it to be fully aired and probed before preparation of a Report containing the Commission's final recommendations.

According to Mr Harmer there are two important inter related issues that will require close attention in the short term. Their early resolution could affect the Commission's thinking on the overall plan toward reform.

down the same road? One of those threshhold issues is whether it is desirable to take the bold approach and promote the cause for a single insolvency act for the nation. If that were done then the insolvency of individuals and that of companies would be embraced under the one legislative enactment. The great majority of its provisions would be common to both. Gone would be the disparity, the confusion and the waste that has marked and marred the differing treatment that has been accorded insolvent individuals and insolvent companies, their creditors and administrators.

getting off before the terminus. The first leads directly to the other of the two issues. That involves the exciting consideration of a different approach to insolvency. Australia, like most countries whose insolvency laws developed from those of England, has exhibited and continues to exhibit a predominantly legalistic approach to the problem of insolvency. Our present laws are, in the main, simply representative of the classical notions of bankruptcy that had their origin some hundred or more years ago. Little change to that law has occurred in the interim despite very significant economic and social changes. One result is that in this country we have a lot of terminal cases of insolvency – many bankrupts and many wound-up companies. There are a lot of people, Mr Harmer said, who would question whether much was achieved by that type of procession. The nation might be better served to develop methods and systems that exhibit a predominantly economic approach to insolvency. In that atmosphere our present notions of bankruptcy and liquidation would be reserved for exceptional circumstances. They would become the extraordinary rather than the ordinary method of dealing with the problem. Already the ALRC has done much to foster that approach by its report *Insolvency: The Regular Payment of Debts* (ALRC 6).

Some brief reflection on those two key issues will perhaps illustrate why they interlock and why it is important to consider them first and foremost. If there is to be a new and refreshing approach to the problem of insolvency then it can be better managed, both in policy and in administration, by a single vehicle – new legislation which will embrace both individuals and companies. We should open our minds to the obvious advantages of that blue print, Mr Harmer concluded, otherwise we are constrained to a laborious review of two legal systems with the object of producing unity while keeping them apart. That seems pointless. It might well produce sullenness and resentment.

punishment

Speaking generally, punishment hardens and numbs, it produces concentration, it sharpens the consciousness of alienation, it strengthens the power of resistance.

Nietzsche *The Genealogy of Morals*, 1887

plus ca change. Delivering the Whatmore Oration to the Victorian Association for the Care and Resettlement of Offenders recently, Dame Roma Mitchell, Chairman of the Human Rights Commission, said Australia's prison system was still plagued by overcrowding and a lack of remand centres and prisoners' rights. Dame Roma lamented that she had delivered a similar speech about the rights of prisoners ten years ago and today many of those problems remain unsolved.

bringing punishment to a halt. In the NSW parliament recently a liberal backbencher made the allegation that a senior adviser to one of the government ministers was a 'convicted criminal'. This raises the important issue whether a reference to a person's past criminal record should be raised under parliamentary privilege. This is one of the matters which will be considered in the course of the ALRC Reference on Expungement led by Professor Robert Hayes. Other developments in this area include the introduction of legislation in Queensland,

the release of a working paper by the West Australian Law Reform Commission (for details see [1984] *Reform* 100) and a proposal by the NSW Attorney-General that the matter will receive attention in the near future.

an 'unjust and dangerous' conviction. The release of Edward Charles Splatt from prison in Adelaide after he had served six and a half years for murder followed the recommendation of a Royal Commission set up by the new South Australian Labor Government. Judge Shannon found that it would be 'unjust and dangerous' for his conviction to stand. The case highlights the need for appropriate review mechanisms and the danger of absolute opposition to the role of the jury as the final arbiter in all cases. Like the Chamberlain case and the Thomas case in New Zealand it also raises the vexed issues associated with expert forensic evidence.

'farcical' parole legislation? The new New South Wales Probation and Parole Act which came into effect in February this year is attracting criticism from some members of the judiciary. One judge recently described the legislation as a 'farcical situation' because the legislation provided for an automatic deduction of remission from the non-parole period and the judge was not permitted to take this into account in fixing the non-parole period. It is seen as an erosion of the judges' sentencing authority.

wa death penalty goes. In August 1984 the West Australian Parliament removed the death penalty, being the final State to do so.

victorian sentencing reform. The President of the Victorian Law Institute Mr David Miles has called for reform of Victoria's system of sentencing offenders and blamed unfair fines, earlier release and meaningless gaol sentences for what he called the increasing public concern over punishment in that State. It is understood that Mr Jim Kennan the Victorian Attorney-General is currently considering an inquiry into sentencing law in Victoria.

a gaol for the act? In the Australian Capital Territory the debate about whether there are appropriate correctional facilities proceeds apace. The ACT Law Society has joined others, including the Deputy Chairman of the Human Rights Commission, Mr Peter Bailey, in calling for a gaol for the ACT. (See *Sentencing: Reform Options* ALRC DP 10 June 1979.)

fines. There has been considerable media discussion in both NSW and Victoria about the large number of fine defaulters in custody. Pressure is mounting on both governments to take steps to reduce the number of people in prison for fine defaults. Attention is being focussed on two areas: the breaking of the automatic nexus between fine default and imprisonment and secondly the need to consider the means of the offender in assessing the fine to be imposed. A working paper on the fine is also shortly to be issued by the Tasmanian Law Reform Commission. An interesting recent study in the area has been conducted by Mr Dennis Challinger, the Chairman of Melbourne University's Criminology Department.

deaths in custody. The death of seven prisoners in Victorian gaols has prompted the State Community Welfare Services Minister, Mrs Toner, to call for a full inquiry into deaths and suicides in Victorian and Australian prisons. A study of the area will be undertaken by the Australian Institute of Criminology. Concern in relation to this issue has also been expressed in NSW. At a meeting in June 1984 a new organisation called Inquest was formed with the following aims: to give assistance to relatives and friends of persons who died in custody; to press for inquiries into particular cases; to press for the compilation and public release of comprehensive statistics; to press for reform in a number of areas, particularly coronial inquiries; to extend public debate.

overcrowding. There has been extensive reference to the problem of overcrowding in Victorian prisons. This has been exacerbated by a recent court ruling which provided that prisoners should not be detained for substantial periods in police lockups. This has apparently led to the delivery by police of prisoners to

gaols who are not in a position to take them and their consequent release.

sentencing of federal offenders: stage II. In 1980 the Australian Law Reform Commission completed a Report: *Sentencing of Federal Offenders* (ALRC 15, Interim) in which a number of proposals were made for sentencing reforms. Some of these proposals have been enacted in the Crimes Amendment Act 1982 (Cth). A number of important proposals were made in relation to a Sentencing Council, Parole, Appeals to the Federal Court of Australia, prison conditions and grievances and compensating victims of crime. A formidable list of items potentially remains to be considered: a review of the criminal justice system in the Australian Capital Territory and in particular the issue whether correctional institutions should be provided in that Territory, collection of sentencing data for Australia, plea bargaining, judicial review of prosecutorial discretion, fines and means inquiry, deportation, restitution and compensation orders, criminal bankruptcy, pecuniary penalties, non-custodial sentences, pardons, migrant offenders, white collar offenders, mentally ill offenders, women offenders, Aboriginal offenders, children and young persons, military offenders, drug offenders, dangerous offenders, the role of a prosecutor in sentencing, pre-sentence reports and the factual basis in sentencing. In addition, an issue of fundamental importance for consideration of the Commission will be a Commonwealth Act, incorporating the general provisions of Commonwealth law governing the punishment of Commonwealth and Territorial offenders. The Commission proposes to append to its final report a Bill to translate into legislative form the final recommendations on the matters dealt with in ALRC 15, the matters relevant to punishment of persons convicted of offences against the laws of the ACT and the matters abovementioned.

Recently Mr George Zdenkowski, a senior lecturer in law in the University of New South Wales, was appointed a full-time member of the Commission to take charge of the Sentencing Reference and to revive work on it. The Commission will be collaborating with the Australian Institute of Criminology.

Of immediate concern will be the commencement of thoroughgoing consultation processes to obtain feedback in relation to important matters raised in the Interim Report (ALRC 15). In addition comments and submissions will be invited in relation to the matters which will be dealt with by the Commission in its forthcoming research programme. As the work of the Commission proceeds in relation to this second aspect and discussion papers become available, it is hoped to consult widely within the community including the relevant professional associations.

A number of other important inquiries which affect the sentencing area have recently commenced or will shortly do so. Professor Tony Vinson of the Department of Social Work, University of New South Wales, has been commissioned to review social welfare services in the Australian Capital Territory. As part of this project Professor Vinson will direct attention to the issue of correctional facilities in the Australian Capital Territory. There is no shortage of debate on this area. (See, for example, the extensive seminar on Administration of Criminal Justice in the Australian Capital Territory conducted by the Australian Institute of Criminology in May 1984.) The Human Rights Commission proposes shortly to conduct an inquiry into the human rights of federal offenders. The New South Wales Law Reform Commission has an on-going reference into criminal procedure one aspect of which will be concerned with the disposition of offenders. Mr Jim Kennan, the Victorian Attorney-General, is considering an inquiry into sentencing in Victoria. Specific attention is being given to the issue of women in prison in New South Wales by the Women in Prison Task Force which is due to report in December this year. Justice Watson has been appointed by the Federal Attorney-General, Gareth Evans, to review the Crimes Act (1914) and other federal legislation which contains criminal sanctions. The Australian Law Reform Commission has established contact with these various agencies and hopes

to co-operate fully with them in its sentencing reform project.

courts and judges

the family court. There has been yet another brutal attack on a judge of the Family Court with tragic consequences. This prompted a degree of criticism of the Family Court in the media. The Chairman of the ALRC, Justice Kirby was quick to spring to the defence of the Family Court and the Family Law Act. Justice Kirby criticised the reactions of the media, the legal community and commentators in general to the tragic occurrence. He expressed regret at:

- the lack of balance in media coverage of the Family Court and the Family Law Act;
- the failure of the legal profession to adequately defend the Family Court and the Family Law Court against recent criticisms;
- the suggestion that there was an 'ethnic element' in the bomb attacks on Family Court Judges;
- the proposal of simplistic solutions such as a return to fault-based divorce for the problems of the Family Court.

Justice Kirby said that it was appropriate to note the many positive attributes of the Family Court and the Family Law Act. Among these he mentioned:

- the abolition of offensive publicity concerning 'the private crises of individual citizens';
- the replacement of 'salacious' grounds for divorce such as adultery by the simple concept of 'irretrievable breakdown of marriage;
- the provision of a range of services, including counselling, conciliation, information, child minding services, improved legal aid, and even video-tape advice for litigants;
- the process of on-going review of the operation of the Family Court and the Family Law Act including the active participation of the judges of the Family Court in the ALRC inquiries into Matrimonial Property, Domestic Violence and Contempt of Court.

Chief Justice Evatt of the Family Court said that the tragedy had increased the pressure on Family Court judges, who already were depressed and feeling hopeless about the problems confronting them. She pin-pointed the lack of staff, including judges and counsellors, and over-crowding as major causes of the enormous pressures on the court. She said that a staff increase of 25 as announced by the Attorney-General would help, but that a lot more needed to be done.

The Attorney-General, Senator Gareth Evans, proposed three further reforms:

- a media campaign to familiarise the public with the family law system, based on market research;
- an increase in experienced salaried lawyers, possibly involving a system of accreditation of practitioners;
- consideration of reversion to the wearing of wigs and gowns by judges of the Family Court.

the judges revealed. Some judges in New South Wales recently consented to being interviewed for a five part series on the judiciary in the Sydney Morning Herald. This emergence from relative obscurity perhaps reflects a recognition both on the part of the media and of the judiciary that there is a greater community need to have information about the judiciary and the courts. It is possible that some of the impetus for the recognition of this need came from the Boyer lectures delivered by the ALRC Chairman, Justice Kirby. The *Sydney Morning Herald* claimed that a 'composite portrait' could be assembled. Judges are 'witty, shy, confident, capricious, demanding, generous and tardy'. Whether these attributes are true of all, or any judges, is unknown. Some items of interest about the judiciary that emerge from the series included: