the Faculty of Law in the University of New South Wales and Mr T.H. Smith of the Melbourne Bar.

Robert Hayes was educated at Melbourne and Monash Universities in Victoria. In 1973 he was awarded a PhD degree by Monash University. He has taught Law at Monash, Queensland, McGill and Toronto Universities before taking up his post at the University of New South Wales Law School in 1972. In 1975 he was appointed Associate Professor of Law and at the time of his appointment to the ALRC was Director of First Year Studies. His special interests are in the law relating to handicapped persons, torts, defamation and communications. It is no surprise that Professor Hayes will be taking over the ALRC project on Privacy and it is expected that he will lead the Commission to the completion of this important task. Immediately on taking up duties with the Commission on 17 March, he began the final work to complete the ALRC discussion papers on Privacy, which will be released in the next quarter. Professor Hayes will hold his appointment for three years, during which time he has been given leave of absence by the University of New South Wales. In addition to his academic appointments, he has practised as a solicitor and later as a barrister in New South Wales. At the Bar he read with Mr David Hunt, now Mr Justice Hunt of the New South Wales Supreme Court. His previous association with the ALRC was as a Consultant in the project on defamation law reform.

Tim Smith was educated at Melbourne University and holds the degrees of B.A. and LL.B with Honours within that University. He was admitted to practise as a solicitor in 1964. In 1965 he signed the Roll of Counsel and read with Mr N.H. Stephen, now Mr Justice Stephen of the High Court. He built up a busy practice in commercial and equity matters but continued an interest in law teaching and law reform. He was a member of a large number of committees of the Victoria Bar and from 1974 to 1978 was delegate of the Bar to the VCJC. In 1975 he was appointed chairman of the committee of the Law Council of Australia on the Underprivileged and the Law. Since 1971 he has been lecturer in the Law of Evidence in the law course conducted by the Council of Legal Education. In 1979 he was appointed as Junior Counsel to the Barristers' Disciplinary Tribunal in Victoria. Mr Smith has been appointed to head the ALRC inquiry into Federal evidence law, which has been substantially 'on ice' pending the new appointments. Already he has begun the task of preparing the ALRC research programme which will initiate a fundamental review of evidence law and practices in Federal courts in Australia.

Mr Smith's term with the ALRC is two years. He is the first member of the Victorian Bar to be appointed as a full-time Commissioner. Not only does he establish a link between the ALRC and the Victorian profession, he establishes a 'first' in that he is the son of the Honourable T.W. Smith, Q.C. (formerly Mr Justice Smith of the Supreme Court of Victoria) who was the first Victorian Law Reform Commissioner from 1973 to 1976.

Other changes in the ALRC membership are noted in Personalia (See p. 63). Mr J.Q. Ewens and Mr Howard Schreiber have retired as Commissioners. It is expected that the Attorney-General will shortly announce new part-time Commissioners to assist in the reference on Federal evidence law reform.

'Just Terms' Today

> "When I was young I used to think that money was the most important thing in life; now that I am old, I know it is."
>
> Oscar Wilde, c1880

The Australian Constitution requires that Commonwealth laws for the acquisition of property provide for 'just terms' (s.51(xxxi)). This provision reflects the prohibition in the Fifth Amendment to the United States Constitution forbidding private property being taken for public use 'without just compensation'. The latest report of the Australian Law Reform Commission, tabled in Federal Parliament by Attorney-General Durack, contains a detailed examination of what 'just terms'

should require in today's Australian society. The report identifies a number of themes, which it proceeds to follow up with specific proposals for reform in Federal acquisitions. First, the themes:

- Greater openness in the procedures leading to acquisition.
- Public accountability for the decision to acquire.
- Procedures and compensation rights which acknowledge the often devastating affect of compulsory acquisition, especially upon home owners.
- Provision of a new general right of compensation for devaluation of property resulting from adjoining Commonwealth works.

Every year, the Commonwealth acquires about 2 000 properties in Australia. Of these, about 700 freehold properties are acquired and almost half are secured by compulsory process. The ALRC points out that the power to acquire compulsorily 'inevitably influences negotiations' even in 'voluntary sales'. The ALRC Commissioners point to five main reasons for revamping current laws on government acquisition.

- *The new administrative law:* with its greater accountability and answerability of Federal officials under recent administrative reforms
- *Increased home ownership:* compulsory acquisition does not simply affect investment properties. Australia has one of the highest home ownership levels in the world. Compulsory acquisition can therefore cause serious disruption to individuals
- *Increasing government functions:* the increasing role of government has made more acquisition necessary and likely
- *Blight during development:* large scale government works require forward planning. But this can put a 'blight' on the property affected, reducing its value, without compensation, often for many years
- *Inflation:* compulsory process must move quickly or compensation will be paid at a devalued rate, as a result of the erosion of inflation.

The ALRC report, *Lands Acquisition and Compensation* (ALRC 14, 1980) attaches a draft Lands (Acquisition and Compensation) Bill with detailed provisions to implement the new ALRC proposals. The ALRC Commissioner who was in charge of the project was Mr Murray Wilcox, Q.C. of the N.S.W. Bar. In the report, a number of specific problem areas are identified and then tackled with specific reform proposals. Amongst the defects in the current Commonwealth laws and procedures are said to be:

- *Resettlement:* lack of provision for public efforts to resettle dispossessed owners
- *Zoning:* lack of provision for loss to owners arising from re-zoning of land for public use
- *Compensation procedures:* the slow, costly procedures often put the individual citizen at a disadvantage in dealing with government, with all its resources and power
- *Notification of rights:* present legislation does not require a notification of basic rights in simple terms
- *Injurious affection:* present law makes no general provision for the payment of compensation to the owners of land, where their property values are diminished by nearby federal public works. Only if some part of their property is taken, do they attract compensation.

The ALRC report proposes many important changes in law and procedure. Amongst the chief reform proposals are:

- *Pre-acquisition inquiry:* generally a person should be entitled to apply to the Administrative Appeals Tribunal for a review of the proposal to acquire his land. Though not binding on the Minister, it is proposed that if the Minister disagrees with the decision of the A.A.T., he should be required to publicly certify his reasons to Parliament
- *New compensation formula:* the ALRC

proposes a new compensation formula setting out details of factors to be considered and disregarded in compensation calculation. The formula includes a provision for a householders' solatium and envisages home owners loans to permit the purchase of a reasonably comparable residence. It also provides that if land has been zoned for public purpose it should be valued by reference to the value it would have had if it had not been so zoned

- *Notification of rights and valuation:* the Minister should serve a notification in plain English, summarising the rights of a person whose property is acquired and making an offer, accompanied by notification of the basis and method of computation
- *New compensation procedures:* as an alternative to judicial determination in the Federal court, the report contemplates a simpler, speedier and more informal procedure for review of compensation determinations, to be made by the A.A.T.
- *Injurious affection:* the ALRC reference calls for specific consideration of injurious affection compensation. In the course of its public hearings, the ALRC heard many submissions from local councils, home owner organisations and individual citizens in property adjoining airports, with their burgeoning, noisy traffic. The general principle is that individuals who suffer loss because of necessary public works, should be compensated by the public and not have to pick up the public's tab. The report upholds the principle that there ought to be a general right to recover compensation for diminution in the value of property caused by an injurious factor resulting from the Commonwealth's public activities on land. 'Injurious factors' are defined to include anything which would, but for statutory immunity, give rise to an action for the common law tort of nuisance. A number of particular factors are spelt out, viz., noise, vibration, smell, smoke, heat, overshadowing, loss of access etc. Provision is made for calculation and determination of such claims. Clause 87 of the draft Bill specifically states that injurious factors caused by aircraft arriving at or departing from an aerodrome vested in the Commonwealth are to be regarded as having their souce at the aerodrome. The operation of airports and the effect of flight paths on property values of adjoining owners, is an important potential field of operation of the new injurious affection compensation. It is proposed that compensation should be assessed by reference to the difference between the market value of the claimant's interest after the completion of the Commonwealth work and the value the property would probably have had in the absence of the injurious factor.

In preparing the report, the ALRC had the assistance of a team of consultants, including lawyers, valuers and government officers of Federal and State departments involved in property acquisition. The ALRC discussion paper was distributed through the *Australian Law Journal* and *The Valuer* and public hearings and seminars conducted in all parts of Australia. Because State reviews were proceeding in a number of States, the ALRC worked closely with those reviews. The report points to the value of uniformity of laws and suggests that moves should be made by Federal and State officers to eliminate major differences of principle in compensation rights and procedures. Already, in advance of the report and of any Federal legislation, the Northern Territory Legislative Assembly has enacted a Lands Acquisition Act based substantially on the ALRC proposals, as set out in the discussion paper. Returning the compliment, the ALRC Commissioners picked up a number of the resettlement provisions added to the Northern Territory law.

This is an important new 'package' of law reform designed to up-date rights and procedures in an area where a specially sensitive balance that must be struck between com-

munity needs and individual rights. A constitutional guarantee of 'just terms' may be frustrated if the substantive law does not reflect modern notions of justice and if the machinery of access to rights and procedures are too cumbersome or expensive to be used by ordinary citizens.

Lawyers' Inquiry: Progress Report

> "The English have a low opinion of lawyers until they become judges."
>
> Lord Devlin, *The Judge*, 1979

The last quarter has seen a number of developments relevant to the reform of the legal profession. In January 1980, the NSWLRC released its third legal profession discussion paper, *Professional Indemnity Insurance.* The chief recommendation is that all legal practitioners in N.S.W. should be required to hold compulsory professional indemnity insurance against errors, omissions and some forms of dishonesty, occurring in the course of legal practice. The paper follows an extensive inquiry into indemnity insurance schemes operating in Victoria and Queensland, as well as inquiries in Britain and North America. Details of proposals:

- *Barristers:* indemnity insurance should be compulsory. But legislative action was postponed pending full examination of the division of the profession (barristers/solicitors)
- *Solicitors master policy:* a single policy should be taken out by a supervisory body on behalf of the whole profession. Individual practitioners (other than employed solicitors) should pay their premium when securing annual practising certificate renewals.

The NSWLRC says that a master policy scheme will ensure adequate insurance cover at the best competitive rate. A master policy scheme is operating in Victoria and Queensland but the NSWLRC proposals are significantly different. In Victoria and Queensland a minimum cover for a sole practitioner is $50 000. Under the NSWLRC scheme, sole practitioners would be required to have between $200 000 and $500 000 cover.

An interesting development, considering the occasionally fragile relations between the N.S.W. Commission and the Law Society, is that proposals for a compulsory scheme have been put forward after regular communication between the Commission and the Society. Initially, the Society favoured an approved policy scheme. Later it accepted the view that a master policy would best protect the profession and the public. Furthermore, the Society now accepts that the minimum cover should be higher than in the other States. In 1979, the NSWLRC provided the Law Society with a set of guidelines concerning the form the master policy should take. These appear to have formed the basis for negotiations with the insurance industry. A quotation for a master policy has been accepted and a scheme is expected to commence from 1 July 1980. The new scheme will provide every firm with a minimum of $500 000 cover on each and every claim for a premium of approximately $800 per principal. A good proportion of N.S.W. practitioners are already insured voluntarily. It is understood that, despite the increased cover and other favourable terms, the premium payable is not significantly higher than current voluntary professional indemnity insurance.

The principal difference between the NSWLRC and the Law Society relates to the administration of the scheme. Initially, the scheme will be administered by the Society. The NSWLRC discussion paper envisages that administration and monitoring of compulsory insurance should become a function of the proposed Legal Professional Council. Here, the sweetness and light evaporates. So far, the Society has strongly opposed the idea of a council which would include a large number of non-lawyers. The Society fears that such a body might diminish the present power of the legal profession to regulate itself. The NSWLRC, on the other hand, presses on with its movement toward greater lay involvement