

ceived from anyone that superannuation might be relevant.

- *business assets.* The difficulties of obtaining adequate information about a spouse's business assets figured largely in criticisms of the operation of the law.
- *views of the legal process.* The greater a party's involvement with the legal process, the greater the dissatisfaction that was expressed with the law, lawyers and the result. But a complementary view was offered by judges and registrars in explaining why cases before them had not settled — the most common explanation was obduracy or unrealistic expectations by one or both parties or personal tensions between them. Complexity of legal or factual issues was seen as a minor factor.
- *discretion v fixed entitlements.* Complaints about the law focussed on uncertainty and delay. But when asked to choose between a discretionary system and one based on a general rule of equal division of property, 80% of women and 66% of men preferred a discretionary system — primarily, it would seem, because of the perceived importance of the needs of the custodial parent and children.

public hearings. Professor Hambly and fellow Commissioner, Justice Josephine Maxwell, will hold public hearings throughout Australia in October and November. Those who wish to discuss their views with the Commissioners are invited to take part. An appointment can be made by writing to the Canberra office of the Commission (GPO Box 1996 Canberra ACT 2601) or by phoning Ms Deena Shiff ((062) 472166). The timetable for the hearings is set out on page 178.

foreign state immunity

The Bishop of Rome hath no jurisdiction in this Realm of England.

Prayer Book, 1662

fsi bill. A previous issue of *Reform*, [1985] *Reform* 34, discussed the *Foreign State Immunity* Report of the Australian Law Reform Commission (ALRC24). That Report was tabled in the Federal Parliament on 10 October 1984.

The Government has moved quickly to take up the recommendations of the Commission. On 21 August 1985 the Attorney-General, Mr Lionel Bowen, presented the Foreign States Immunity Bill 1985. That Bill reflected almost completely the draft legislation attached to the Commission's Report. At the time of writing, the Bill has been passed by the House of Representatives.

The Bill, when enacted, will provide a comprehensive statement of, setting out in clear and accessible form, the law concerning the circumstances in which Australian courts will be able to exercise jurisdiction over foreign states, their agencies and instrumentalities.

The key points of the Bill are:

- States will be immune generally speaking with prescribed exceptions set out in the Bill.
- Commercial transactions will not be immune.
- Torts resulting in death, physical injury or damage to tangible property will not be immune if committed in Australia by the foreign state or by its servants acting in the course of their employment.
- Torts resulting in economic loss will continue to be immune unless the tort occurs in the course of a commercial transaction.
- Employment contract will not be immune except in limited circumstances.
- Disputes concerning immovable property will not be immune.
- There is a clear and comprehensive statement of what amounts to submission to the jurisdiction.
- Property of foreign states is made immune from execution subject to speci-

fied exceptions the chief of which is commercial property. Special protection is accorded to military and diplomatic property.

Again, major reforms are made to the method of service upon our court process on foreign states. Under the legislation, the only mode of service is through the diplomatic channel by the Department of Foreign Affairs or as specially provided for by agreement or treaty.

When introducing the legislation, Mr Bowen noted that the reference to the Commission had been given by the previous Government and that the matter was not contentious, with bipartisan support.

Praising the ALRC, Mr Bowen said

Finally, I take this opportunity again to congratulate the Law Reform Commission on its excellent work on this Reference. It is an outstanding example of legal scholarship and of the continuing relevance and importance of the Law Reform Commission. The Report will prove, I am sure, of lasting importance and of use not just in relation to this legislation, but also to other countries and international bodies like the International Law Commission which are continuing work in this area.

child euthanasia

If anything is sacred the human body is sacred.
Walt Whitman, *I Sing the Body Electric*

Some 2000 children are born in Australia each year with severe disabilities. Parents of the most severely affected and the medical practitioners involved face a dilemma on the question of the application of life-sustaining treatment. To apply treatment may result in a life of extreme suffering and pain for the child. The alternative is death — either passive, or the active killing of the child, for example by lethal injection. The law proscribes the intentional or reckless killing of a person. Even where death results from certain omissions, murder may be held to have been committed. Nor does the law explicitly provide an escape route in cases of compassionate

killing (although a jury may return a not guilty verdict as in the Dr Arthur case in England). Nonetheless, the prosecution of the parents or medical practitioners is a rare thing indeed. Children are apparently allowed to die and may in some cases be aided to die. The subject is a moral and legal minefield. A recent paper issued by the Human Rights Commission discussing legal and ethical aspects of the management of new born children with severe disabilities is a welcome contribution to the debate upon what should be done to remedy the unresolved questions in the area.

The paper, produced in co-operation with the Australian College of Paediatrics, discusses a broad range of issues related to medical treatment for severely disabled newborn children. It deals with:

- the distinctions that are made in relation to the management of such children, including active and passive euthanasia, treatment and non-treatment, intention to palliate and intention to kill and ordinary and extraordinary treatment, and some of the 'grey areas' arising from these distinctions;
- the existing criminal law in the Australian Capital Territory regarding murder and manslaughter and the application of that law to the decision-making process concerning severely disabled children;
- the implications of various international statements of rights relating to such children for the decision-making process;
- recent technical and social developments which have highlighted the ethical and legal dilemmas in the management of severely disabled children; and
- attitudes of the medical profession to the management of severely disabled newborn children.