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ETHNIC COMMUNITIES' COUNCIL OF TASMANIA

CULTURAL AWARENESS SEMINAR

HOBART, TASMANIA, 28 JULY 1982

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The Hon. Mr. Justice M. D. Kirby
Chairman of the Australian Law Reform Commission
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## IMPACT OF AN UNFAMILIAR SYSTEM

One of the most uncomfortable moments I have experienced since my appointment as Chairman of the Australian Law Reform Commission was when I was booed and hissed by a rather large group in an audience in the Sydney Town Hall. I was filling in time because the speaker whom I was to introduce, Mr. Ralph Nader, was late. I told what I thought was a humorous jest which part of the audience considered 'sexist'. If it is not to indulge the same error, I would say that they took my words 'amiss'. Some people in public office get upset at the suspected decline in the national sense of humour. It is thought that incidents such as this and Mr. Grassby's valiant efforts to stamp racial jokes, represent the final decline and fall of that most British of cultural inheritances: a collective sense of whimsy and fun. I am not so sure. I think it is probable that prejudice and stereotypes can enter our mind by way of language and humour. There is nothing that makes you reconsider your position so quickly as a couple of hundred hissing people. I shall tell no sexist or any racist jokes. I will be guiltless of both sins. So let me say at the outset that the words 'reasonable man' were chosen, elaborated and used by judges of bygone times. They are words assigned to me for this address. As far as I am concerned, I propose to talk about the 'reasonable person' and whether this mythological existence is safe in multicultural Australia. In short, in testing the conduct of our fellow citizens in particular circumstances having legal relevance, is it any longer justifiable - if ever it was - to test that conduct against the supposed behaviour of a presumed 'reasonable man'?

Does such a test imply that it is possible to conjure up in the mind a single, identifiable pattern of behaviour, objectively determinable, against which such conduct can be measured? Is the assumption about a criterion of the reasonable man or the reasonable person one inherited via our legal system, from a country which had a fair degree of racial, linguistic and cultural homogeneity? If this is so, in a multicultural society, is the test any longer a viable one? Should we replace it in Australia precisely because one-third of our people are, or are the children of, migrants who came from non-English speaking countries since the Second World War? Does the persistence of the reference to the conduct of this mythological 'reasonable man' impose a legal and cultural stereotype no longer safe in a country of such cultural and linguistic variety? If we should replace the test of the 'reasonable man', what should be put in its place?

Before I approach the resolution of these issues, I want to illustrate the way in which the Australian legal system, with many strengths and fine qualities, must adjust if it is to be sensitive to the problems of migrants and responsive to the challenge of the multicultural ideal. I then want to say something of the work of the Australian Law Reform Commission as it has been relevant to the specific concerns of members of the ethnic communities. Finally I will turn back to the 'reasonable man'.

## A DIFFERENT SYSTEM

For the newcomer arriving in Australia from a non-British culture, there is a distinct risk of a legal cultural shock. Mr. Frank Galbally, now Chairman of the Australian Institute of Multicultural Affairs and who has conducted an enquiry into the problem of post-arrival migrants knows it well:

> From the moment a ship docks, migrants are under a tough assault by salesmen - often ruthless, unscrupulous - to sign papers to buy everything from furniture, cars and houses to courses in English...Almost immediately...they meet difficulties in housing, employment, trade unionism, health, work and social relations with Australians and other migrants, education, adjustment to many strange laws, regulations and conditions, social welfare rights, motor licences and registration, traffic laws, public service, political systems...The inherent tragedy is that at every stage it is difficult acclimatising to a new land. Something can go wrong and usually does. And whenever something does go wrong, the migrant is thrust at once against the restrictions of our alien culture.[1]

The provision of an interpreter and translation services, important though those facilities are, are inadequate to overcome the unfamiliarity with the laws and procedures we have in Australia. There is a great deal of evidence that the experience and expectations of migrants concerning our police and legal procedures make it difficult for them to understand the way we do things in Australia. For example, Australian courts have adopted the adversary system of trial. In most countries of the non-English speaking world, a different system of court trial exists under which the judge or magistrate is in charge of a judicial enquiry. Under this sytem the defendant can rely to a far greater extent on the judge or magistrate to protect and even advance his interests. Under our system, the judicial officer is, to a large extent, a neutral umpire. Furthermore we use juries in the trial of serious cases. In most of the countries from which we now draw our immigrants, jury trial does not now exist, if it ever did.

There are many opportunities for a breakdown in the relationship between migrants and the police. For example, particularly difficult in police/migrant relations is the unfamiliarity of many migrants with certain Australian police practices. Fingerprinting is used in Italy only for the most serious of crimes. In Australia it is a much more frequently used practice. For the Italian, the experience of fingerprinting can be quite traumatic. Likewise, bail is most unusual in European legal system.[2] Many migrants have mistaken the payment of bail for the payment of a fine and have been surprised by subsequent arrest to secure their appearance at court.

Sometimes, without intending it, our legal system can operate unfairly upon persons of a different cultural background. In the criminal trial especially, the impression which the accused may make on the magistrate, judge or members of the jury may be critical. Yet people from different cultural backgrounds with different accepted modes of behaviour may act in a way that seems quite alien for the simply reason it is alien to the majority of participants in the courtroom. Witnesses may appear excited. They may gesticulate more than is common in our tradition. Yet the fair and reasonable administration of justice requires that migrants' cultural and linguistic backgrounds should be taken into account in accessing their conduct and their evidence in court. But without contact with migrants and familiarity with their ways it may be difficult for this fairness or 'reasonableness' to be achieved.

Migrants sentenced to prison may suffer special disadvantages with the loss of linguistic, religious, culinary and other familar basics of life. This may add to the quality

of their punishment, as may a requirement that they have to write their letters in the English language. Migrant women may have special problems because of their unfamiliarity with our legal system. In many countries from which they are drawn, the husband or his family are virtually assured of the custody of the children of the marriage upon separation. The Family Law Act 1975 adopts a much more evenhanded regime for Australia.

Surveys show that the legal profession in Australia is relatively little affected by the influx of migrants.[3] The Bench in Australia, whether the magistracy or the judiciary, is still overwhelmingly Anglo-Celtic. The intake into our law schools is still disproportionately privileged, private school educated and Anglo.[4] However, times are changing and recent research suggests that women, for so long a mere 2% of the Australian legal profession are now rising in numbers so that they amount to nearly 50% of the entrants into law schools.[5] Perhaps this change in the stereotype of the lawyers as a gentleman in a dark suit, may herald the day when more and more people from non Anglo Celtic backgrounds enter the law to enrich its sensitivity to our cultural diversity. In the meantime, it is necessary for judges, magistrates and lawyers constantly to remind themselves that out there in the Australian community, things have changed. Our laws and our procedures need reform in order to reflect the change.

## THE ROLE OF LAW REFORM

The Australian Law Reform Commission is one of ten law reform bodies in Australia working on the improvement of our laws. We are proud of our association with colleagues in the Law Reform Commission of Tasmania. I am delighted that my good friend Mr. Bruce Piggott has done me the compliment of chairing this session. Mr. Justice Neasey of the Supreme Court of Tasmania is a distinguished part-time member of the Australia Law Reform Commission. We lose no opportunity to consult with Tasmanian colleagues concerning the various projects assigned to us by the Federal Attorney-General. We hope that, as in other States, some of our projects may prove useful for adoption and adaptation in the State sphere. I am delighted to note that this Seminar was opened by Mr. Max Bingham, Q.C. now the Deputy Premier and Attorney-General for Tasmania. Mr. Bingham has had a most distinguished career in the law. In Parliament and outside, he has long expressed his interest in the orderly reform and renewal of our legal system.

In almost every project of the Australian Law Reform Commission mention has already been made of a number of tasks of law reform bodies, Federal and State, addressed to the adjustment of the Australian legal system to take into account the changing composition of the population and the growing numbers of persons whose first language is not English. In almost every project of the Australian Law Reform

Commission the implications of the multicultural nature of modern Australian society must be considered. The special problems of dealing with complaints of minority groups were considered in the Commission's reports on complaints against the police. Reference was made to the fact that people unable to communicate satisfactorily in English may comprise a significant proportion of those wishing to make a complaint.[6] In the Commission's enquiry into consumer indebtedness, analysis was offered, in the context of community based debt counselling, of the particular problems of persons with debt difficulties who were not fluent in English.[7] In the Commission's report on defamation law reform, consideration was given to the need for a procedure for group defamation, including to remedy hurtful publications concerning minority groups in Australia.[8] The Commission was unable to reach a unanimous view on this subject, a majority feeling it was preferable to use the procedures of conciliation and persuasion. Two members urged a remedy of injunction but not damages in respect of proved defamation of a group including a racial group.[9] These proposals are still under the consideration of the Standing Committee of Federal and State Attorneys-General. In the Commission's report on privacy and the census, reference was made to the special problems which the census poses in Australia for migrants and the possible under-enumeration of this group.[10] Recommendations were made for a specific enquiry into these problems.

In the Australian Law Reform Commission's report on compulsory lands acquisition, mention was made of the need for simpler notifications of acquisitions and of rights.[11] In the report on child welfare law reform for the Australian Capital Territory, the Australian Law Reform Commission dealt specifically with a number of issues of relevance to migrant children. One of them related to the enforcement of child care laws in the case of migrant children, whose parents wished their children to be kept together, for linguist and cultural reasons but thereby offended the statutory rules on child care. These tend to be concerned with objective considerations such as the numbers of children and the availability of physical facilities, rather than with such intangibles as linguistic and cultural congeniality.[12] Possibly our most intensive examination of the legal needs of persons not fluent in English arose in the context of our enquiry into criminal investigation. The report on this subject was a major and controversial one. It is not possible to escape controversy when one is dealing with that critical question of striking the balance between effective law enforcement and the rights and liberties of citizens, including suspects. The Commission delivered a report.[13] That report has led onto a Federal Bill which is presently before the Parliament in Canberra.[14] That Bill deals with a whole range of issues relevant to the provision of a modern statement of the rights and duties of citizens and suspects. It deals with rights of interrogation, search, seizure, identity parades, the use of sound recording for confessions

o police, fingerprinting, bail, entrapment and so on. It deals with the three specially vulnerable groups who need particular assistance if the process of criminal investigation is to work fairly and evenly. I refer to the child under suspicion, Aboriginals and those persons not fluent in English.[15] Several proposals in the Bill are intended to take into account the special difficulties which may be experienced in our criminal procedures by those whose background and culture is not English speaking.

The key provision, relevant to persons not fluent in English who are under interrogation by Federal Police, is clause 28:

> 28. Where a Police Officer has reasonable grounds for believing that a person in custody is unable, by reason of inadequate knowledge of the English language...the communicate orally with reasonable fluency in the English language, the Police Officer shall not ask the person any questions in connection with the investigation of an offence unless
>
> (a) he does so in a language in which both he and that person are able to communicate with reasonable fluency...;
>
> (b) a person competent to act as an interpreter is present and acts as interpreter during the questioning; or
>
> (c) he has reasonable grounds for believing that it is necessary to question the person otherwise than in accordance with paragraph (a) or (b) without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.

This provision is not precisely the one which was proposed by the Law Reform Commission. But it does amount to a public affirmation of the need for our system of laws to adapt to the reality that many people in our midst no longer have a fluent command of the English language and a knowledge of the English ways we have inherited in the law.

In the Australian Law Reform Commission's current enquiry into the laws of evidence in Federal and Territory Courts, consideration has been given to a number of adjustments to the laws of evidence to take into account the language, religious and cultural differences that now exist in the Australian community. For example suggestions have been made, in consultative documents, for changes in the law relating to the entitlement to an interpreter.[16] Modifications have been proposed to the procedures for oaths and affirmations.[17] Consideration will be given to the need to expand the categories of privilege (for example to the penitent-priest relationship) beyond those presently protected by the law.[18] Fundamentally, consideration will be given to the

role of the judge and whether some features of the more active procedures of judicial enquiry followed in non-English speaking countries should not be grafted onto the adverserial and accusatorial procedures of the English tradition.

## THE REASONABLE MAN: AN UNREASONABLE TEST?

Provocation. In a sense, everything I have so far said is relevant to the adaptation of the Australian legal system from one developed on an assumption of linguistic and cultural uniformity to one sensitive to diversity and multiculturalism. I now turn directly to the so-called 'reasonable man' or 'reasonable person'. He shows his face in a number of areas of the law, some of such I will consider; one of which is before the Australian Law Reform Commission.

Take first the law relating to the defence of provocation to the charge of murder. Should the standard of this defence be an 'objective' or a 'subjective' one? This was the issue posed in the paper by the Victorian Law Reform Commissioner Provocation as a Defence to Murder.[1a] The Commissioner, Sir John Minogue said this:

> In this State [Victoria] where there is a considerable cultural mix and where it has been asserted, for example, that Melbourne has the largest Greek population of any city outside Athens, is would seem an insoluable problem to pinpoint the qualities or characteristics of the ordinary man when considering such a man's (or woman) ability or propensity to lose his (or her) self control.

What might provoke a reasonable Italian or Frenchman or Vietnamese beyond endurance might not be same as what will provoke the average Englishman. You may think that the time is fast approaching, if has not already arrived, when it is unsafe in Australia to judge the 'ordinary man' or 'reasonable man' by the characteristics of the 'ordinary Englishman'. Such an 'objective' approach may be valid in a homogeneous English speaking society. It might have been acceptable in a community of transported Antipodean Englishmen and women. It might be doubted, however, whether it is still the fair standard for an Australian society whose cultural composition has so radically changed. This point was made in the High Court of Australia in the decision in Moffa v The Queen.[20] The Court in that case quashed the appellant's conviction for the murder of his wife, substituting a conviction for manslaughter. Moffa's defence was that he was so greatly

provoked that he killed in response to his wife's words and actions. In reaching its decision, the High Court recognised that important differences may arise from the national and cultural origins of individual Australians. Chief Justice Barwick said:

> That he was emotionally disturbed by his wife's disclosed attitude to him did not make him, in my view, other than an ordinary man; and in particular other than an ordinary man of his ethnic derivation.

In the same case Mr. Justice Murphy went even further. He considered that the 'objective test' 'cannot withstand critical examination'. He said:

> The objective test is not suitable even for a superficially homogeneous society, and the more heterogeneous our society becomes the more inappropriate the test is. Behaviour is influenced by age, sex, ethnic origin, climatic and other living conditions, bio-rythms, education, occupation and, above all, individual differences. It is impossible to construct a model for a reasonable or ordinary South Australian for the purpose of assessing emotional flashpoint...In the Northern Territory Supreme Court Kriewald J. refused to apply the test to a tribal aborigine and used the standard of the accused's tribe...The same consideration apply to cultural subgroups such as migrants. The objective test should not be modified by establishing different standards for different groups in society. This would result in unequal treatment. The objective test should be discarded.

Workers Compensation. The applicability of the 'reasonable man' test for migrants can be vividly illustrated by reference to a number of workers' compensation cases which have arisen in recent years. The problem is usually one of the refusal by a migrant to undergo medical treatment: a refusal that may arise from linguistic problems in understanding precisely what the treatment recommended involved and what risks and benefits have to be weighed. But cultural as well as linguistic considerations can be relevant here. A desire not to submit to 'disfiguring' surgery, a special fear of the knife, an ignorance about standards of surgery in Australia, a concern about other members of the culture who have not recovered, can all play a part in inhibiting the decision to undergo the operation. Insurers in these circumstances sometimes seek to mount an argument - fairly well established in workers compensation law - that upon the refusal to undergo an operation which a reasonable man would have undergone, the disability of the worker flows not from his injury but from such unreasonable refusal. This argument poses the question: is the worker to be held to the conduct of the 'reasonable man' i.e. some unnamed, objective and undoubtedly courageous and Anglo Celtic worker who has had a full

conversation with his doctor. Or is the fact in some way to be modified to take into account the linguistic problems and cultural fears that are specific and personal to this particular worker?

Mr. Justice Gobbo in Glavonjic v Foster considered that it was necessary to take into account individual idiosyncracies in applying the so-called 'objective standards' of workers compensation law:

> I am of the view that if the matter is to be judged entirely objectively without regard to the plaintiff's knowledge, circumstances and mental condition, refusal to the operation was not a reasonable one. I am of the opinion however that upon analysis of the authorities, I am not constrained to apply such a strict and technical test. It seems to me more appropriate to have regard to the circumstances of a plaintiff. That is not to say that one simply applies a subjective test and considers whether the plaintiff thought it was reasonable for him to refuse surgery. It is, however, appropriate to accept the test that asks whether a reasonable man in the circumstances as they existed for the plaintiff and subject to the various factors such as difficulty of understanding and the plaintiff's medical history and condition that affected the plaintiff, would have refused treatment. In my opinion, applying the broader test, I am of the view that the defendants have not discharged the onus which is upon them of showing that it was unreasonable for the plaintiff to refuse the surgery proposed.[21]

This retreat from the hypothetical and purely 'objective' test of the reasonableness of conduct has found favour in a number of cases since Mr. Justice Gobbo's judgment. In Karabotsos v Plastex Industries Pty. Ltd.[22], the observations of Mr. Justice Gobbo were approved. The line of authority has now spread beyond Victoria. As with Sir Garfield Barwick's approach in Moffa there is an attempt to retain the 'objective' formulation whilst in truth modifying its operation to take into account factors personal to the plaintiff. In Lorca v Holts' Corrosion Control Pty. Ltd.[23] the Supreme Court of Queensland held that the question of whether or not the plaintiff had reasonable refused treatment, which might mitigate his damage, was to be determined 'objectively having regard to all the circumstances of the case, including matters subjective to the plaintiff'. Mr. Justice Kneipp, after quoting Mr. Justice Gobbo (above), agreed with his conclusion but added comments on 'one difficulty about the formulation':

> This is that I find it inappropriate to speak of 'a reasonable man in the circumstances of a plaintiff' when the circumstances might be such that the plaintiff could not possibly be said to be a reasonable man in the usual sense of that term. He might be quite unable to consider the matter reasonably. I would prefer to ask a question along these lines: having regard to all the circumstances of the case, including matters subjective to the plaintiff, is it resasonable to hold the plaintiff responsible for the consequences of his refusing treatment which might improve his situation?[24]

In February 1982 the High Court of Australia handed down its decision in Fazlic v Milingimbi Community Inc.[25], also a case of a worker refusing to undergo surgery. The Court held that the concern of the trial should not be whether on the balance of medical evidence the operation might reasonably have been performed but whether, judged in the light of all the medical evidence given to the worker at the time and all the circumstances known to him and affecting him, his refusal was unreasonable. Specific mention was made by the Court of the cultural phenomenon:

> The surgeon was not altogether surprised at the appellant's refusal because in his extensive experience it was, he said, not uncommon for patients from south-eastern Europe, as was the appellant, to be particularly fearful of back operations. The surgeon took the view that 'as his treating doctor, he is the person with the complaint, he is the patient, and as a doctor I have got to accept, or respect, [his] decision.[26]

The Court pointed out that the worker had been told very little indeed about the operation.[27] Compensation was restored. Sensitivity to the problems of the particular worker before the Court and his background was plain in the High Court judgment.

Insurance Contracts. Finally, the matter that has brought this issue most clearly before the Australian Law Reform Commission is its current enquiry into the law governing insurance contracts. The report on that subject is presently with the printer.[28] When I was invited to speak to you, I hoped that the report would have been available. I am sure you will understand that it is not possible for me to detail the precise recommendations of the Law Reform Commission in a report before that report is handed to the Attorney-General and tabled in Federal Parliament. I must content myself with sketching the problem confronted by the Law Reform Commission and indicating the possible way ahead.

The contract of insurance is a special variety of contract. It requires the utmost good faith on the part of both parties to the contract. The insured is obliged to bring to the notice of an insurer, when making a proposal for insurance or thereafter, any matter which could have affected the judgment of a prudent insurer as to whether or not to offer insurance or in fixing the premium to be charged. This test - the test of the 'prudent insurer' is unfair to all Australians. It is impossible for the average insured to know all of the considerations that would influence a prudent insurance company. It imposes an 'objective' standard which is unreasonable. It might be specially unreasonable to persons not fluent in the English language who, by reason of inadequate understanding of a proposal or claim form fail to disclose a material fact - but do so innocently without any suggestion of fraud.

Various attempts have been made to modify this clearly unjust rule. Some judges have suggested substituting a test of the 'reasonable insured' rather than the 'prudent insurer'.[29] This was the approach urged upon the Australian Law Reform Commission by the submission received from the Australian Treasury.[30] It is the approach that was favoured by the English Law Reform Committee in 1957.[31] It would certainly be a step in the right direction: to prevent people - fluent and non-fluent in English - from being fixed with a standard, the content of which they simply would not know, and generally would have little means of discovering. On the other hand, the 'reasonable insured' test could impose an alternative standard which a great number of insured's would be unable to meet. It might not be justified by the principle of the utmost good faith: a principle which is addressed to honesty and frankness in dealings by the particular insured, not compliance with the standard of some average or reasonable insured. A severe loss is no less severe merely because it is suffered by one who, acting in the utmost good faith, falls short of the suggested standard. Adopting a standard of a 'reasonable insured' could be to make an assumption that all insureds are equally capable of reaching that required standard. An insurance executive's chances of non-disclosure of material facts might be relatively small. A newly arrived migrant's chances, on the other hand, are comparatively high. It could be especially unfair in a country like Australia, with a high proportion of first generation citizens from overseas, to impose a standard which would discriminate against those who have had less than average education, who are inexperienced in and unaccustomed to business and insurance practices or who have an imperfect understanding of the English language, let alone the legal and commercial jargon often used in insurance forms and policies.

These difficulties were referred to in the Australian Law Reform Commission's discussion paper.[32] It has since been dealt with in a report by the English Law Commission which proposed that the insured's duty should be:

> To disclose those facts which a reasonable man in his circumstances would consider to be material in the sense that they would influence the judgment of a prudent insurer in accepting the risk or fixing the premium.[33]

The English Law Commission was critical of the 'objective test' of the 'reasonable man' adopted by the English Law Reform Committee in 1957:

> We are concerned that this test may be too inflexible: it may be suitable for businessmen but it may be too exacting for the individual seeking, say, motor or household insurance as a consumer. Under our recommendations, the report should therefore be enabled to take the individual's circumstances into account. Accordingly, the standard of disclosure required would depend on, inter alia, whether the insured was a businessman or a consumer.[34]

It does seem clear that the existing duty of disclosure on insured persons in Australia is not justified by the principle of the utmost good faith which should exist between parties to an insurance contract. There are various approaches to the reform of the rule including:

* the radical approach that an insured should be disqualified from recovery only if his failure to disclose material facts is deliberate and wilful (a 'subjective' test).
* the less radical approach that mixes the 'objective' and 'subjective' elements and tests the conduct of the insured by what was reasonable 'in the circumstances' and
* the most cautious approach of all, namely, returning to the 'reasonable man' and testing the conduct of the insured by a purely 'objective' standard of what would the 'reasonable insured', objectively, have done in the circumstances.

At this stage, I must leave it to you to decide which would be the fairest and most appropriate test and one which would strike a fair balance between the need to encourage frankness and honesty in dealings in insurance and the need to protect people - especially those in the ethnic communities - from shattering losses that can occur from the application of the current rule.

## CONCLUSIONS

I hope that enough will have been said in this talk to illustrate the way in which the Australian legal system is coming under scrutiny, in the endeavour to make its

rules, its personnel and its procedures better reflect our multicultural society. Part of the initiative for this new scrutiny is coming from the law reform agencies - Federal and State - which have been established to help parliaments to review, modernise and simplify our laws. The influx of migrants poses problems in our own legal system. We must meet those problems and adapt our system. In doing so, we should not lose sight of the important values which we have inherited from the English common law and legal system. These include the principle of the rule of law, the tradition of a dedicated, civilized, educated, independent and uncorrupted judiciary, hard working lawyers and the general acceptance that the law should strive after justice and seek to achieve orderly reform where injustice is shown.

Like so many other concepts, the 'reasonable man' concept must now be re-examined.[35] Whether in the criminal law, in civil compensation cases, in the law of contract or elsewhere, it may no longer be safe to make assumptions about a hypothetical stereotyped objective 'reasonable' man or woman. One of the great goals of our time should be the destruction of stereotypes and the acknowledgement, so far as may be practicable, of the idiosyncracies and varied capacities of our people. A law which is in tune with the variety of the Australian population will be worthy of celebration. The Law Reform Commissions of Australia work toward that goal.

## FOOTNOTES

* The views expressed are the author's personal views only.

1. F. Galbally, Speech to Loss Adjusters' Convention, October 1974. Mr. Galbally is now chairman of the Australian Institute of Multicultural Affairs, established under the Australian Institute of Multicultural Affairs Act 1979 (Cwlth).

2. See Australian Law Reform Commission, Criminal Investigation (ALRC 2), Canberra 1975, p.124.

3. M. Heatherton Victoria's Lawyers, Vic. Law Foundation, 2nd report 1982.

4. J. Goldring, Admission to Law Courses in Australia, Vestes, 20, 1977, 61.

5. M.D. Kirby, The Women are Coming, Law News, June 1982, 11. Reviewing a paper by Judge Jane Matthews delivered to the 1982 ANZAAS Congress, Sydney.

6. See Australian Law Reform Commission, Complaints Against Police (ALRC 1), Canberra 1975, pp. 26ff ; ibid, Complaints Against Police: Supplementary Report (ALRC 9), Canberra 1978, p.44.

7. Australian Law Reform Commission, Insolvency: The Regular Payments of Debts (ALRC 6), Canberra 1976, p.49.

8. Australian Law Reform Commission, Unfair Publication: Defamation and Privacy (ALRC 11), Canberra 1979, p.52.

9. Ibid, p.54.

10. Australian Law Reform Commission, Privacy and the Census (ALRC 12), Canberra 1979, p.52.

11. Australian Law Reform Commission, Lands Acquisition and Compensation (ALRC 14), Canberra 1980, p.70.

12. Australian Law Reform Commission, Child Welfare (ALRC 18), Canberra 1981, p.324.

13. Australian Law Reform Commission, Criminal Investigation (ALRC 2), interim, 1975.

14. Criminal Investigation Bill 1981 (Cwlth)

15. The main relevant provisions are clauses 19 (notification of rights 'in a language in which the person is reasonably fluent'); 20 (provision of a caution); 28 (presence of an interpreter during questioning); 43 (cautioning after charge) and 45 (provisions of translated statements of co-accused).

16. Australian Law Reform Commission, Evidence Research Paper No. 8 Manner of Giving Evidence, 1982 p.98.

17. Australian Law Reform Commission, Evidence Research Paper No. 6 Sworn and Unsworn Evidence, 1982.

18. Australian Law Reform Commission, Discussion Paper No. 16 Reform of Evidence Law, 1980 p.3.

19. Victorian Law Reform Commissioner (Sir John Minogue), Provocation as a Defence to Murder, Working Paper No. 6, 1979. See now ibid Report No. 12 Provocation and Diminished Responsibility as Defences to Murder, 1982

20. Moffa v. The Queen (1977) 13 ALR 225.

21. [1979] VR 538, 540.

22. [1981] VR 675.

23. [1981] Qd. R. 260.

24. Ibid, 270.

25. (1982) 38 ALR 424.

26. Ibid, 425

27. Id, 427.

28. Australian Law Reform Commission, Insurance Contracts (ALRC 20), 1982, forthcoming, para 182.

29. Guardian Assurance v Condogianis (1919) 26 CLR 231, 246-7; Southern Cross Assurance Co. Ltd. v Australian Provincial Association Ltd. (1939) 39 SR (N.S.W.) 174, 187.

30. Treasury, Submission to the Law Reform Commission on Insurance Contracts, 1979, para 139.

31. Conditions and Exceptions in Insurance Contracts, Cmnd 62 (1957), 7.

32. Australian Law Reform Commission, Insurance Contracts (ALRC DP 7), 23.

33. Law Com. WP 73 (1979), para 60 (emphasis added).

34. Id, para 61. Note that the Law Commission subsequently modified this proposal in its final report. See Law Com. 104, Insurance Law Non Disclosure and Breach of Warranty, 1980.

35. There is an amusing discussion in R.E. Megarry, Miscellany at Law, 1955. Law Book, 260 ('The Clapham Omnibus').