provisions were not proceeded with and I would be very disappointed if they were not proceeded with because of police opposition.

reasonable man test. Discussion of the impact on the legal system of the changing racial, cultural and linguistic composition of Australia was the theme of the seminar held in Hobart on 28 July 1982 organised by the Ethnic Communities' Council of Tasmania.

Mr William Court, Registrar of the Family Court of Australia in Hobart, gave illustrations of a number of cases where embarrassment had restrained migrants from requesting the assistance of an interpreter. The ALRC Chairman, Mr Justice Kirby discussed the way in which the 'reasonable man' test, frequently adopted in Australian law, would need to be modified to take into account that the Australian population was no longer a homogeneous community made up only of English speaking people. He instanced cases involving the reasonableness of migrant conduct:

- in the refusal of surgery in workers' compensation cases;
- in response to provocation in cases of homicide; and
- in seeking insurance cover and filling out insurance forms.

Specifically addressed was the forthcoming report of the ALRC on insurance contracts dealing with the so called 'objective standard' imposed on the insured to disclose certain matters to the insurer. The ALRC Chairman said that such a standard could discriminate against those who had less than average education, were inexperienced or unaccustomed to business or who had an imperfect understanding of insurance forms and policies. Turning to the general question he added:

> The influx of migrants poses problems in our own legal system. We must meet these 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 dedicated, civilised, 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. One of the great goals of our time should be the destruction of stereotypes and the acknowledgment, 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.

Not everyone liked this theme. An editorial in the Sydney *Daily Telegraph* (29 July 1982) suggested that the idea of diversity in the law 'should be greeted with a little caution'. Whilst conceding the need for migrants to be given more help in understanding the law, the notion of adapting the law to suit migrants was considered going too far:

> After all, migrants elect to come to Australia and choose to accept it as it stands — warts and all — in matters of law as in order areas . . . care must be taken in how far any modification of our law is taken. It may need a little fine tuning to suit our changing ethnic makeup — but that is all.

crimes commission controversy

It takes all sorts of people to make an underworld.
Don Marquis, *'Mehitabel Again'*, 1933

striking a snag. The proposal to establish a new National Crimes Commission reviewed in [1982] *Reform* 101 has met considerable opposition. In initial response, thundering editorials in the media came out generally in favour of the proposals and early in September 1982 the Prime Minister stated firmly his intention of pressing ahead regardless of opposition. First, a few sample editorial comments.

The Australian (6 May 1982) got in early. Whilst conceding the risks of McCarthyism, the editorial urged the need for an inquiry 'able to discover the truth while ensuring there are safeguards for ordinary citizens'. 'Those who have nothing to hide', declared the editor, 'should have nothing to fear'. A statement more out of line with the English accusatorial system of justice could scarcely be written.

The Melbourne *Age* came out strongly on 9 September 1982 with 'the case for a crimes buster':

> The Premiers have expressed concern about the risk of infringing civil liberties . . . The basic issue is whether existing law enforcement agencies are capable of

> confronting the deep rooted and high-reaching organised crime exposed by the Costigan Commission . . . A National Crimes Commission would be a logical and chronological successor to the work of the Costigan Commission and task forces. The precise powers and resources of a crimes commission and appropriate safeguards against abuse of power and risk of corruption, would have to be carefully considered. But in principle it appears to be the most promising form of vigilant protection against the corrosive ravages of organised crime and corruption on Australian society and faith in its political institutions.

Earlier, under the heading 'Needed: A Crimes Commission' (3 September 1982) the *Age* was even more specific. It denounced the 'strange coalition' and 'illogical arguments' that were voiced against the proposal since first put forward by Victoria's Chief Commissioner of Police, Mr Miller.

opponents rally. It certainly was a strange coalition of opponents. Locked in criticism of the scheme were:

- Law ministers of Western Australia and Queensland. The Minister for Police of Western Australia, Mr Bill Hassell warned of a major row with the States if the Federal Government were to create a National Crimes Commission unilaterally.

- The Chief Minister and Attorney-General for the Northern Territory, Mr Paul Everingham described the proposal as a 'political sham'. Without power to issue warrants for listening devices or telecommunications interception, the Commission would not work, he said.

- Federal Opposition spokesman on legal matters, Senator Gareth Evans, listed six problem areas with the proposed Commission, urging that 'we don't want to create a star chamber' in order to kill organised crime.

- The Director of the Australian Institute of Criminology, Mr William Clifford contested the need for a National Crimes Commission. As reported in the *SMH*, 2 September 1982, he said that there was no guarantee that such a Commission would be effective against organised crime. He proposed instead a better co-ordination of the criminal justice services of the States to 'retool our existing systems to enable them to cope more effectively with the crime of the next century'. 'The United States', Mr Clifford pointed out, had 'any number of crime commissions' and still a 'very flourishing organised crime industry'.

- A meeting of 100 lawyers at the Law Institute of Victoria passed a resolution in mid September 1982 stating that the Commission would 'seriously prejudice the rights and reputations of all those called before it and be readily open to political manipulation by the government of the day'.

These and other criticisms of the proposed Commission led some sober elements in the media to urge retention of judicial controls for the protection of civil liberties and contentment with better co-ordination of police work. Take the *Canberra Times* (9 September 1982):

> A task-force approach, involving the co-ordination of police and lawyers, using sophisticated computer and communications equipment, and enjoying the full support of the entire government apparatus of the Commonwealth and the States is the direction indicated by the Costigan Report. But although the collection of information and intelligence is a necessary part of the task-force approach, it cannot be an end in itself — something that has too often been the result of commissions and criminal intelligence bureaux.

On the same day, the *Sydney Morning Herald,* urged that it was better for Mr Costigan's present commission to get on with its job 'with its lawyers, analysts and computers' and if necessary to be given additional powers to follow the trail 'it has so far so assiduously explored'. The *Herald* reminded its readers that Mr Costigan had stated unequivocally that law enforcement agencies in Australia have not identified in 'any meaningful way' the nature and extent of organised crime in this country. The message was clear: beware of hysterical overkill and of dismantling liberties long established.

co-operative body. Arising out of the concerted opposition from some unaccustomed bedfellows, it now seems that some form of improved co-operation between Federal and State police will come of this debate. In its editorial on 27 September 1982, whilst welcoming the apparent abandonment of the National Crimes Commission proposal — it has since become clear that the Federal Government intends to press on with it, unilaterally if necessary — the *Sydney Morning Herald* listed the remaining questions:

> That leaves the question of what is to be done, on a national scale, to tackle organised crime in an effective way? There is no doubt that action must be taken, for there is widespread and justified community concern about the spread of such crime; it is not confined to any particular area and pays not the slightest attention to State boundaries . . . There is force in the view of the Victorian Premier, Mr Cain, that the Costigan Royal Commission has proved itself to be a 'de facto national crimes commission' through its wide-ranging powers of access to documents and use of computers. It should certainly be given every help to complete its investigations, which will continue for some time. But not permanently: that is the point. The case for a Standing National Crimes Commission, with extraordinary powers, has failed to carry conviction, and alternatives such as those being canvassed represent the reasonable compromise which is needed.

other developments. Developments in a number of regions of substantive criminal law enacted or planned during the last quarter need to be listed:

- In New South Wales, a new s.23 of the Crimes Act has been enacted to replace the old law on homicide. The new section, in particular, does away with the need for a close temporal connection to be shown between provocative conduct and the response resulting in death. Another major change is the abandonment of the rule that the defendant carries the onus of proving provocation and the abandonment of the legal need for proportionality. A review of the New South Wales reforms was offered by someone present at the creation, Dr Greg Woods QC, Director of the Criminal Law Review Division of the N.S.W. Attorney-General's Department when he addressed a Law Foundation workshop on 9 August 1982. His paper 'The Sanctity of Murder: Reforming the Homicide Penalty of New South Wales' pointed to the removal of the mandatory sentence for murder of penal servitude for life and the substitution of the discretionary penalty where 'it appears to the Judge that the person's culpability for the crime is significantly diminished by mitigating circumstances'. The proposal came into effect in relation to persons arraigned for murder after 14 May 1982. It arises out of a New South Wales Task Force on Domestic Violence which reported in July 1981.

- Following the N.S.W. changes, the new Premier and Attorney-General of Victoria, Mr John Cain asked the Victorian Law Reform Commissioner, Professor Louis Waller, to examine aspects of homicide law in Victoria. Among matters to be reviewed by Professor Waller are revision of the mandatory life sentence which has been the only penalty for murder since the abolition of the death penalty in Victoria in 1975.

- In the Australian Capital Territory, the Chief Justice, Mr Justice Blackburn has urged the abolition of committal proceedings. Speaking at the Fifth South Pacific Judicial Conference at the High Court, Mr Justice Blackburn said that committals were a wasteful duplication in proceedings. 'If we had a truly independent prosecutor with a proper staff, he could decide if there was a prima facie case', he said.

canadian review. Finally, a note from Canada. On 25 August 1982 the Canadian Minister of Justice Mr John Chrétien, (in September after a cabinet shuffle, he was replaced by Mr Mark MacGuigan) issued a major statement of government policy with respect to the criminal law. Titled *The Criminal Law in Canadian Society* the document launches a basic review of the fundamentals of the Canadian criminal justice system. According

to the minister the review has been endorsed by all federal and provincial ministers responsible for criminal justice. Over the next few years there is to be an examination of all facets of Canadian criminal law. More than 50 individual projects on the substantive and procedural aspects of law are to be completed by the Law Reform Commission of Canada before the end of 1985. In essence, according to Mr Chrétien, the document endorses the basic approach recommended by the CLRC in its report *Our Criminal Law*. Pointing to the vast expansion in the number of offences provided under federal and provincial law, the policy document proposes that the criminal law ought to be reserved for conduct which causes or threatens serious harm to individuals or to society.

The document is attractively presented with numerous graphs, maps and charts. It is accompanied by a bilingual document, *Highlights*. This document:

- seeks to describe the operation of the criminal law;
- asks the proper meaning of 'crime';
- lists a number of serious questions and concerns about the effectiveness of the criminal justice system;
- proposes reshaping the focus of the criminal law and stating more clearly its purposes and principles.

Views and opinions are invited by the Co-ordinator, Criminal Law Review, Department of Justice, Ottawa, Canada. Many of the subjects dealt with in the *Highlights* reflect similar problems addressed in Australia, particularly by the ALRC. A good part of the document is focussed on the problem of sentencing and how greater consistency can be secured in the process, without diminishing unduly the human elements of justice. Already, the Canadian review has sought copies of the relevant ALRC reports.

of constitutions and courts

Politics offers yesterday's answers to today's problems.
Marshall McLuhan, 1965

constitutional reform. In late June 1982 the Federal Attorney-General, Senator Peter Durack QC, announced that the Premiers Conference had approved the holding of a further plenary session of the Australian Constitutional Convention. Four sessions of the latest series have been held since 1973. According to the Federal Attorney-General, substantial agenda items will be discussed including:

- four year parliaments and fixed term parliaments;
- integration of the Australian court system;
- an advisory jurisdiction for the High Court;
- the Australian Senate and supply.

The announcement of the further session came at the same time as the agreement of the Premiers to sever residual constitutional links with Britain, save for those with the Crown. This development was noted in [1982] *Reform* 78.

Parallel with the official constitutional convention is the effort being promoted by the N.S.W. Law Foundation to provide a more popular project on constitutional reform, in which a wider range of participants, including many non-politicians, can take part. This project, bipartisan in character, is largely the idea of the Federal Opposition's spokesman on legal matters, Senator Gareth Evans. According to Peter Ward in the *Weekend Australian,* Senator Evans has 'cast himself in the role of a latter day Dr John Quick, the Radical Liberal who in the 1890s led the Australian Natives Association's vigorous campaign for Federation'. Spurred on by Senator Evans and his multi-talented, multi-disciplined and multi-partisan team of consultants, Mr John McMillan is preparing a volume on constitutional reform which can be the focus for widespread public discussion of the subject during 1983. Senator Evans is quoted as saying:

> It's no use being a romantic about Constitutional reform. It takes a long time and it needs the consideration of many opposing views. And it's my belief that without a popular debate all we will ever be able to achieve is piecemeal marginal reforms. After 88 years, throwing the whole issue open to a popularly elected Convention is the only game in town.

Already, Senator Evans and other participants in the project have had important discussions with a