past. The Bill specifically makes it clear that the person is not to be declared mentally ill because of his political, religious or sexual preferences or because of 'immoral conduct' or drug taking. The sole criterion will be physical danger to the patient or those around him.

and death. The death in a suicide pact of Arthur Koestler, writer and philosopher in March 1983 drew attention once again to the law of euthanasia. Mr Koestler was the Vice-President of Exit, the British Voluntary Euthanasia Society. His thesis was that death could sometimes be a welcome and natural relief to someone whose only alternative was pain and suffering. At the time of his death, Arthur Koestler was suffering from leukemia and Parkinson's Disease.

The law continues to take a dim view of suicide and active euthanasia. In 1982 officers of Exit were sentenced to imprisonment in Britain. However, the year also saw some progress with the passage of reform of the law of suicide in NSW, more than 20 years after it was reformed in Britain and with growing public debate about the ethics of mercy killing. This debate has spilt over into the courts with discussions of the death of deformed or retarded neonates in *In re B (a minor)* [1981] 1 WLR 1421,; *R. v Leonard Arthur* noted (1982) 56 ALJ 139; and *McKay v Essex Area Health Authority* [1982] 2 WLR 890.

In Victoria, the Health Advisory Council at the request of the Minister of Health (Mr Tom Roper) is enquiring into a Private Members' Bill called The Right to Refuse Medical Treatment Bill 1980. The Bill provides that a person who has attained the age of 18 years and is of sound mind, may declare in writing that he is suffering from a fatal condition and that his life is not to be maintained by life sustaining procedures. Submissions are called for by mid-April 1983. The Victorian Bill followed numerous similar legislative initiatives in the United States which were in turn inspired by the famous case *In re Quinlan* 70 NJ 10, 355 A. 2d 647 (1976).

Issues of life and death have always been issues for the the law. Changing technology and changing social attitudes promise more perplexing issues, including legal issues.

fire, floods and dams

'Calamities are of two kinds: misfortune to ourselves, and good fortune to others'.
Ambrose Bierce, *The Devil's Dictionary*, 1881.

ordeal by fire. The terrible Australian bushfires in February 1983 caused record losses of life and property in Victoria and South Australia. The outgoing Prime Minister, Mr Fraser, described the scene as 'this most frightful disaster'. Suggestions for both technological and legal changes have been advanced to tackle the recurring problems of Australia's bushfires. Some commentators have pointed to the virtually permanent phenomenon of bushfires in Australia, long before European man arrived. The *Canberra Times* editorial, 18 February 1983, observed:

> 'Before European man came here some 200 years ago, natural bushfires and bushfires lit by Aborigines would scour the land with regularity and the living creatures of the bush had adapted themselves accordingly over the years. After thousands of years of evolution, fire had a function which had become almost benign. The bush needed it. In an average Australian summer about 400,000 hectares are burnt by bushfires and regularly in all States and Territories there are bushfires more dreadful than the usual ones'.

Numerous suggestions have been made for action:

- the establishment of an Australian Bushfire Foundation to bring together diverse work already being done on bushfire control by bodies such as the CSIRO, the Natural Disasters Organisation, the Soil Conservation

Services, the Australian Conservation Foundation, the National Parks and Wildlife Service and the Insurance Council of Australia;

- the introduction of 'control burns' despite opposition by conservation groups, in order to control the otherwise destructive impact of uncontrolled bushfires on flora and fauna;
- the immediate distribution and provision of lightweight fire shelters, developed in Australia by CSIRO and advanced in the United States by the NASA space program. A spokesman for the importers, Mr Alan Banks, said that the shelters were capable of deflecting temperatures as high as 1300 degrees Fahrenheit but that his endeavours to sell them to Australian authorities had met with little success. The shelters can be carried in a pouch and according to Mr Banks would have saved countless lives lost in the February fires;
- substitution of petrol operated by diesel operated fire engines in the wake of the death around their fire truck of 12 volunteer fire brigade officers during the recent outbreaks;
- introduction of stricter fire prevention control as called for by public meetings in Melbourne immediately after the fire. The need to strike a proper balance between fire control and decorative conservation is a constant theme of numerous commentaries on the 1983 bushfires;

arson laws. In January 1983 the Victorian Government announced its intention to review the law to detect and punish arsonists. The review would be conducted by the Victorian Law Department and the Department of Police and Emergency Services. It would cover powers and penalties to combat arson according to the Premier and Attorney-General, Mr John Cain. In mid-March NSW Minister Mr Paul Whelan, announced that he too was examining the inadequacies of State arson laws. At the same time the Victorian Government appealed on the ground of leniency against a sentence on a convicted arsonist confined to a fine and a bond. The Government contended the sentence had not given appropriate weight to deterrence.

On the same themes, the *Canberra Times* editorial (above) urged consideration of a reference on the subject of the ALRC. After listing the Royal Commission and other enquiries of the past and the sad catalogue of lives lost in bushfires over recent years, the *Canberra Times* expressed this conclusion:

> 'Mt. Macedon in Victoria was attacked by fire, and, it emerged later, and incredibly, that 119 bushfires had been deliberately lit in Victoria alone in the past seven months. Generally, according to the Victorian Government, about 18% of all fires are lit deliberately and the Minister for Police and Emergency Services, Mr Mathews has spoken of harsher penalties for such arson. At present, the County Fire Authority Act prescribes a $4000 fine or two years jail or both for people convicted of lighting a fire in the open on a total-fire-ban day. The matter of bushfire arson might be one for the Australian Law Reform Commission because it affects justice and public safety in all States and Territories'.

Following the serious Victorian and South Australian fires, a number of persons have been arrested and charged before the Courts with deliberately starting fires. In March it was announced that the Australian Institute of Criminology is to convene the First National Conference on Arson in Canberra between 26 and 29 April 1983. Dr Johnson once said that there is no sight nobler than a fire. But in Australian's tinder dry circumstances of the worst drought on record, the nobility wears off and all that is left is death, ruin and agony.

flooding rains. As if to prove the poet right, the bushfires were followed, in South Australia, by a shocking flood, particularly in the winegrowing district of the Barossa

Valley. About 100 homes were reported as being severely damaged by the floods which swept through the Adelaide Hills and Northern Adelaide suburbs, and left parts of the Barossa Valley under almost 2 metres of water for 48 hours in the beginning of March 1983. Continuance of storms and heavy rains in South Australia co-incided with cyclones threatening townships along the Queensland and Western Australian coastline. A spokesman for the Insurance Council of Australia said that very few winegrowers in the flood region of South Australia had insured their crops for flood damage and that less than 5% of householders would have insurance for flooding. The cost of insurance for flooding was high he said, and floods had generally been excluded from regular householders' contracts (*Australian Financial Review*, 4 March 1983, 14). On the other hand, claims against the insurance industry arising out of the bushfires were estimated to reach $200 million in Victoria and South Australia. In mid March 1983, flash floods cut off sections of Alice Springs just as Prince Charles and his party were about to arrive. On the same day, in the drought stricken centre of NSW, a sudden downpour did over a million dollars damage in the city of Dubbo. The heavy losses and consequential claims on insurers has focused attention once again on proposals for insurance law reform.

insurance reform. Speaking in March 1983 on the release of the printed copies of the ALRC report on insurance law reform, the ALRC Chairman, Mr Justice Kirby, called attention to the significance of insurance reform in the light of the bushfires and floods. He drew attention to the chief proposals for reform already noted in these pages. See [1983] *Reform* 2. The chief relevant proposal was that of 'standard cover' which would ensure that normal expectations of persons insured were laid down by law and could only be varied with the specific approval of the insured person. The ALRC made this proposal to overcome the difficulty of getting consumers of insurance to read their policies.

The ALRC Chairman also drew attention to the discussion of natural disaster insurance in the ALRC report (ALRC 20). The establishment a natural disaster insurance scheme in Australia was proposed by the insurance industry in 1974 following disastrous floods in Brisbane in that year. In 1976 the Federal Government announced that it had decided in principle to establish such a scheme. However, in 1979 the Government changed its mind. The ALRC report calls attentions to the need to ensure cover of 'natural disaster risks'. A number of proposals relating to standard cover would include certain natural disaster risks. Mr Justice Kirby said that following the large insurance claims made after the recent Australian bushfires and floods, pressures could be imposed by the competitive nature of the Australian insurance industry to include unusual exclusions in bushfire-prone areas. The need to be alert to unusual exclusions and to reconsider natural disaster insurance is a point made in the ALRC insurance report. Also called to notice was the insolvency scheme to guarantee insurance claims against insolvent insurers. The scheme, based on one already operating in the United Kingdom, would provide protection for up to 75% of the claims.

The ALRC report attracted another bouquet from the *Canberra Times* (January 8 1983). Commenting on the time taken to prepare the ALRC report, the editor said:

> 'The six years does not represent needless delays; it represents meticulous work, research, consultation and thinking out of consequences of recommendations. The needless delay is occurring now, because after tabling the recommendations in Parliament, the Acting Attorney-General, Mr Brown, sent them for 'detailed study' by officers of the Attorney-General's Department and Treasury. What a cop-out! The Australian taxpayer has paid for one team of experts and support staff (the Australian Law Reform Commission) to look at outdated law, consult people affected and recommend changes. Once

> the Commission has recommended changes, all that is required is a *political* decision by the Minister or the Cabinet to accept or reject them. What is not required is the avoidance of a decision by passing the recommendations to another lot of people to make another lot of recommendations. Why have a Law Reform Commission? Why bother giving it references? Why bother tabling its recommendations, if every reference is to be reworked by people in the various departments? The essence of law reform is to prevent injustice. And that is exactly what the insurance recommendation is all about...Mr Brown's pigeonholing of insurance recommendations is an insult to the Commission and an insult to the public that will have to continue to suffer from insurance companies escaping liability on technicalities expressed in fine print'.

strong language. Equally strong is the language of Mr Justice Rogers in the Supreme Court of NSW in *Trimbole and others v Royal Insurance Australia Ltd.* (1983) 2 *ANZ Ins Cas* para 60-500. Mr Justice Rogers calls attention to problems which will be tackled by the forthcoming report of the NSWLRC *Insurance Contracts: Non-disclosure and Misrepresentation* (LRC 34, 1983). The report has been presented to the NSW Attorney-General, but not yet tabled in the NSW Parliament. A review will appear in the next issue of *Reform.* The NSW report is the first in its community law reform program. The proposal for reform arises out of a program given by the State Attorney-General, this time following the decision of Mr Justice Rogers in an earlier case. For the approach taken by the ALRC, see [1982] *Reform* 4. It is worth noting here that the incoming Federal Attorney-General, Senator Evans, has indicated an intention not only to act on his Bill on regulating insurance brokers (based on ALRC 16) but also on the new report on insurance contracts (ALRC 20):

> 'Despite the clear existence of Commonwealth constitutional power and despite the strong support shown by commercial and consumer interests, the Fraser Government failed utterly to implement its undertaking, first given in 1976, to improve the legal regulation of the insurance industry in the interests of policyholders and the industry itself. A Labor Government will enact the Insurance (Agents and Brokers) Bill 1981 and regulate the form and effect of insurance contracts. The Australian Law Reform Commission has recently drafted a comprehensive report on this area of the law. Labor will give immediate priority for the consideration of this report with a view to the early implementation of its major recommendations'.

that dam. Also included in Senator Evans' policy documents was consideration of the position of Australia under the Australian Constitution and international instruments to which Australia is a party, by which the incoming Government could prevent the construction of a dam in south-west Tasmania in a wilderness area which is included in the World Heritage List. This List was brought into being by the World Heritage Convention adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 1972. As disclosed in an article by Professor Ralph Slatyer, Chairman of the World Heritage Committee and former Australian Ambassador to UNESCO, the List is aimed at protecting the world's natural and cultural heritage 'so that, unlike the seven wonders of the ancient world, properties on the List can be conserved for all time'.

During the election campaign, the Australian Prime Minister, Mr Hawke, promised that the dam proposed by the Tasmanian Government, would not go ahead. At the same time, he undertook early attention by the incoming Government to the legitimate energy and employment needs of Tasmania. In the general election that followed, Tasmania was the only State which did not reflect a heavy swing to the Labor Party. In fact, the five seats in the House of Representatives in Tasmania were all won by Opposition members and there was a 5% swing against the ALP.

The constitutional and legal issues now facing the Australian Government in relation to the dam are complex. In December 1982, before the old Parliament was dissolved, a Bill outlawing damage to

any property nominated for or included on the World Heritage List was passed through the Senate. The Bill was sponsored by the Australian Democrats and introduced by Democratic Senator Colin Mason. See World Heritage (Properties Protection) Bill 1982. Coinciding with the election campaign were numerous efforts by conservationists and their supporters to blockade the dam-building works of the Tasmania Hydro-Electric Commission. An interesting footnote is the report that the Director of the Tasmanian Wilderness Society, Dr Bob Brown, a member of the Tasmanian House of Assembly, requested copy of Thoreau's 'On Civil Disobedience' when he was sent to prison in connection with protests surrounding the dam construction. The book was procured by a friend. But prison authorities would not permit it to be given to Dr Brown reportedly on the grounds of its 'subversive content'. Ironically, the jail inmates were later shown the film 'Caligula' as the week's film entertainment!

Opinions on the constitutional position vary:

- Professor R. D. Lumb, Professor of Law at Queensland University, commended the outgoing Coalition Government (The *Australian* 27 December 1982, 6) for its decision not to intervene in Tasmania 'The decision.. is a recognition of the fact that our constitutional development is not to depend on the numbers game at the United Nations or other international forum from which an agreement giving rise to a so-called international obligation may arise. It also upholds the rights of the smaller States...'
- Mr Frankel, Q.C. (*SMH*, 25 January 1983) pointed out that since *Koowarta*, the issue is whether protection of the wilderness 'can properly be regarded as a matter of international concern such that Australia's relations with other countries would be affected by our failure to act'. Mr Frankel suggested that the World Heritage List would not give 'international status' to the south-west.
- Incoming Federal Attorney-General, Senator Gareth Evans, responded to this contention by agreeing that the mere fact of Australia's accession to the World Heritage Convention or any other treaty would not be conclusive. But he quoted former Liberal Attorney-General, Bob Ellicott who in 1974 had urged that uncertainty as to the extent of constitutional power should never of itself be a reason for opposing an otherwise worthwhile legislative exercise of power or preventing a Government from treading 'where angels of constitutional probity formerly feared to tread'.

Those 'angels' and anti-angels are now examining what can be done. Immediately following the election on 7 March 1983 The *Australian* included a discussion with Senator Evans. With disarming candour, the new Attorney-General suggested there would be a '70-80% chance' of winning a High Court challenge based on Federal legislation to block the dam founded on the World Heritage List. Other possibilities mentioned by Senator Evans were:

- reliance on the overseas trade power;
- reliance on the 'rather vague "nationhood" power';
- reliance on the financial grants in aid as 'the big stick'.

Tasmanian lawyers began to examine the Constitution and have already referred to the little known provisions of s.100 of the Australian Constitution. One thing is clear. Lawyers on both sides of Bass Strait will be looking closely at the Constitution in the weeks ahead.