The A.L.R.C. team is concentrating in the first instance on the Northern Territory but will subsequently broaden its inquiry to all States and Territories. It will also study overseas attempts to harmonise common law and civil law systems with the customary laws of indigenous people. Explaining the A.L.R.C. project in Darwin, Mr. Justice Kirby, the A.L.R.C. Chairman, said that the Commission fully realised the arguments against "legal Apartheid". He said that the first step would be to find out just what Aboriginal customary laws were. Only then could a decision be made as to whether, and if so how, they could be acknowledged by the Australian legal system.

> "It is now more than 200 years since the first contact between the white community and Aboriginals in Australia. It is nearly 200 years since the legal system was established. Especially since the Referendum in 1967 this country has been in the throes of important efforts designed to reform the relationship between the indigenous Aboriginal people and the rest of the community. Until recently we simply imposed our system of law and it must, at times, have seemed unfair and irrelevant".

The A.L.R.C. has published a *Seminar Paper* raising a large number of issues for answer in the reference. Some of the questions raised are :

* Have particular problems arisen in applying tribal laws to young people, especially women, educated in schools and later returned to the tribe?
* To what extent have Aboriginals now accepted the values of Australian criminal law and its system of punishments?
* To what extent will an Aboriginal community exact "pay-back" or other punishments, regardless of the decisions of a criminal court?

Various proposals have been put forward to allow some recognition of Aboriginal customary laws, at least in the tribal situation :

* A requirement that criminal courts should take into account Aboriginal customs, especially punishments, to which the prisoner is subject amongst his own people.
* An attempt to make our criminal law more sensitive by the use of Aboriginal assessors sitting with judges or magistrates, when an Aboriginal is being tried.
* Authorisation of Aboriginal groups to apply their own laws and practices, unless cruel or inhumane.

An A.L.R.C. spokesman said that the views of the community, including the non-Aboriginal community, were being sought. No report would be delivered until proposals had been thoroughly canvassed and discussed in all parts of Australia. Those interested in commenting on the A.L.R.C. *Seminar Paper* are invited to write in for it. It is distributed without charge.

Uniform Law Reform at a Snail's Pace

> "Celerity is the mother of good fortune. He has done much who leaves nothing over till tomorrow".
>
> *Baltasar Gracian, The Art of Worldly Wisdom, 1647.*

Views differ about the advantages of speed in law reform. There are many who would say with Shakespeare that "celerity is never more admired than by the negligent". Some practitioners of law reform have urged that haste is the enemy of true reform. No-one can accuse Australia of this sin, at least in the department of uniform law reform. The American and Canadian federations have their uniformity conference. With 50 States in the union, the Americans can agree upon major uniform legislation, ranging from the Uniform Commercial Code (in force in 49 States) to legislation on such a sensitive matter as organ and tissue transplants (in force in 50 States). Against this record, Australia's list looks pitiful.

We secured a uniform Companies Act in 1961, but it soon took different directions in different States. There was simply no machinery to keep the uniform act up to date. We have virtually uniform hire purchase legislation and very similar blood transfusion laws but that is about it.

Speaking at the First Anniversary Dinner of the National Press Club in Canberra, A.L.R.C. Chairman, Mr. Justice Kirby, described Australia's record in achieving uniform laws as "sad, almost paltry". He was describing the A.L.R.C. efforts to secure a uniform defamation law for Australia. Acknowledging that the history of achieving uniform laws in Australia was a "sobering one" and not a task for "the short-winded" he said that "legislatively speaking, this is a job for the long distance runner".

The judge suggested that there were many areas of the law in Australia where there was no logic and much inconvenience in differing State laws. Inconvenience especially arose where the transactions or conduct governed by the law were not geographically isolated, but involved interstate elements. He instanced

* Defamation
* Protection of privacy
* Road traffic laws
* Consumer protection laws
* Credit laws

as areas of the law "ripe for uniformity". The list is surely much longer.

The A.L.R.C. Chairman said that proposals for uniform law reform generally came to nothing in Australia. He cited the history of the attempt to reform consumer credit transactions. Reform of the antique laws governing credit transactions had been accepted in many countries. But what has happened in Australia? The A.L.R.C. Chairman described it :

> "In 1966 the struggle began. A committee was set up under Professor Rogerson to prepare a report on uniform credit laws and moneylending. The need for urgent reform to modernise the law and reduce its technicality was promptly reported to the Standing Committee of Attorneys-General. We then saw that peculiar Australian device of procrastination : the committee on the committee. A further committee under Mr. T. Molomby was established to report on the Rogerson Committee's proposals. That committee also promptly reported with very specific recommendations. Yet a further committee was then set up by the Standing Committee of Attorneys-General. Legislation to implement any reform in this area has not yet seen the light of Parliamentary day".

The A.L.R.C. Chairman said that indifference, preoccupation with other matters and opposition from those who had learned to live with the creaking system explained the lack of enthusiasm for uniform law reform. The growth of legislation and the retreat of the unifying common law oblige Parliaments to "find new means to achieve reform at something better than this snail's pace".

At last report the proposed uniform consumer credit legislation was still under study by a committee. Fresh heart can be taken from the recent decision of Commonwealth and State Ministers to adopt a new uniform act on company law throughout Australia and new machinery to update it. The A.L.R.C. continues its efforts to secure a uniform defamation law. A proposal by the second meeting of the Australian Law Reform Agencies in 1975 that they should service the Standing Committee of Attorneys-General with uniform law proposals, was rejected by the law ministers. The Caribbean Islands now have machinery to harmonise their laws and promote uniformity where this is warranted. Perhaps one day Australia will answer Sir Owen Dixon's questions :

"Is it not possible to place law reform on an Australia-wide basis? Is it not unworthy of Australia as a nation to have varying laws affecting the relations between man and man? Is it beyond us to make some attempt to obtain a uniform system of private law in Australia?

(1957) 31 *A.L.J.* 340 at p.342

Privacy Inquiry's First Fruits: Publishing Private Matters

"[H]owever it may be ultimately defined there is a zone of privacy surrounding every individual, a zone within which the state may protect him from intrusion by the press with all its attendant publicity".

White J. in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974).

During the last quarter, the A.L.R.C. has published its second discussion paper *Privacy and Publication - Proposals for Protection*. It is important for several reasons :

* It is part of the new A.L.R.C. approach to involve the whole legal profession of Australia in the process of law reform. Discussion papers are brief (designed to be read in an hour or so), not too boring and, with the help of the Law Book Company have been distributed to all subscribers to the *Australian Law Journal*.
* The proposals on privacy represent a"package deal" with the earlier proposals for a uniform defamation law. They represent an attempt to strike a balance between the common law and code approaches to defamation law, so far taken in Australia.
* The proposals are the first fruit of the A.L.R.C.'s major reference on privacy protection.

It is not easy to construct a uniform law in Australia. The history of our achievements shows that. The task is not made easier when two entirely different approaches have been taken that are difficult to reconcile. This is the case in defamation law reform. South Australia and Victoria have stuck to the common law. Most of the other States and Territories have had code systems. In most States the defence of justification is not simply "truth" as it is at common law (and in Victoria and S.A.) An additional element must be proved : either "public benefit" or "public interest" to justify publication of true but defamatory material. Having to justify this additional component has had a privacy protective effect. The mere fact that an item was true did not warrant publication if, because it was private, it was not for the "public benefit" to publish it. How to strike a balance between these two very different approaches?

The first A.L.R.C. discussion paper *Defamation - Options for Reform* proposed a defence of truth alone. But it foreshadowed the second paper which replaces the broad, uncertain, vague "public benefit" with specific guidelines. Without providing a general, equally vague, right of privacy, an attempt has been made to spell out the *private zone* asserted by White J. in the U.S. Supreme Court. Publication will be prima facie actionable if it is about :

* *the home and personal relationships :* material relating to private behaviour, home life or personal or family relationships including photographs of persons in a private place.
* *health :* material relating to a person's health or photographs of him in an injured, ill or distressed condition.
* *old criminal prosecutions :* except by contemporaneous report or legal report or writing.

These are the "hands off" zones. But it is suggested that even here, invasions of