was reached by the Pearson Commission in Britain. A different view was adopted by the Woodhouse Scheme in New Zealand and the National Compensation Report in Australia.

The Woodhouse Report was, of course, assailed by many critics. In a Paper for the Sydney Conference ("Accident Prevention, Compensation and Law Reform"), Mr. Justice Kirby listed the principal objections voiced against the report:

- the initial decision to limit reform to an adaptation of the New Zealand scheme;
- the loss of benefits recently won (100% weekly wages);
- the deeply ingrained view about fault among citizens;
- bureaucratic rather than curial decision-making;
- difficulties and inconsistencies in funding;
- constitutional problems arising from the limited powers of the Commonwealth Parliament in Australia.

Despite these limitations, he predicted that "we will live to see implemented a variant of the Woodhouse Scheme". He also referred to the even more vexed problem of accident prevention. Acknowledging that society, despite itself, does a "cost-benefit" equation and accepts certain inevitable risks of injury, the numbers killed and injured were still too high. The Robens Report in Britain estimated that at least half of all industrial accidents were truly preventable. Suggestions for reducing the toll in Australia included:

- a national approach to safety legislation along lines recently adopted in Britain, Canada and the United States;
- establishment of a National Safety Office to promote expert attention to injury avoidance;
- expenditure of funds on preventive design of equipment, vehicles, products, etc.;
- public awareness and information campaigns directed at key personnel;
- collection of statistics to identify the recurrent causes of accidents;
- compulsory establishment of work safety committees in factories over a certain size;
- greater involvement of industrial tribunals in accident prevention instead of the provision of compensation for dangerous work.

Criticising the plethora of Australian legislation on work safety, he pointed to the *Occupational Safety and Health Act* 1970 (U.S.A.). That Act, based on the U.S. trade and commerce power, has imposed a national regime of work safety in the United States on the basis of a finding that injuries arising out of work "imposes substantial burden upon interstate commerce". The doctrine of "commingling" of intra- and interstate trade has not yet been adopted by the High Court of Australia. *Ansett* v. *The Commonwealth* (1977) 12 A.L.R. 17. However, the growing integration of the Australian market economy (and the line of authority under s.92 of the Constitution protective of private business) make it likely that an interpretation akin to that in the United States will yet emerge. In the meantime reformers are not holding their breath. Some progress is being made towards securing agreement on uniform principles of safety legislation in Australia. As well, in South Australia, a Committee on the Rights of Persons with Handicaps has delivered a Report on *The Law and Persons with Handicaps*. Volume 1 deals with physical handicaps and suggests numerous measures of "fundamental law reform" necessary to bring that State into line with the United Nations Declaration as to the Rights of Disabled Persons. In particular, it is suggested that discrimination on the basis of physical impairment should be treated no differently in law than other forms of discrimination. Laws to deal with parking, access, employment and insurance are just some of the matters raised in the Report. The Chairman of the Committee is Mr. Justice Bright, who recently retired from the S.A. Supreme Court.

More on Law Reform Implementation

> "In our era, the road to holiness necessarily passes through the world of action."
>
> Dag Hammarskjold, *Markings* (1964).

In our last issue, attention was drawn to the implementation of a number of law reform proposals advanced by the Australian Law

Reform Commission. In the last quarter, further illustrations have come to hand. The A.L.R.C. Commissioners have always accepted the test of success in the actual achievement of reformed law.

Complaints Against Police: In New South Wales, the Police Tribunal was established on 19 February 1979. A Judge of the State Industrial Commission, Mr. Justice Perrignon, has been appointed its President and Mr. Justice Dey, Deputy President. From now on, complaints against N.S.W. Police will not be conducted solely within the police service. The State Ombudsman (Mr. Ken Smithers) and the Police Tribunal will supplement a special branch of the police in operating the "package" proposed in the Law Reform Commission's reports. In the Federal sphere, legislation on the proposed Federal Police of Australia has not yet been implemented. However, it is understood that an interdepartmental committee of government officers has reviewed the A.L.R.C. Report. The contents of this I.D.C. report have not yet been made public. It is believed that the report will first be reviewed by the Ombudsman and the Administrative Review Council, before legislation is prepared. In Queensland, amendments to the Police Act in 1978 adopted one or two of the A.L.R.C. proposals, notably the principle that the Police Force should be responsible for the torts of individual constables. Another legal anomaly disappears.

Bail Reform: If there is one matter of criminal procedure that has been investigated by almost every law reform body, it is bail. The Victorian *Bail Act* 1977 followed a report of the Victorian Statute Law Reform Committee in 1975. The Western Australian Law Reform Commission is about to deliver a report on the subject. The A.L.R.C. Report, *Criminal Investigation*, contained a comprehensive statement on bail reform, in the context of police bail. The major point of difference from the Victorian reforms was the A.L.R.C. rejection of the proposal that the risk of the accused's committing further offences whilst on bail should be considered as one of the criteria for refusing bail. This point of difference was explained in A.L.R.C.2, *Criminal Investigation*. The accused "should not be punished in advance by the loss of his liberty because of speculation as to what he might do if he secures it". The A.L.R.C. opinion has been criticised as a "counsel of perfection" [1978] 2 *Criminal L.J.*, 90. The *Criminal Investigation Bill* 1977, as introduced by the Government set out criteria for bail, and allowed reference to the risk of future offences but only in those cases where the accused has prior convictions.

Following the A.L.R.C. report, a special committee was established in New South Wales under Mr. Kevin Anderson, S.M. and Miss Susan Armstrong, now Head of the South Australian Legal Aid Commission. This committee drew heavily on the A.L.R.C. proposals. Most of its recommendations have now been accepted in a major reform statute of the N.S.W. Parliament, *Bail Act* 1978. The criteria to be considered in bail applications follow very closely the A.L.R.C.2 suggestions. However, the list includes:

> "The likelihood that the person will or will not commit an offence while at liberty on bail."

Certain limitations are put on this speculation, including the requirement that the future offence would be "likely to involve violence or otherwise be serious". The legislation was basically supported by Government and Opposition members. The Attorney-General (Mr. Walker) expressed the Government's determination to ensure that an unconvicted person's right to be released on bail is not prejudiced solely because of social disadvantage or inability to raise financial conditions of bail. The Opposition spokesman and former Attorney-General (Mr. John Maddison) said that the Government was to be congratulated for adopting proposals "first referred to in the Australian Law Reform Commission's Report on *Criminal Investigation*".

Police Powers: In the Northern Territory the *Police Administration Act* 1978 takes up a large number of suggestions proposed by the A.L.R.C. in its Report on *Criminal Investigation*. Introducing the measure, Mr. Paul Everingham, the Chief Minister of the Northern Territory, said this:

> "Members may be aware that there have been several recent investigations into the matter of police powers in Australia. The Law Reform Commission introduced a comprehensive report some time ago which found its way into the federal *Criminal Investigation Bill* and which

> I understand is about to be introduced in the Federal Parliament . . . The task of attempting a total restatement of police powers is monumental . . . It was realised early in the piece that it was not possible to attempt such a task in the Territory if we are to have an early passage of new general laws applicable to the Northern Territory Police."

Nevertheless, Northern Territory law draws many provisions from the Law Reform Commission's Report:

- provision for search warrants by telephone;
- criteria for emergency searches;
- criteria for arrest, including arrest warrants by telephone;
- limitation on various forms of investigation;
- adoption of the principle of vicarious liability for the negligent conduct of members of the police force.

No date has yet been given for the reintroduction of the revised version of the Federal Government's *Criminal Investigation Bill.* It seems likely that the establishment of the new Federal Police in Australia will provide the occasion for Commonwealth adoption of new procedures for handling complaints against police and new ground rules on criminal investigation by the new force.

Excluding Confessions: The key provision of the A.L.R.C. proposals on criminal investigation was the suggestion that the judicial discretion to reject and exclude confessions and admissions illegally or wrongfully obtained should be guided by certain criteria and not left at large as it is in the English common law. The criteria proposed included those now contained in the *Criminal Investigation Bill*, namely:

- the seriousness of the offence;
- the urgency and difficulty of detecting the offender;
- the nature and seriousness of the police contravention;
- the extent to which the evidence could have been obtained lawfully.

During 1978, the High Court of Australia, in *Bunning* v. *Cross* (1978) 52 A.L.J.R. 561, appears to have embraced a similar approach to that proposed by the Law Reform Commission. Stephen and Aickin JJ. (with whom Barwick C.J. agreed on this point) pointed to the competition between the public interest in lawful conduct by police and fairness to the individual and the public interest in securing evidence to enable justice to be done. A number of criteria were proposed. Not surprisingly, the criteria reflect substantially the same considerations as spelt out in the *Criminal Investigation Bill.* Law reform works in interstitial ways.

Overseas Reformers

> "They spell it Vinci and pronounce it Vinchy; foreigners always spell better than they pronounce."
>
> Mark Twain, circa 1869.

New Zealand: The proposals for revision of Law Reform machinery in New Zealand, mentioned in the last issue of *Reform*, have now been published. Professor D. L. Mathieson of the Victoria University of Wellington, writing in [1978] N.Z.L.J. 442, collects what he sees as the major disadvantages of the present system: a tardy pace, inefficient meetings, uneven expertise, a lack of appropriate research staff and of effective co-ordination of the country's law reform effort. In their place, he proposes that a Law Reform Commissioner should be appointed who is simultaneously a Judge of the Supreme Court. That Commissioner, supported by a Deputy and a small research staff, should have power to appoint ad hoc committees according to the circumstances and nature of each project.

The New Zealand Law Reform Council is to meet in April 1979. It last met in July 1976. The Government has promised that a review of existing statutes and regulations is to be carried out to "weed out" those that are outdated and irrelevant. This task of statute law revision is to be the special concern of the Law Reform Council.

Sri Lanka: The first program of work of the re-established Law Commission of Sri Lanka has now been published. It includes a mixture of items ranging from the preparation of a new code of civil procedure, procedures for the enforcement of fundamental rights, new administrative law and matters of statute law revision. Some items in the program are