to vaccination, on the grounds that it would imply that there must be a real danger.

But there was the opposite view, which the Commission shared, that the Government must be confident about the safety of vaccination before it would make such a provision. It naturally hoped that any increase in litigation resulting from their recommendations, and any attendant publicity, would not have an adverse impact on the future vaccination programme.

**Ante-natal injury**

Ante-natal injury was specifically included in the Commission's terms of reference because of the thalidomide tragedy. It was often impossible, however, to distinguish the results of ante-natal injury from other congenital defects. Congenital defects account for 90 per cent of all severe disability among children.

As the cause of congenital malformation could rarely be estab-

lished it was not practical to devise a separate scheme for those cases which were within the terms of reference. Children who may have been injured before birth should be considered as part of the problem of compensation for all children who are severely handicapped.

The introduction of strict liability for products would provide a remedy for ante-natal injury if it could be proved to have been caused by "defective" drugs.

The tort action provided under the Congenital Disabilities (Civil Liability) Act 1976 should be retained but its operation should be restricted because there are grave objections to the tort action within the family in the sphere of ante-natal injury.

The child should not normally be allowed to sue either of its parents.

The liability for pre-conception injury in Scotland — where there had been no legislation on ante-natal injury — should be limited to the same extent as the rest of the United Kingdom.

**Children**

It is estimated that there are about 100,000 severely handicapped children — 90,000 suffering from congenital disability; 1,000 to 2,000 disabled through post-natal injury and 8,000 who have suffered from disabling diseases acquired after birth such as meningitis, leukaemia and epilepsy.

As all children who are severely handicapped should be treated in the same way, no matter the cause of their handicap, the Commission recommends that a special benefit for severely handicapped children should be introduced. There is no obvious source of finance related to the causes of handicap so that the cost would have to be borne by the Exchequer.

Those children with a severe disability needed all possible assistance if they were to achieve maximum potential later in life and the whole family may suffer if support was not available.

The "no-fault" provision at present available was not adequate and it is recommended that an addition to child benefit should be paid to parents and guardians of all severely handicapped children.

*The new benefit*

The new allowance would be at the rate of £4 a week (at January 1977 levels), tax free, for severely handicapped children from the age of two. For preference it could be paid to the mother as an addition to child benefit. It would not be a substitute for local authority services.

The allowance would cease when the child became eligible for non-contributory invalidity pension at the age of 16, or at age 19 if receiving full-time education. It should be reviewed as the child grows as there may be some change in his condition.

Assessment of "severe handicap" should not depend solely on medical certification by doctors but should include assessment by members of other health care professions.

The Department of Health and Social Security should administer the benefit and lay down detailed procedure. There should be no avoidable delay in determining entitlement. There should be an appeal procedure of which parents should be told.

*Mobility allowance*

Attendance allowance and mobility allowance would still be payable where applicable.

The Commission recommends that the mobility allowance, now payable to children from the age of five, should be paid from the age of two.

It notes that the conditions of eligibility for the mobility allowance exclude substantial numbers of children with serious mobility problems such as uncontrolled epilepsy; severe asthma or cystic fibrosis; blind and deaf; overactive mentally handicapped children who require constant supervision.

It also understands that recent decisions on the award are in effect extending entitlement. It recommends that the conditions of eligibility for mobility allowance should be reviewed so as to help those children who may be technically mobile but whose mobility is subject to special difficulties.

*Cost*

The cost of the new allowance would be some £15m a year plus administration costs of £2m a year. To make mobility allowance payable at the age of two would cost £1m a year.

Even if compensation is available to all severely handicapped children on these lines it should still be possible to bring tort actions — subject to the off-setting of social security benefits.

**Occupiers' liability**

No change was needed regarding injuries on other persons' premises beyond that required to implement the Law Commission's recommendations on "uninvited entrants". These were trespassers, "authorised ramblers" and persons exercising a right of way (except those exercising a public right of way) who had not been dealt with under the Occupier' Liability Act 1957, which covered "invited" (or permitted) visitors only and was applicable to England and Wales. The Law Commission had prepared a draft Bill which would supplement the 1957 Act covering "uninvited entrants" and this should be enacted. Similar steps should be taken in Northern Ireland.

No change is recommended for Scotland. The Bill proposed by the Law Commission would bring English Law broadly into line with Scottish law as it stands under the Occupiers' Liability (Scotland) Act 1960.

**Criminal injuries**

The Commission recommends that the scheme for Great Britain should be put on a statutory basis. On the possibility of change, it does not think it necessary or appropriate to duplicate the thorough reviews recently completed in Northern Ireland and in an advanced stage in Great Britain. It confines itself to comment on the principles of the schemes.

It asks that the existing schemes should be reviewed in the light of its proposals on tort and the assessment of damages.

**Animals**

No major change was needed in the law in England, Wales and Northern Ireland but the Scottish legislation might be aligned with the rest of the United Kingdom by enacting provisions parallel to the Animals Act 1971.

The Dangerous Wild Animals Act 1976 and the Riding Establishment Acts 1964 and 1970 should be amended, either to specify practical limits to the compulsory third party insurance required, or to give the licensing authorities discretion to determine what is a satisfactory amount.

**Exceptional risks**

Some provision should be made for exceptional risks that could not adequately be covered under any of the categories they have considered. Strict liability should be imposed on controllers of things or operations which by their unusually hazardous nature require supervision because of their potential for causing death or personal injury, and those which, although normally safe, might cause serious and extensive casualties if they did go wrong.

In the first category would fall such things as explosives and flammable gases or liquids. In the second are such things as large public bridges, dams, major stores and stadiums and other buildings where large numbers may congregate.

There should be a statutory scheme under which certain things and operations would be listed in a statutory instrument, the controller of each becoming strictly liable for death or personal injury resulting from its malfunctioning.

The Minister making the Statutory Instrument should have the power, although not the duty, to lay down a requirement of compulsory insurance — and the minimum permissible to cover any particular case — for the risk to which strict liability applies.

Several recommendations are made (some by a majority) on the extent to which the parent statute should define the extent of strict liability and the possible defences and what should be left to be defined by the Statutory Instrument.

**Compulsory insurance**

At present, third party insurance cover was compulsory for employers and motorists, and also for nuclear installations, dangerous wild animals, riding establishments and oil pollution from merchant ships.

The Commission saw a number of practical difficulties to widening the scope of compulsory insurance. It recommends that consideration be given to imposing a new requirement in only two areas (a) for exceptional risks for which strict liability is imposed and (b) private aircraft.

**Cost of the proposals**

At January 1977 prices the combined effect of the Commission's proposals for compensation for personal injury would be to increase total compensation payments after five years by £5m a year. But as there would be an overall saving of £16m a year in the cost of administration there would be an initial reduction of £11m a year in the cost.

Ultimately, after 40 years, the combined effect would be to increase compensation payments by £51m a year. This increase represented nearly ten per cent of the £542m a year payable in injury compensation at present levels through both tort and social security. At the same time overall administration costs would decline by about £10m a year leaving a net increase in cost of £41m a year.

This concealed a change in the distribution of compensation costs. Costs in the state social security scheme (including administration) would ultimately increase by £130m a year (industrial injuries £58m; road £54m and severely handicapped children £18m). Tort compensation costs which were met, in the first instance, mainly by insurers in the private sector, would decrease by £86m a year and occupational sick pay by £3m.

The Commission says that despite the transfer of costs from the private to the public sector, broadly speaking, the costs of the proposed compensation arrangements would ultimately fall on the same groups as at present, namely employers and motorists, and would not involve a large increase in taxation.

The Commission is in no doubt that, looking at the whole picture, its proposals would result in a better balance in the distribution of the funds devoted to compensation for personal injuries and would give greater help to those who most need it.

**The future**

After its extensive enquiries and discussions, the Commission says that it naturally has views on ultimate objectives for the development of compensation.

"There are among us broadly three schools of thought which are indicated in the report only briefly as they go, in part, beyond the

scope of our terms of reference, and wholly beyond our conclusions and recommendations", states the Commission.

Some of the members would welcome an eventual extension of no-fault compensation beyond the spheres of employment and road traffic to cover the other categories of injuries within their terms of reference (e.g. injuries arising from services) and those injuries which were outside their terms of reference (e.g. injuries in the home). The cost of introducing a much more extensive no-fault scheme covering both sickness and injury would be substantial but these members believed that it was a socially desirable objective.

Some of these members were also doubtful about the permanent value of the tort system of compensation as a means of supplementing what could be obtained from social security. In their view the tort system was too costly, too cumbersome, too prone to delay and too capricious in its operation to be defensible.

Other members hoped and believed that there would always be a role for the tort system, whatever happened to no-fault provision. They would argue that tort would remain uniquely well equipped for compensating the widest possible range of the particular losses suffered by a given individual; that despite the role of liability insurance, tort would continue to embody the socially valuable principle that, where a person negligently or intentionally caused injuries to another, amends should be made for the consequences of his fault; and that the continued existence of tort, would, of itself, be some safeguard against a system of total dependence on the State.

There were yet other members who took the view that, in the light of all the uncertainties, it would be best to wait until it was possible to asses the social and practical consequences of their proposals, in particular the road scheme, before trying to judge, even in principle, in which direction it would be appropriate to move next.

"But speculation about the future takes us well beyond our terms of reference", concludes the Commission. "We have tried to deal with some of the most urgent problems which relate to compensation for death and personal injuries; and to provide a vantage point from which a number of possible routes into the future could be mapped out. On most of what we propose we are agreed".

**Pre-release preparation for jailed drug addicts**

The Working Group on Treatment and Rehabilitation of the Advisory Council on the Misuse of Drugs in its report on "Drug Dependants within the Prison System in England and Wales" has urged the proper preparation for jailed drug addicts before being released if they are not to lose the value of enforced withdrawal and therapy in prison. The Report notes that "one of the great hazards of insufficiently prepared release is that the ex-drug dependant will immediately go back to taking drugs".

The expression "drug dependants" is used to describe all those persons who are received into custody, including those remanded in custody before trial or sentence, who, in the opinion of a prison medical officer, are dependant upon drugs (excluding alcohol) whether or not the drugs are controlled by the Misuse of Drugs Act 1971 or are drugs controlled by that Act to which the Notification of Addicts Regulations apply; and the term "addict" refers to any person whose drug misuse meets the criteria for addiction as described in the Misuse of Drugs (Notification of and Supply to Addicts) Regulations 1973.

The recommendations of the Working Group deal with the statistics of such cases, their treatment and rehabilitation. The Report notes that treatment in prison based on withdrawal and therapy is often adhoc or scarce. It recommends more therapeutic units, greater use of the techniques utilised by the National Health Service and aid for prisoners on remand who can no longer use addiction clinics. In main, the Working Group emphasises on the importance of preparation for release, that is, the need for adequate arrangements to be made for the rehabilitation of persons who have been treated in prison for their drug-dependence when they are released in order to ensure that they do not relapse into drug-taking. According to the Report, one in ten addicts released dies of an overdose within days of freedom.

The main recommendations are as follows—

(i) There should be adequate pre-release preparation for all prisoners dependent on drugs, starting at least one month and preferably three months before discharge, and that this preparation should include instruction on the effects of withdrawal and abstinence on tolerance.

(ii) In order to improve the opportunities for an improved system of after-care, the Prison Service should allow the voluntary drug agencies easier and regular access to the prisons.

(iii) The voluntary agencies under the co-ordinating aegis of NACRO (National Association for the Care and Settlement of Offenders) and SCODA (Standing Conference on Drug Abuse), and in co-operation with the Prison Service, should explore the possibilities of creating together an organisation specifically devoted to work with ex-drug dependants within prisons.

(iv) In order to increase the opportunities for referral from the Prison Medical Service, the voluntary agencies, the Probation and After-Care Service and the DTCs (Drug Treatment Centre) should explore the possibility of a pilot therapeutic/supportive scheme for ex-drug dependant prisoners on release from an existing prison therapeutic unit; such a scheme should be monitored with a view to developing the support thereby offered on a wider scale.

(v) The relevant local statutory authorities, either directly or on an agency basis, should use the opportunities provided by recent legislation or circulars to provide funds to supportive hostels and other housing opportunities for ex-prisoners with histories of drug dependence. The DHSS (Department of Health and Social Security) should issue a circular to health and social service authorities drawing attention to these new arrangements and specifically their value in the provision of supportive housing for vulnerable groups.

(vi) Existing hostels including probation and bail hostels and those for ex-offenders should start to accept ex-drug dependents and SCODA and NACRO should provide the staff training necessary to facilitate such a development.

(vii) The Prison Service should set up a pilot half-way hostel attached to a prison with an existing therapeutic unit, for ex-drug dependants on a pre-release basis, including opportunities for pre-release employment.

(viii) More training opportunities within the Training Opportunities Scheme run by the Employment Services Agency should be made available to ex-dependent prisoners on release.

# Reviews

**International Digest of Health Legislation, Vol. 30, No. 3** (World Health Organization, Geneva: ix + 710 pp: Sw.fr.25 – Sw.fr. 90 per volume)

This Digest is published quarterly in two separate editions, English and French, and contains a selection of health laws and regulations and, from time to time, studies in comparative health legislation as well as a bibliographical section. Official publications and other documents forwarded by Member States in fulfilment of Article 63 of the Constitution of the World Health Organization constitute the principal source of material for the Digest. Texts of legislation are, according to their general interest, reproduced or translated in full or in extract form, summarised, or mentioned by their title. A subject index is published after the issue of the last number in each volume.

This issue reproduces the comparative survey by Rebecca J. Cook and Bernard M. Dickens of abortion laws in Commonwealth countries prepared for the Commonwealth Secretariat and included in the Secretariat's publication *Three Studies of Abortion Laws in the Commonwealth* [reviewed by Lesley Vick at (1979) 5 C.L.B. 581].

**Law and Planned Parenthood** by John M. Paxman (International Planned Parenthood Association, London: 116pp.: £3.00)

The author explains that the Handbook is designed to inform family planners, in a general way, about what the law has to say on subjects linked to family planning, to look briefly at the ways law restrains the development of family planning programmes, to explore the various imaginative approaches which have been adopted around the world to eliminate, overcome or avoid these restraints and to see how the law has been utilised to make freedom of choice in family planning matters possible. The emphasis is on working within the law by using known legal techniques, but the task of challenging and reforming the law is not ignored. On the whole, the Handbook is essentially a positive exercise which perceives the law as a facilitator rather than an inhibitor. The Handbook itself should be treated as a source book for ideas rather than a definitive treatise.

Chapters deal with legal and policy aspects of contraceptive information and services; voluntary sterilization and the law; pregnancy termination and the law; expanding the roles of health and auxiliary personnel in family planning; fertility regulation information and services for the adolescents; changing the status of women through law. A selected bibliography is included.

**Three Studies of Abortion Laws in the Commonwealth** by Mostyn P. Embrey, Victor Tunkel, Rebecca J. Cook and Bernard M. Dickens (Commonwealth Secretariat, London. 183 pp. £3.00 incl. postage) reviewed by Lesley Vick.

As noted in the preface to this valuable publication, medical technology in relation to family planning and the medical termination of pregnancy has in recent years outstripped the provisions of the law in many countries. In recognition of this, the Third and Fourth Commonwealth Medical Conferences, in 1971 and 1974 respectively, recommended that the Commonwealth Secretariat should gather information on the subject and study the legal and ethical aspects. Accordingly, three separate papers were commissioned by the Secretariat and tabled at the meeting of Commonwealth Law Ministers in August 1977 and later at the Commonwealth Medical Conference in November 1977. Now published as *Three Studies of Abortion Laws in the Commonwealth,* the report is intended to provide governments with information which may be of assistance in reviewing existing legislation and considering changes to that legislation.

The present state of abortion laws, including recent changes, was surveyed in 53 national and provincial jurisdictions within the 36 countries of the Commonwealth and in a number of associated states and dependencies. The information was analysed by the then Head of the Law Programme of the International Planned Parenthood

Federation (I.P.P.F.) and Professor Bernard Dickens, Faculty of Law of the University of Toronto, in consultation with the Medical Adviser and the Legal Division of the Commonwealth Secretariat. The two companion papers, prepared by Mostyn P. Embrey, M.D., F.R.C.S., F.R.C.O.G. of the Nuffield Department of Obstetrics and Gynaecology, John Radcliffe Hospital, Oxford and Victor Tunkel, Lecturer in Law at the University of London, deal with medical developments and legal initiatives respectively.

In their paper, "A Survey of Abortion Laws in Commonwealth Countries", Miss Cook and Professor Dickens show that most of the Commonwealth countries inherited their laws from the English Offences Against the Person Act of 1861 and English common law tradition. The English imprint has not been exclusive, however, since countries such as Malaysia have been influenced by Islamic law, while others fit into the Roman-Dutch common law tradition. A number of countries also retain the influence and jurisdiction of their indigenous customary law. Thus laws in Commonwealth countries range from apparent total prohibition to abortion on request, despite their common heritage. The word "apparent" is significant, because the survey shows that few, if any, Commonwealth countries are ready to recognise de jure the decriminalisation of medically conducted abortion that has occurred de facto. The report says that medical advances and social attitudes have rendered abortion safe and more widely acceptable, so that the atmosphere of crime has largely been removed. Abortion control is passing out of the realm of criminal law and into the realm of welfare law, which includes female health and fertility control. Legislation based on social justice, aiming to extend equal rights to health care to the poor, may be part of a social policy programme encompassing more than the enactment of legislation. In this context, abortion may not be the central focus but a residual part of a fertility control programme giving priority to family life education and instruction in contraceptive methods.

There are various societal pressures likely to lead to the inclusion of abortion in a wider health-care setting. It has been found repeatedly that legislation attaching sanctions to abortion does not prevent it, though poorer women may be denied access to safe medical procedures. The trend towards equal opportunity for women is making governments cognisant of their special needs and, based on current developments, the report predicts that the claims of women will lead to new thinking and new laws with a subsequent impact upon their status within society.

The report comments that the evolution of abortion law may be seen to follow a course moving from a prohibitive basic law to developed law, by means of a court ruling or an administrative declaration, and on to an advanced law stating grounds and conditions of lawful abortion. Once the scope of permitted abortion is defined, the justification for a separate abortion law may weaken

and it may be assimilated into the general law governing health and welfare. It is noted that legalising abortion does not necessarily make resources available for it and unless services which have been made legal in theory are made available in practice, the toll upon women's lives from illegal abortions will not be reduced.

Apart from the analysis of legal developments, the survey includes summaries of the Lane, Badgley and McMullin reports; three tables showing a) the legal indications for abortion in the various jurisdictions, b) when and by whom an abortion may be performed and c) the current government moves to assess their laws and the changes proposed by government and non-government agencies; three Commonwealth statutes and a sample Medical Termination of Pregnancy Bill (with commentary) which could be adapted to become law in all Commonwealth countries. The wealth of data contained in this report will undoubtedly prove as useful to governments, and others, as the authors hope. By identifying the various factors that those planning change may need to consider, indicating how individual jurisdictions have responded to particular issues and showing how certain laws have been found to operate the report will assist governments to respond to their individual needs and pressures in the light of knowledge and experience.

In his paper, "Developments in Medical Technologies for Fertility Regulation and Their Implications for Medical Legislation", Mostyn P. Embrey expresses concern that abortion laws have not kept pace with medical developments and thinking. The once clear difference between contraception and abortion has blurred due to modern techniques of fertility control. Most abortion laws were based on the understanding that conception takes place at the moment of the union of the sperm and the ovum but medical science today defines conception differently. Furthermore, the newer methods of pregnancy interception takes place at the very earliest stages of pregnancy, both before and after implantation is complete. The legal status of menstrual regulation (by vacuum aspiration or prostaglandins) needs clarification and the ambiguities are inadequately resolved by restrictive abortion statutes. Future developments on post-coital steroids (the "morning-after" pill) and several other methods which are being researched—notably biochemical blocking of hormone pathways and immunisation against hormones which suppresses fertility for a period and causes subsequent pregnancies to end in abortion—present further legal problems. As the author notes, these recent developments have implications of moral, ethical and legal importance and will necessitate a reappraisal of the law.

Mostyn Embrey's view is supported by Victor Tunkel in his paper "The Law Against Family Planning: A Commonwealth Survey". He states unequivocally that "the law is antiquated and largely ignored, but it remains the law and threatens to obstruct the new F.P. methods now being developed...present day family planning

practice, however ethical medically and desirable socially, is increasingly moving into the line of fire of the criminal law". In referring to the newer methods of pregnancy interception and displanting discussed by Mostyn Embrey, Mr. Tunkel finds the laws in the Commonwealth interpretable in two ways. Some restrict family planning while others, mainly through administrative provisions, actively promote it. In general, however, even the latter type is so imprecise and vague that they are unhelpful and could be troublesome to medical practitioners. Conversely, of course, laws which seem to restrict are often unenforceable. Having identified these problems, the paper then canvasses some suggestions for reform. Apart from complete decriminalisation, the possibility of legalisation by reference to a number of factors, including the stage of pregnancy, the means used, the practitioner and function, is discussed. These possibilities, and legalisation through lack of evidence, are not seen by the author as likely to suffice in isolation. A combination of approaches, varied according to the present and foreseeable needs of a particular country, seems most desirable. In noting that it is doubtful whether there is any Commonwealth country where post-conceptive family planning is not already being practised, Mr. Tunkel reiterates the view that runs through the three papers—"Forward-looking family planning policy needs positive help from a forward-looking law".

Lesley Vick

**The law and mental health: harmonizing objectives** by W. J. Curran and T. W. Harding (World Health Organisation, Geneva: 161 pp.).

This report, which was originally published in the *International Digest of Health Legislation,* is concerned with ways in which the law can be used to promote more effective and humane responses to mental disorders. A large number of countries are surveyed, guidelines developed for the assessment of existing legislation, and an account given of alternative approaches which it is hoped will generate fresh thinking and creative drafting in future legislation.

**New abortion law**

The World Health Organisation's translation of Italy's new abortion law, one of the most liberal in Western Europe, is available in the June 1978 issue of *Law File*, published by the International Planned Parenthood Federation, 18–20 Lower Regent Street, London SW1Y 4PW, United Kingdom. *Law File*, which appears regularly, records developments around the world in the field of family planning and related issues (e.g. status of women, mothers and children, primary health care etc.).

**Beyond the interests of the child** by Joseph Goldstein, Anna Freud and Albert J. Solnit (Macmillan Publishing, New York: xiv + 170 pp: $2.45).

The book examines child placement and child-parent relationships and sets out guidelines and their implications for laws concerning the placement of children. It culminates in the following model statute, for which the remainder of the book serves as a commentary—

*ARTICLE 10. DEFINITIONS*

PARA. 10.1 BIOLOGICAL PARENTS

The biological parents are those who physically produce the child.

PARA. 10.2 WANTED CHILD

A wanted child is one who receives affection and nourishment on a continuing basis from at least one adult and who feels that he or she is and continues to be valued by those who take care of him or her.

PARA. 10.3 PSYCHOLOGICAL PARENT

A psychological parent is one who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs. The psychological parent may be a biological (Para. 10.1), adoptive, foster, or common-law (Para. 10.4) parent, or any other person. There is no presumption in favour of any of these after the initial assignment at birth (Para. 20).

PARA. 10.4 COMMON-LAW PARENT-CHILD RELATIONSHIP

A common-law parent-child relationship is a psychological parent (Para. 10.3)—wanted child (Para. 10.2) relationship which developed outside of adoption, assignment by custody in separation or divorce proceedings, or the initial assignment at birth of a child to his or her biological parents (Para. 20.1).

PARA. 10.5 CHILD'S SENSE OF TIME

A child's sense of time is based on the urgency of his or her instinctual and emotional needs and thus differs from an adult's sense of time, as adults are better able to anticipate the future and thus to manage delay. A child's sense of time changes as he or she develops. Intervals of separation between parent and child that would constitute important breaks in continuity at one age might be of reduced significance at a later age.

PARA. 10.6 LEAST DETRIMENTAL AVAILABLE ALTERNATIVE

The least detrimental available alternative is that child placement and procedure for child placement which maximizes, in accord with the child's sense of time (Para. 10.5), the child's opportunity for being wanted (Para. 10.2) and for maintaining on a continuous, unconditional, and permanent basis a relationship with at least one adult who is or will become the child's psychological parent (Para. 10.3).

*ARTICLE 20. INITIAL PLACEMENT*

PARA. 20 PLACEMENT OF CHILD

At birth, a child is placed with his biological parents (Para. 10.1). Unless other adults assume or are assigned the role, they are presumed to become the child's psychological parents (Para. 10.3).

*ARTICLE 30. INTERVENTION TO ALTER A CHILD'S PLACEMENT*

PARA. 30.1 STATE POLICY OF MINIMIZING DISRUPTION
It is the policy of this state to minimize disruptions of continuing relationships between a psychological parent (Para 10.3) and the child. The child's developmental needs are best served by continuing unconditional and permanent relationships. The importance of a relationship's duration and the significance of a disruption's duration vary with the child's developmental stage.

PARA. 30.2 INTERVENOR
An intervenor is any person (including the state, institutions of the state, biological parents, and others) who seeks to disrupt a continuing relationship between psychological parent (Para. 10.3) and child or seeks to establish an opportunity for such a relationship to develop. Upon such interventions the court's decision must secure for the child the least detrimental available alternative (Para. 10.6).

PARA. 30.3 BURDEN ON THE INTERVENOR
A child is presumed to be wanted (Para. 10.2) in his or her current placement. If the child's placement is to be altered, the intervenor, except in custody disputes in divorce or separation, must establish *both:*

(i) that the child is unwanted, *and*
(ii) that the child's current placement is not the least detrimental available alternative (Para. 10.6).

In custody disputes in divorce or separation, the intervenor, that is the adult seeking custody, must establish that he or she is the least detrimental available alternative (Para. 10.6).

PARA. 30.4 CHILD'S PARTY STATUS
Whenever an intervenor seeks to alter a child's placement the child shall be made a party to the dispute. The child shall be represented by independent counsel.

PARA. 30.5 FINAL UNCONDITIONAL DISPOSAL
All placements shall be unconditional and final, that is, the court shall not retain continuing jurisdiction over a parent-child relationship or establish or enforce such conditions as rights of visitation.

PARA. 30.6 TIMELY HEARING AND APPEAL
Trials and appeals shall be conducted as rapidly as is consistent with responsible decisionmaking. The court shall establish a timetable for hearing, decision, and review on appeal which, in accord with the specific child's sense of time (Para. 10.5), shall maximize the chances of all interested parties to have their substantive claims heard while still viable, and shall minimize the disruption of parent-child relationships (Para. 30.1).

## Australia

**Legal and Social Aspects of Human Artificial Insemination: a bibliography of items written after 1970** compiled by Roy Jordon (13 pp.)

This bibliography containing a listing of books, journal articles, and newspaper and magazine articles (223 items) has been published

by, and is available from, the Australian Attorney-General's Department, Canberra.

**The Second Symposium on Law and Justice in the Australian Capital Territory**

The papers from the Symposium held in Canberra, Australia, in March 1977 have now been published and are available from the Symposium Convenor, Mr. J. K. Bowen, Assistant Crown Prosecutor, 4th Floor, QANTAS House, London Circuit, Canberra, A.C.T. 2601.

The papers include —

(i) problems associated with the institution and conduct of prosecutions in the Australian Capital Territory, by K. E. Enderby, QC;
(ii) the conduct of prosecutions in the Australian Capital Territory, by A. J. Oldroyd;
(iii) blind justice: an exercise in press censorship by Australia's economic-legal system, by Ian Mathews;
(iv) freedom of information v. privacy, by Mr. Justice Kirby;
(v) the role of the psychiatrist in the criminal trial, by A. A. Bartholomew;
(vi) an examination of the laws of the Australian Capital Territory and proposals for reform, by Mr. Justice Blackburn;
(vii) reform of the investigation and trial of rape, by H. Coonan;
(viii) the impact of legalised casinos in Canberra, by J. McCrudden;
(ix) the role of the ombudsman, by Sen. John Knight.

**Deterrence and the drinking driver** by Roman Tomasic (Law Foundation of New South Wales; 77 + xiii pp).

The paper re-examines a major social problem and attempts to determine whether it is possible to classify the drinking-driving population and so establish how particular drivers or groups of drivers will respond to the threat and the imposition of punishment, and next to non-punitive measures. It also argues that the problems of many drinking drivers should be defined as community and health problems rather than as traffic problems, and that the diversionary approach to offenders is more appropriate and more likely to be successful as a deterrent than wholly punitive measures.

**Drugs, alcohol and community control** by Roman Tomasic (Law Foundation of New South Wales; 248 pp).

Two studies in this series have been noted at (1977) 3 C.L.B. 334, namely *Deterrence and the drinking driver* and *Bail and pre-trial release—strategies and issues*. This, the third, brings together a wide range of materials to illustrate Australian approaches to alcoholism

and drug dependence and contrasts these with developments currently taking place to reform legal systems, particularly within the U.S.A. The author sees a need for greater community involvement in alternatives needed to replace those aspects of the legal system which have apparently failed to respond adequately to the needs of individual alcoholics and drug users.

**Family planning and the law** (2nd edition) by H. A. Finlay and J. E. Sihombing (Butterworths Pty Ltd, Australia: xii + 228 pp).

The book reviews Australian legislation, both State and Federal, on the distribution and marketing of contraception, abortion, sterilisation, adoption, artificial insemination, embyro transplantation and fertility drugs.

Since the first edition appeared there has been the comprehensive symposium on "Family planning and the law" held in Sydney, and the authors have included the papers from this in the second half of the book, adding to its breadth, interest and usefulness.

## Canada

**Psychiatry and the Judicial Process: A Bibliography** compiled by Robert J. Menzies (Centre of Criminology, University of Toronto: 55 pp: $2.50)

This bibliography was compiled as a component of a larger study on the Mentally Disordered Offender, conducted for the Canadian Department of Justice by Dr. Christopher D. Webster. Upon a preliminary survey of the literature, it became apparent that few attempts had been made to accumulate and classify the bourgeoning research in the field of forensic psychiatry. The area cross-cuts such a wide spectrum of disciplines and orientations that ready access to relevant research data is often impossible. The Centre is attempting to bridge that gap by means of this bibliography.

Subject areas include general papers on policy and legislation; studies of psychiatric remands; the role of the psychiatrist in determining fitness (competency) and insanity (criminal responsibility); issues relating dangerousness to mental illness; and considerations of ethics and civil liberties.

**The Silent System: An Inquiry into Prisoners who Suicide: an Annotated Bibliography** by Brian E. Burtch and Richard V. Ericson (Centre of Criminology, University of Toronto: 113 pp: $5.00)

It is generally known that the rate of suicide in penal institutions exceeds that of the general population. Notwithstanding substantial media coverage on prisoner suicides as well as renewed academic and clinical interest in the prediction and prevention of inmate suicide, this subject has remained largely unexplored.

This report is the first major study of prisoner suicides in Canadian penal settings. It is based upon an official document

analysis of 96 inmates who committed suicide in four maximum-security penitentiaries between 1959 and 1975. Background demographic factors, offence history, length of confinement, stage of confinement, location in prison, and previous psychiatric history of these inmates are considered. Where possible, the suicide sample is compared on these characteristics with a sample of 1,383 inmates in four maximum-security penitentiaries in 1977. Official responses to distressed inmates are appraised in terms of emergency measures, clinical resources, and adequacy of post mortem investigations. An annotated bibliography briefly reviews selected books and articles on inmate suicide.

**The Canadian Patients Book of Rights** by Lorne E. Rozovsky (Doubleday Canada Ltd: $8.95 paperback, $14.95 hardback)

The publication is a comprehensive consumer's guide to Canadian Health Law containing all the information needed to secure a good medical care or to deal with difficult medical situations. Topics covered include a Patients' Bill of rights; hospital insurance and medical care; the rights to a doctor of one's choice; consent to treatment; standard of care and negligence; who is responsible for whom?; the patient's property; medical records and confidentiality; abortions; mental illness and communicable disease; death; after you are gone; what do we mean by law?; why do patients sue?; and to whom do you complain?

**Canadian Hospital Law** 2nd Edition by Lorne Rozovsky (Canadian Hospital Association, Ottawa: $Can. 12)

This work, by one of Canada's leading authorities on health law, contains up to date information on health care law in Canada. Topics covered include: the lawyer; responsibility to a patient; consent to treatment; negligence; privileges of medical staff; patients' records; medical termination of pregnancy; the patient's property; transplants and human tissues; wills.

**Canadian Law Reform Commission publications**

A number of reports, working papers and studies of the Law Reform Commission of Canada are available, free of charge, from the Canadian Law Reform Commission (130 Albert St, Ottawa Ontario K1A 0L6).

The publications include —

(i) Law Reform Commission's Fifth Annual Report 1975–1976 (Cat. No. J31–1976);

(ii) Limits of criminal law, Working paper No. 10 (Cat. No. J32–1/10–1975);

(iii) Imprisonment and release, Working No. 11 (Cat. No. J32–1/11–1975);

(iv) The criminal process and mental disorder, Working Paper No. 14 (Cat. No. J32–1/14–1975);
(v) Commissions of inquiry, Working Paper No. 17 (Cat. No. J32–1/17–1977);
(vi) Federal court, Working Paper No. 18 (Cat. No. J32–1/18–1977);
(vii) Evidence, Report to Parliament (Cat No. J31–15/1975);
(viii) Guidelines on dispositions and sentencing in the criminal process, Report to Parliament (Cat. No. J31–16/1975);
(ix) Our criminal law, Report to Parliament (Cat. No. J31–19/1976);
(x) Expropriation, Report to Parliament (Cat. No. J31–17/1976);
(xi) Mental disorder in the criminal process, Report to Parliament (Cat. No. J31–18/1976);
(xii) Family law, Report to Parliament (Cat. No. J31–20/1976);
(xiii) Sunday observance, Report to Parliament (Cat. No. J31–21/1976);
(xiv) The Immigration Appeal Board, Administrative Law Series Study Papers (Cat. No. J32–3/13);
(xv) The Atomic Energy Control Board, Administrative Law Series Study Papers (Cat. No. J32–3/15);
(xvi) The parole process, Administrative Law Series Study Papers (Cat. No. J32–3/14);
(xvii) Unemployment Insurance Benefits, Administrative Law Series Study Papers (Cat. No. J32–3/16).

## Sri Lanka

**Legal Dimensions of Population Dynamics: Perspectives from Asia** by D. C. Jayasuriya (Associated Educational Publishers, Sri Lanka: 174 pp.)

Population policy and development problems in the Asia region have received considerable attention from demographers and social scientists, but information on the legal aspects of population dynamics and comparative surveys have largely been lacking. This book is intended to fill this void by analysing salient aspects and taking examples from selected countries in the region.

**Narcotics and drugs in Sri Lanka: socio-legal dimensions** by D. C. Jayasuriya (Associated Educational Publishers, Mount Lavinia, Sri Lanka: 219 pp).

The book traces the historical development of the law and of control mechanisms relating to narcotics and drugs in their social, economic and political perspectives.

**Uganda**

**The Veneral Diseases Decree 1977** (published by the Law Reform Commission, Ministry of Justice, Kampala, Uganda: 12 pp: Shs. 5)

An explanation to the public of a measure to combat sexually-transmitted diseases.

**United Kingdom**

**Suicide guide**

A 30-page booklet titled "Guide to Self-deliverance" detailing five ways to commit painless suicide has been compiled by EXIT, the Society for the Right to Die with Dignity or the voluntary euthanasia group. It contains a great deal of information specifically aimed at ensuring that those who attempt to kill themselves do so efficiently. Controversy over its publication, which according to the Society would be available to people who have been members of EXIT for three months, led to a split in the 9,000 membership.

The argument in favour of its availability is based, first, on the principle of "the right to die" and, second, that if a person has already decided to put an end to his life, he should be entitled to the necessary information on how to go about his self-destructive act so as to achieve certain success. That philosophy supposes that people who contemplate suicide to do calmly and dispassionately, taking all factors for and against into consideration, and coming to the conclusion that, on balance, they would prefer to be dead rather than alive.

Those opposed to its publication argue that suicide is more often an irrational act and emphasise its dangers if it gets into the hands of persons suffering from a temporary or pathological emotional distress, thus resulting in unnecessary deaths.

The booklet has been published in Scotland after EXIT members were told they would not be breaking the law. In England, however, the executive committee decided against publication after being told there would be a risk of committee members being prosecuted for contravening the Suicide Act 1961, which makes it an offence, punishable with 14 years' imprisonment, to aid or abet a suicide. In 1961, attempting to commit suicide ceased to be a crime, but aiding and abetting another to take his or her life however, has remained an offence, punishable with up to 14 years' imprisonment (although no sentence approaching that severity has in fact been imposed).

**The Human Rights Review** (Oxford University Press in association with the British Institute of Human Rights: twice yearly: edited by J. E. S. Fawcett)

Since we noted the first appearance of this journal [at (1976) 2 C.L.B. 469], the issues for Autumn 1976 and Spring 1977 have appeared. These have perceptively broadened the areas of interest, and the journal has quickly assumed a major place in human rights literature.

Items noted in these issues include parliamentary privilege; Race Relations Board; ombudsman; consent to abortion; prison rules; congenital disabilities; computerised data banks; psychiatric

detention; deserters; remand; defamation; privacy; police power; Community Land Act; inheritance; insurance; press freedom; trade union rights; employment protection; defence counsel; capital punishment; immigration officers; military discipline; indecency; sterilisation; electronic surveillance; sex education; homosexuals and the young; incitement to disaffection; shop stewards; and appeals against deportation orders.

Articles include "The law and fundamental rights in the United Kingdom: the law and the British constitution "(*Anthony Lester*)", Protection of human rights "(*U.K. Home Secretary*)", UN and Human Rights in Chile" (*Felix Ermacora*), and "The European Convention on Human Rights, Article 32: what is wrong?" (*Anthony Morgan*).

Documents reproduced include individual and social rights as described and protected in the Constitution of Greece; the UN Declaration on Protection from Torture; the reservations and interpretative statements on behalf of the United Kingdom in respect of the International Covenant on Civil and Political Rights; and President Carter's Executive Order to regulate the foreign intelligence agencies of the United States.

**Influence of Litigation on Medical Practice** edited by Clive Wood (Academic Press, London: 215 pp: £10.20p).

The book records the proceedings of a Conference held in London and jointly sponsored by the Royal Society of Medicine and the Royal Society of Medical Foundation Inc. Participants included distinguished medical practitioners from both Britain and the United States, prominent lawyers, and experts in the field of health administration and medical insurance. The volume includes a précis of discussions as well as the text of the papers presented.

One aspect of the enormity of the problem is shown by the following figures: In the United States the number of suits filed alleging medical malpractice doubled in the five years from 1970 to 1975 while the average jury award increased six times over in the same period. At the same time some 36 per cent of the spiralling rise in the cost of medical care has been attributed to the costs of malpractice claims and suits. Yet for all the millions of dollars spent in the malpractice area, recent estimates suggest that as little as 18 to 20 per cent of the total malpractice dollars actually reach an injured patient. However 80 per cent is consumed by the system itself—by lawyers, insurance companies, and expert witnesses.

This provoked the comment that "a more unfortunate system could not have been devised by ten madmen or ten law professors (which may be the equivalent) working overtime for 20 years . . . If we are to deal with the problems of both compensating the patient and eliminating the incompetent practitioner, we must do away with

the fault system itself. This means that we must compensate the patient on a no-fault basis for untoward results. This would not prove extremely costly, since if we tripled the amount of money we are currently paying to patients, we could still cut insurance premiums by approximately 40 per cent. As far as weeding out the incompetent physician is concerned, this cannot be done by a tort or fault system, but must be done by a vigorous system of licensing carried out by the medical profession itself to eliminate the incompetent physician."

In discussion on the paper, the point was made that New Zealand already has a no-fault plan which seems to be working effectively.

In the field of multiple drug therapy, an American consultant in a paper entitled "Is There a Standard of Care?" noted that physicians in the United States last year wrote about two billion prescriptions for some 22,000 drugs with information about side effects and toxic reactions well represented by a litany of warnings in the Physicians Desk Reference pharmicology text books, and the medical literature. The chance recognition of unexpected drug interactions is slow and inefficient.

Space precludes a full review of this fascinating exchange of experience. The nagging doubt in Britain is noted—that litigation for negligence may be an American export which will adversely affect Britain lives and the practice of medicine in that country. Plainly the British concern is also a Commonwealth concern. For this reason, the volume could not be more relevant.

# Recent Articles

**The drug abuse problems: international policy** (prepared by the UN Secretariat) (1978) 34 International Review of Criminal Policy 43.

**The right to parenthood** (*Patricia A. Wright*) (1979) 2 Family Law Review 173. In an area dealing with law and the control of life, values and morals are of the utmost concern.

**Death: a medical dilemma: a legal answer** *(Alan C. Hoffman and Mark Van Cura)* (1979) 3 Legal Medical Quarterly 110.

**The development of Commonwealth abortion laws** *(Bernard M. Dickens* and *Rebecca Cook)* (1979) 28 International and Comparative Law Quarterly 424.

**Mental health patients' rights and the European Human Rights Convention** (P. T. Muchlinski) (1980) 5 *Human Rights Review* 90.

**Travel and communications—their relation to health problems in Small States** (*E. R. Walrond*) (1980 March/April) 6 Bulletin of Eastern Caribbean Affairs 27.

## Australia

**Injuries to unborn children** (*Peter F. Cane*) (1977) 51 Australian Law Journal 704.

**Law and the battered wife** (*Anwar Khan and Jeanette Hacket*) (1978) 3 Legal Service Bulletin 5.

**Damages in contract for mental distress** (*P. H. Clarke*) (1978) 52 Australian Law Journal 626.

**Medico-legal aspects of family planning** (*Ian E. Black*) (1978) 2 Legal Medical Quarterly 198.

## Canada

**Canadian Abortion Law: obstacle for safer management of Canadian women** (*Dr. C. A. Douglas Ringrose*) (1978) 2 Legal Medical Quarterly 97. Canadian abortion laws were formulated at a time when medical technology and knowledge of reproduction were relatively primitive by present-day standards.

**Liability to the unborn** (*L. C. Green*) (1978) 2 Legal Medical Quarterly 82.

**Drug regulation in Canada** (*Willem Wassenaar*) (1978) 2 Legal Medical Quarterly 209.

**Control of Living Body Materials** (*Bernard M. Dickens*) (1977) 27 University of Toronto Law Journal 142.

The article looks at countries whose medical technologies are skilled enough to undertake human organ transplantation and which have legislation governing express post mortem gifts of body materials.

**Establishing the cessation of life** (*David A. Frenkel*) (1978) 2 Legal Medical Quarterly 162.

**Children's right and the family unit** (*Frank Bates*) (1978) 1 Family Law Review 242.

**Child abuse and the social worker: rights of the parents** (*Jeff Rasley*) (1978) 1 Family Law Review 247.

**The ectogenetic human being: a problem child of our time** (*Bernard M. Dickens*) (1979 – 80) 18 University of Western Ontario Law Review 241.

**Psychiatry, the inmate and the law** (*A. W. Cragg*) 3 Dalhousie Law Journal 510. An analysis of the role of psychiatry in the treatment of offenders.

## Jamaica

**A Modern approach to mental health legislation in Jamaica** (*Frederick W. Hickling*) (1977) West Indian Law Journal 55.

**The legal and psychiatric implications of ganja use in Jamaica** (*Frank Knight*) (1979 October) West Indian Law Journal 52.

## New Zealand

**Psychiatric testimony: the ultimate issue rule and the rule in Rowton's case** (*C. B. Cato*) [1980] New Zealand Law Journal 288.

## United Kingdom

**Compensating vaccine-damaged children** (*Harvey Teff*) [1977] New Law Journal 904.

**Switching off life support machines—the legal implications** (*Ian McColl Kennedy*) [1977] Criminal Law Review 443.

**Children at risk and care proceedings** (*S. Christie*) [1980] 130 New Law Journal 280.

**Some problems of evidence obtained by hypnosis** (*Lionel Howard and Andrew Ashworth*) (1980) Criminal Law Review 469.

**Psychopaths in the criminal process** (Andrew Ashworth and Joanna Shapland) (1980) *Criminal Law Review* 628.

**Brain death: a case for legislation?** (*Alexander McCall Smith*) (1980) 25 Journal of the Law Society of Scotland 113.

**The case of the mentally abnormal offender** (*J. A. Baird*) (1980) 25 Journal of the Law Society of Scotland 169.