Mr Temby argued that no amount of 'drug abuse, dirty movies, or official corruption could justify the in-roads being made on the personal privacy, liberties and freedoms which we have traditionally enjoyed'.

Mr Temby proffered three examples of the way in which he said standards had already slipped in the area:

- allegations in an anonymous letter referred to recently in the Federal Parliament 'were given the same sort of credence as an official report might properly command';
- elements of the press have dubbed an individual who has never been convicted of any offence as 'public enemy number one';
- many are disposed to sanctify certain law enforcement officers who broke the law by tapping telephones.

Mr Temby adopted the sentiments of former ALRC Commissioner, Professor Zelman Cowen, as he then was, from the 1969 Boyer Lectures on Privacy to the effect that the protection of privacy depended not only on appropriate legal protections and procedures but also on the attitudes of men and women in democratic societies.

bills of rights and wrongs

> It is always easier to be sympathetic to someone else's minority groups. They are safely out of reach and can be accorded a dignity denied our own.
>
> Bruce Dawe, Toowoomba *Chronicle*, 14 September 1978

nz bill of rights. The advent of the Labor Government in New Zealand has brought fresh pressures in that country for a Bill of Rights for New Zealand. Earlier this year a White Paper was presented to the New Zealand House of Representatives by the Hon Geoffrey Palmer, Minister for Justice. The White Paper contained a draft Bill of Rights for New Zealand and detailed comment on each of the proposals. The New Zealand draft is clearly intended to establish the supremacy of the Bill of Rights over existing law. It is based on the International Covenant on Civil and Political Rights and is also designed to recognise and affirm the treaty of Waitangi with the Moari people ion 1840. The Paper carefully analyses the problems identified with Bills of Rights including the necessity or desirability of judicial law making, the changes that would be necessary or that would result in the role of the courts, and the relationships of the Bill of Rights to rights of administrative action and existing protections for human rights.

a wider role. The White Paper comments finally:

> but the Bill of Rights will be more than a legally enforceable catalogue of fundamental rights and freedoms. It will be an important means of educating people about the significance of their fundamental rights and freedoms in New Zealand society. Citizens will have a readily acceptable set of principles by which to measure the performance of the government to exert an influence on policy making. An awareness of basic human rights and fundamental freedom amongst citizens and a desire to uphold them is as powerful a weapon as any against any government which seeks to infringe them ... As Sir Robert Cooke has said 'there is a wider and deeper argument. An instantly available, familiar, easily remembered and quoted constitution can play a major part in building up a sense of national identity.'

social and economic rights excluded. According to Mr Palmer, the Bill excludes economic and social rights for a very deliberate reason, namely that these matters, in the New Zealand Government's view, should be left to the political process.

progress report. More recently Mr Palmer disclosed the Government was not entirely happy with the way in which public debate on the Bill of Rights was progressing. Addressing a seminar of the International Commission of Jurists on the Bill of Rights on 10May 1985, Mr Palmer said:

> it is my view that very few people have much appreciation of what is involved in adopting a Bill of Rights for New Zealand. We are still a long

> way off having any widespread public understanding of the issue let alone any consensus about them.

Mr Palmer said that the response to the White Paper had been mildly disappointing. The reactions of lawyers, political scientists, politicians and other interest groups have been largely predictable:

> according to their likes, they have called it 'bold' 'unadventurous' 'tyrannous' 'vague' 'far-reaching' and 'flawed'.

Media reaction, on the other hand, had been more cautious, ranging from praise for its display of imagination and degree of ingenuity (*New Zealand Herald* 3 April 1985) to warnings to the Government that attempts to write down rights that have come to be understood could lose as much as it gains and that the drafting of these rights is extremely difficult (*Dominion* 3 April 1985).

difficulties in a conceptual debate. Mr Palmer pointed to a number of difficulties with any debate on a Bill of Rights:

- it is conceptual and lacks concreteness;
- as a concept it is difficult, requiring a good deal of legal understanding and a knowledge about the existing distribution of power.

Indeed, according to Mr Palmer, the key issue in the Bill of Rights is the distribution of power as between the citizen and the Parliament requiring the accountability of government and procedural safeguards to ensure fair treatment by the State in its dealings with individual New Zealanders.

australian problems. Prior to the last Federal election, the then Attorney-General, Senator Gareth Evans, prepared and circulated, on a restricted basis, a draft of a Bill of Rights. Selective leaks by those opposed to the Bill ensured that the secrecy surrounding the Bill, as much as its terms, became an election issue in the Federal election. After the election, the new Attorney-General, MrLionel Bowen MP, released the Bill under the Freedom of Information Act with an endorsement in the following terms:

> The Attorney-General has decided that the draft Australian Bill of Rights will be made available under the Freedom of Information Act. Mr Bowen has directed that copies of the Bill be endorsed with the following statement of his position in relation to the Bill:
>
> My predecessor prepared this draft Bill. The draft should not be taken as representing the government's position on any of the issues it raises.

opposition. The Bill immediately drew significant criticism from the Opposition. The Shadow Attorney-General Neil Brown QC, in an address to the Liberal Lawyers Association on 13March 1985 said:

> I am now convinced, having read the Bill and the explanatory paper that came with it, that it should be delivered a coup de grace and given a decent burial.

He gave a number of reasons for this view:

- A Bill of Rights is not necessary, as our rights and liberty have always been protected by the law.
- The Bill could potentially cause more breaches of human rights than it could prevent.
- The Bill is a vehicle for overturning the decisions of properly elected state and local government authorities.
- The Bill is silent on some very basic human rights that are coming under continual attack in Australia.

rights excluded. Focussing on the rights that the Bill does not contain, Mr Brown instanced:

- the right to own private property;
- the right to refuse to join a trade union;
- rights of companies.

Mr Brown said that the reason for these curiosities

> is no doubt that the Bill is based on the International Covenant on Civil and Political Rights which has been signed mostly by Warsaw Pact countries but not, for instance by the USA or Great Britain.

He said that rights that were not adequately reflected in the draft Bill included the right of every human being to legal protection for his or her life. The only reason given for this, Mr Brown said, was that such a right 'seems inappropriate' to be included in the Bill.

Substantial criticisms were made by Mr Brown on the role given to courts under the Bill to declare State, Commonwealth and other laws invalid. Mr Brown said:

> this clearly means an end to the separation of functions that has been one of the foundations of our system of government for centuries. It means of course that a court can negate a law passed by a Parliament on the grounds that it is not justified. This is a monstrous invasion of the rights of free people to elect their Parliament to pass laws that have the effect of law ... no wonder Mr Justice Kirby said that judges will 'need to get training' in the laws they will allow and the laws they will reject.

a licence for eccentric behaviour? In March Mr James Bowen, a former Commonwealth Prosecutor and the Treasurer of the Victims of Crime Assistance League argued that the Federal Government's proposed Bill of Rights would interfere with State criminal justice systems, hamper police and erode the family unit. Mr Bowen is a Victorian barrister. According to Mr Bowen:

> The Bill appears to be a licence for cranks and radicals every where in Australia to emerge and claim a legal right to engage in previously unacceptable and eccentric behaviour.

Mr Bowen's remarks were contained in an article in the journal *Police Life*. (*The Age*, 12 March 1985)

senate committee. Despite these criticisms, the Bill, or at least the idea of a Bill of Rights, still remains alive. In April the *Australian Financial Review* reported that the Federal Caucus Legal and Administrative Committee had moved to retain a commitment to a Bill of Rights and that that it would now be referred to a bipartisan Senate Committee – the Senate Standing Committee on Constitutional and Legal Affairs. The report said that although there was significant criticism of the existing draft Bill of Rights there was a strong feeling in the Committee that the issue should not be dropped or allowed to lapse (*Australian Financial Review*, 18 April 1985). The Senate Committee has been given a reference to examine the desirability, feasibility and possible content of a National Bill of Rights for Australia. The reference particularly requires the Committee not to consider the provisions of any Bill on this subject prepared by the Government unless the Bill has been introduced into the Parliament and the Senate has authorised the Committee to do so. The Committee has already called for public submissions.

human rights commission questioned. In the same speech Mr Brown attacked the Human Rights Commission which was set up by the previous Liberal administration. 'Looking at its record', he said:

> I think it may have been a mistake to set it up at all ... its powers and its practices are far from being the finest hour in advancing the cause of civil liberties.

In particular, Mr Brown singled out the mingling of the educational and inquisitional roles of the Commission, the express denial of right to legal representation, and the lack of protections against self incrimination. 'Mr Justice Stewart and Mr Costigan would be green with envy', he said. 'Not even the National Crime Authority and Royal Commissions have such powers-but they were only established to investigate organised crime.'

In March, Professor Lauchlan Chipman told a seminar organised by the Centre for Independent Studies in Sydney that anyone who expected to receive justice from the Human Rights Commission was 'naive'. Professor Chipman claimed:

- The Family Court was not concerned with justice and was robbing innocent marriages partners of judicial recognition of their innocence.
- Traditional concepts of justice were being quietly redefined to mean something completely different from what they had been traditionally accepted as meaning.
- The Human Rights Commission was guilty of the most serious violations of human rights (Professor Chipman seems to have had in mind lack of any requirement that the Commission apply rules of evidence including, for example, exclusion of hearsay material, in making determinations and lack of any statutory requirement against partiality by it in making decisions (*The Australian*, 22 March 1985)).

teething problems. In April the Federal Attorney-General Mr Lionel Bowen announced that he would seek to give the Human Rights Commission some 'teeth' to ensure that State legislation complied with international conventions on human rights. Mr Bowen was speaking on 9 Network's Sunday program (*Sydney Morning Herald*, 15 April 1985). Meanwhile the Human Rights Commission has reported to the Federal Government about Queensland legislation dealing with the industrial difficulties in that State surrounding the Queensland Electricity Commission. The Chairman of the Human Rights Commission, Dame Roma Mitchell is reported as having told the Federal Government to take action on breaches of human rights in the Queensland legislation, in particular powers giving the Queensland Electricity Commissioner power to direct anyone to do necessary work. The Commission apparently concluded that that provision breached guarantees in the International Covenant of Civil and Political Rights against forced labour. The Human Rights Commission apparently also pointed to breaches of provisions in international conventions to which Australia is a party dealing with the right to strike, freedom of association, reversal of the onus of proof in criminal proceedings and freedom of association (*Sydney Morning Herald*, 19 April 1985).

improving the law

> To regard a great change as something fraught with dire danger is not always a sign of wisdom; it is more often a sign of the parish-pump mind.
>
> JB Chifley, 1930

grass roots reaction. On 19 April 1985, the Federal Director of Public Prosecutions Mr Temby addressed the Western Australian Press Club. He emphasised that his remarks were made in a personal rather than an official capacity. Mr Temby said that it was desirable that as many people as possible get involved in working to improve our laws and legal system. He added that in many cases ordinary citizens are in the best position to militate for reform:

> after all, if they become aware of deficiency in the law it will usually be as a result of direct experience of a present shortcoming.

faceless foils. Mr Temby emphasised the need for law reform not to get too far in advance of social change lest the community may come to regard reform as unpalatable. He spoke of the need to anticipate thoroughly the consequences of any intended reform and suggested that the Federal Government's new administrative law package had produced some unintended results. Mr Temby noted that the legislation was aimed to make big government more accountable to the citizen affected by decisions of 'faceless' bureaucrats. But he said that one result was the development of a growth industry in the recruitment of lawyers in government departments, to act as foils against greater accountability,