creditors generally (this question affects the general principle of insolvency law whereby insolvent estates are distributed rateably amongst creditors of the same class);

- should tests be prescribed which establish a rebuttable presumption of insolvency and thus clarify the concept of inability to pay debts as and when they become due.

In addition to these policy issues, Mr Smits pointed out various inconsistencies in the sections (for example between s229(1) which relates to a director's duty of honesty and which provides for a penalty of $20000 or 5 years' imprisonment or both for a breach of that duty if the breach is committed with intent to deceive or defraud and s561 which provides a penalty of $10000 or 2 years' imprisonment or both for frauds by officers) and areas requiring clarification (for example the extent to which professional advisers may be held liable under s556 for a company's debts).

Mr Smits' paper was received with great interest by the participants in the seminar and aroused a great deal of debate. The issues connected with limited liability and the possible liability of officers of a company who permit that company to trade while insolvent must be examined in the context of a wide-ranging review of insolvency law. The paper presented by Mr Smits will be of considerable assistance to the ALRC in its review of this area of the law.

national sentencing seminar

My object all sublime
I shall achieve in time
To let the punishment fit the crime
The punishment fit the crime
WS Gilbert – 'The Mikado'

agenda. A National Sentencing Seminar was held at the Australian Institute of Criminology from 18 to 21 March 1986. The Seminar was convened at the request of the Australian Law Reform Commission which is collaborating with the Institute in relation to its reference on the Sentencing of Federal and ACT offenders. However, the panned agenda was deliberately wider than the sentencing of federal and ACT offenders. This was because of the interest in sentencing in other jurisdictions and, in particular, because there were current sentencing inquiries in Victoria and New South Wales. The establishment of the Victorian Sentencing Committee is referred to elsewhere in this issue. The New South Wales Law Reform Commission is also considering the issue of sentencing in the context of its enquiry into criminal procedure.

The Conference was attended by well over 100 delegates with a wide range of practical and academic interests in the subject matter, including more than 20 judicial officers from most jurisdictions in Australia.

The topic of sentencing was treated in its widest sense, incorporating not only the problems confronting the sentencing judge, but also those faced by the prosecutor at one extreme and by the administrative and executive arms of government at the other.

After the opening remarks of the Director of the Australian Institute of Criminology, Professor Richard Harding, in which he drew particular attention to problems resulting from imprisonment for fine default, the overuse of short-term imprisonment and the dramatic rate of imprisonment of Aborigines in Australia which he described as an 'abomination', the Conference was officially opened by Mr Jim Kennan, Attorney-General for Victoria. During his address the Attorney drew attention to the notion that prisons were becoming a scarce resource having regard to the enormous costs of imprisonment. This had implications for the decision to imprison, given that it involved a significant allocation of community resources. He referred to the consideration of the wider use of community-based options in Victoria. These issues will be taken up by the recently established Victorian Sentencing Committee, chaired by Sir John Starke, a recently retired

judge of the Victorian Supreme Court. The Attorney-General also drew attention to the limited role that the criminal justice system can play:

> Ultimately, I believe that there needs to be a recognition that there are limitations to the criminal law, the sentencing policy and the imposition of dispositions whether they be custodial or community-based. We need to insist that when government intervention is proposed or taken through the criminal law it should be justifiable as serving some common good and that this intervention be moderated by considerations of fairness, justice and humanity.

let the punishment fit the crime. This theme was taken up by Dr Andrew Ashworth of the Centre for Criminological Research at the University of Oxford. Dr Ashworth made an important contribution to the conference by delivering the initial keynote address 'Criminal Justice, Rights and Sentencing: A Review of Sentencing Policy and Problems'. After indicating the limited function that sentencing had in relation to crime control, Dr Ashworth stressed that the aim of sentencing should be to impose on offenders a punishment that is proportionate to the seriousness of the offence, so as to restore the order disturbed by the criminal offence.

> Proportionality therefore assumes central importance ... (and there should therefore be) public discussion of the relative seriousness of the various crimes. Imprisonment and the non-custodial measures continue to raise deep issues of rights and philosophy which should not be neglected, but the solution of sentencing problems will be handicapped unless and until there is systematic review of offence-seriousness and of the relevance of previous convictions to the official response to crime. In these areas, as in the decision-making process itself, there are issues of individual rights which have been overlooked too frequently in the arguments for judicial discretion.

Dr Ashworth criticised reliance on the common law for the regulation of sentencing and argued that 'sufficient elements of judicial discretion can be preserved within a framework which increases greatly the quantum of guidance, structures and rules in the sentencing process.'

sentencing guidelines. In commenting on Dr Ashworth's paper, Mr Justice Nicholson of the Victorian Supreme Court (who is Deputy Chairman of the Victorian Sentencing Committee) was less pessimistic about the role of the common law and appellate courts although he recognised that 'the past failure by courts of Criminal Appeal to perform a real role in giving guidance to sentencers will only strengthen moves towards the imposition of legislative guidelines of a much more rigid kind'. His Honour thought that it was not too late to remedy the situation and that this may be achieved by way of 'a system of guidelines or by substantial improvements to the present appellate control of sentences coupled with the supply of adequate information to sentencers and perhaps some form of judicial training'. Mr Justice Nicholson also remarked that although he saw the doctrine of just deserts as 'useful in setting an upper limit on sentencing so that no person receives a sentence which is disproportionate to the offence involved' he felt that there ought not to be a single justification for punishment and that there should be room on occasion to consider other aims, in particular rehabilitative aims.

discretion in the sentencing process. Considerable interest was stimulated by the other keynote speaker Dr Kay Knapp who had just taken up her appointment as staff director on the recently established US Sentencing Commission. Her appointment to the federal body followed a long-standing involvement with the Minnesota Sentencing Guidelines Commission at which she was research director. After referring to the crucial role of discretion in the sentencing process, Dr Knapp outlined the history of attempts to regulate discretion in the United States. For most of this century, the 'indeterminate sentence' held sway. Under this system

> the legislature defined crimes and established very broad parameters for sentences, with the minimum sentence generally set at zero (ie, no imprisonment) and the maximum sentence generally set at a high level of five years, ten years, twenty years, or life imprisonment. Dispositional

> authority was left to the discretion of judges with virtually no policy provided to guide the exercise of the broad discretion to imprison or not imprison. . . . Substantial sentencing discretion was also delegated to the executive branch. . . . Judges pronounced symbolic sentence ranges . . . and the parole board determined when the offender would actually be released.

The reaction to this was the 'determinate sentence' which was introduced in many jurisdictions in the 1970's. As a result of this reform,

> sentencing discretion was substantially reallocated . . . with the legislature retaining significantly more sentencing authority than previously. Under determinate sentencing, the legislature defined relatively narrow sentencing ranges compared to indeterminate sentences. The legislature also generally defined aggravating and mitigating factors which, if present in a case, could be used to adjust the sentence by specified amounts.

Another response to dissatisfaction with the discretion exercised by judges and parole boards under indeterminate sentencing was to institute 'mandatory sentences' for specified crimes. In practice, this vastly increased the discretion of the prosecutor. Dr Knapp went on to point out that

> Legislatively authorised sentencing guidelines followed closely on the heels of legislative determinative sentencing systems. Sentencing guidelines are developed by a legislatively authorised Commission which develops specific sentencing policy for judges to follow. . . . The motivation for establishing this type of sentencing structure was to correct the lack of accountability, lack of articulated policy, and broad discretion of the indeterminate sentencing system within a structure that would permit the development and maintenance of a rational sentencing policy.

Perhaps because of her association with the Minnesota Sentencing Guidelines Commission which has been more successful than most attempts at sentencing reform via guidelines, Dr Knapp was a staunch advocate of this approach.

the role of the prosecutor. The Director of Public Prosecutions, Mr Ian Temby QC, took up the theme of the role of the prosecutor in the sentencing process. Although the prosecutor plays a significant role at earlier stages, Mr Temby chose to direct most of his attention to the desirability of an address on sentence by the prosecutor at the sentencing stage. He referred to the different traditions which existed in various jurisdictions on this issue and urged that given the right of the Crown to appeal against leniency in all jurisdictions, sentencing decisions and the evolution of a rational and coherent sentencing policy could only be enhanced by fuller participation of the prosecution. Superinterdent John Murray from the South Australian Police Department contributed the view of a police prosecutor on sentencing in summary courts.

the role of the court. In discussing the role of the court in the sentencing process, both Mr Justice Vincent of the Supreme Court of Victoria and Mr James Glissan QC, former NSW public defender, frankly acknowledged the many deficiencies in law and practice as to sentencing at the trial stage and as to appellate review. However, both expressed the view that a common law approach to sentencing reform was both possible and desirable.

the magistrate as decision maker. In a joint presentation Dr Jeanette Lawrence and Dr Ross Homel of Murdoch and Macquarie Universities respectively, turned their attention to sentencing in magistrates' courts and in particular the role of the Magistrate as a professional decision maker. Using techniques of observation, in-depth interviews and statistical analysis, they have been conducting research in magistrates' courts and reported on work in progress. They found that very little attention has been given to date to the difficulties which face magistrates as professional decision-makers particularly given the variation in information presented to them. Mr Kevin Anderson, Deputy Chief Magistrate in New South Wales, outlined the experience of a sentencing seminar conducted for a group of New South Wales

magistrates. Case facts based on actual cases (suitably anonymised) had been presented to sub-groups of magistrates attending the seminar and each sub-group was given the task of determining the appropriate sentence. These determinations were subsequently compared as between the various sub-groups and with the actual results obtained in the original cases. As Mr Anderson pointed out, the results were instructive, revealing a wide range of disparity which parallelled findings in the United States when similar experiments were conducted.

To add interest to his presentation, Mr Anderson distributed a sample of the cases originally given to the magistrates at the Sentencing Seminar to participants in the AIC seminar on the evening prior to his talk with a request for them to indicate the sentence that they would give. This information was collated and analysed and, perhaps unsurprisingly, the results revealed a similarly wide ranging disparity amongst seminar participants.

imprisonment — the future. The seminar then turned its attention to the issue of imprisonment. Mr David Brown of the Faculty of Law at the University of New South Wales pointed to the difficulty of considering the future of imprisonment in isolation. According to Mr Brown, 'speculation on the future of imprisonment is in turn dependent on being able to speculate on the broader economic, political, ideological and social climate and arrangements within which some future imprisonment will be located'. He referred to the New South Wales situation and in particular to the increasing prison population and 'the emergence of a law and order climate unfavourable to criminal justice, sentencing and penal reform'. He argued that it was futile to search for a blue-print for reform, as 'there are no magic blue-prints for reform nor is there some central essence, logic, fulcrum, rationality, from which the complex of penal relations can be changed or reformed. Indeed the construction of a rationalist model or framework for reform based on the adoption of some central rationale for sentencing such as 'just deserts' and a commitment to a wholesale reclassification of maximum penalties . . . is replete with many dangers.' He went on to argue for the need to address specific issues and referred to the problem of 'regulating the media' and 'socialising the judiciary'. In discussing the desirability of creating forums for debate he said that a sentencing council could play a useful role in this respect.

correctional services. Under the rubric of 'Sentencing: Reflections of an Innkeeper' Mr John Dawes (Director of the South Australian Department of Correctional Services) and Mr Frank Morgan (from the Research section of that Department) jointly presented the recent South Australian experience, as far as the Department of Correctional Services was concerned, in the aftermath of the new parole legislation incorporated in the Correctional Services Act, 1982, which was proclaimed in December 1983. The major impact of that legislation is to place the primary sentencing role in the hands of the court system. They argued that the result was an increase in fairness of administration and certainty. The process of sentencing is more open to public scrutiny:

> It appears that correctional officers as well as prisoners in South Australia have supported the introduction of definite sentencing. Correctional officers appear to have accepted the benefits of a prison system which is more stable, has few serious incidents involving groups of prisoners, has prisoners easier to manage, and with a structured incentive system.

alternatives to imprisonment. The discussion of alternatives to imprisonment was initiated by Dr Ken Polk of the Department of Criminology at the University of Melbourne in a paper which discussed the deinstitutionalisation movement. After analysing the notion of decarceration or deinstitutionalisation into various components — crime prevention, decriminalisation, diversion and actual decarceration — his paper moved to a consideration of an assess-

ment of decarceration programs. Dr Polk argued that there were three major questions to be asked in relation to this issue: Are programs effective in terms of lowering subsequent levels of offences? Do programs remain as true alternatives or do they contribute to an actual widening of the net of social control? Finally, are such programs cost-effective?

In relation to the first issue he concluded that, although community alternatives did not produce lower rates of subsequent offending, the evidence appeared to suggest that 'at least offenders are no worse off, that is, pose no greater risk in terms of subsequent criminal behaviour, than would result from incarceration.' As to the second issue he said that it could not be concluded in Australia that the development of community-based programs had contributed to a significant decline in prison population. As to cost effectiveness, he said that the evidence appeared to be of escalating costs despite the evolution of community-based programs. He also pointed out that even if prison populations could be reduced in real terms it does not necessarily follow that correctional costs would be reduced significantly. This was because

> a prison population composed of the most serious and intractable prisoners will still be expensive . . . while on the other hand, new and perhaps hidden costs will have to be anticipated in terms of the resources needed to provide housing, income supports, health care, training, and similar services to the new community clientele.

Dr Polk urged a reconsideration of the 'hands off' approach advocated in the 1960's and early 70's. Ultimately, efforts to reduce prison size may depend upon 'the simultaneous development of wider programs expanding resources for employment, education and housing (among others) not just for prisoners, but for all citizens. Ultimately, the specific and narrow concern for prison reform may have to be cast within a wider framework of social justice for all'.

non-custodial options. Mr Ron Cahill, Chief Magistrate for the ACT, presented a paper on 'Sentencing Options: The ACT Experience'. Mr Cahill referred to the significant workload that the ACT Magistrates' Court had in the criminal area because of the two tier court system in the ACT. 90% of indictable offences were dealt with in the Magistrates' Courts. In practice this led to dispositions which were dealt with more quickly, cost less and produced lesser penalties. He said he did not consider it a rational system for Magistrates' Courts to be dealing with offences with a maximum penalty of up to 14 years when the penalty ceiling for the Magistrates' Courts was 2 years. There is a need either to raise the jurisdictional level of the Magistrates' Courts or to bring down the maximum penalty for these indictable offences. He referred to the lack of a Crown appeal against penalty and said that it was unlikely that common law principles as to sentence would usefully develop in the absence of such a Crown appeal from the Magistrates' courts. He highlighted the lack of non-custodial sentencing options in the ACT and said that this hampered effective sentencing by ACT judicial officers. The problem had been a longstanding one and was referred to in the ALRC Discussion Paper No.10 (1979). The situation had been improved slightly with the introduction of community service orders in August 1985. The other key area in the ACT was the need for a full range of correctional institutions. Mr Cahill referred to the discussion of this matter in the Vinson Report. He acknowledged that the real problem in this respect was the issue of finance and agreed with the remarks of the Victorian Attorney-General, Mr Kennan, during his opening address, that the decision to imprison should not be taken lightly having regard to limited community resources. For all that, ultimately the ACT must have its own prison system.

Mr Cahill said that a preliminary analysis of the CSO scheme seemed to indicate that it was working well. Between the period 12 August 1985 to 1 March 1986, 84 people had

been assessed and 46 people had been placed in the scheme. As far as he is aware there had only been two breaches. He regarded the scheme as a *genuine* alternative to imprisonment. Mr Cahill said media reaction to the CSO scheme had been excellent. The Canberra Times had published a special Saturday feature explaining the scheme. Such co-operation had been invaluable in improving community understanding of a new sentencing option. He referred to the Community-based Corrections Committee which had recently been formed to advise the Minister which would continue to monitor the operation of the CSO scheme. Monitoring of any new option was important. Mr Cahill said that although theoretically the CSO scheme could be used in respect of fine defaulters it had not been used in this manner to date. No procedures had been prescribed yet and consideration was being given to the administrative cost involved.

Mr Cahill referred to the pilot scheme for Pre-trial Diversion of adult offenders in the ACT. The pilot project had been initiated following a seminar at the AIC in August last year and a committee was currently putting a proposal to the federal Attorney-General.

In summing up, Mr Cahill referred to the need for (i) the widest possible range of custodial and non-custodial sentencing options in the ACT, (ii) flexibility as to their use and to improve the collection and dissemination of information about sentencing so that public opinion could be adequately informed.

parole. The Director of Probation and Parole in Western Australia, Mr Ivan Vodanovich led the discussion on parole/early release with his paper 'Has parole a future?' After outlining the history of conditional release and the debate surrounding attempts to abolish or reform parole in various jurisdictions, he reached the firm conclusion that parole was here to stay in Australia. Ms Maureen Kelleher of the Attorney-General's Department undertook the daunting task of surveying the legislative framework and case-law in relation to federal offenders with particular attention to the problems posed by the setting of minimum periods. This was a very useful paper which drew together a great deal of information which was previously unavailable in accessible form. Mr Nigel Stoneman, spokesperson for the Probation and Parole Association of New South Wales, commented on the operation of the Probation and Parole Act 1983 (NSW). As he frankly acknowledged, it was somewhat paradoxical for him to criticise probation and parole (indeed advocate its abolition) but he was forced to this conclusion having regard to the present system. He thought his views might not be shared by others in the system.

reform issues. The focus of the conference then shifted to reform issues. The initial paper on this topic 'The Limits of Sentencing Reform' was delivered by Ms Janet Chan of the Australian Law Reform Commission and covered an extensive range of sentencing reform issues which set the scene for papers to follow. Ms Chan pointed out that attempts to reform sentencing have been with us for a long time but that she was going to concentrate on the reform 'movement' of the last 20 years or so in which primary attention has been directed to (a) reducing the use of imprisonment and (b) structuring the exercise of sentencing discretion. She noted that the problems of sentencing have long been expressed in terms of justice, humanity, cost and effectiveness but the problems can be conceptualised at a more general level namely the competing demands of *legitimacy* and *efficiency.* Ms Chan argued that the reform solutions offered in relation to the 'dual problem of legitimacy and efficiency' have taken two contradictory approaches namely *rule-creation* 'which aims at escalating state control over sentencing decisions' and *diversion* 'which seeks to de-escalate state control over the management of deviants'. A review of the reform literature appeared to indicate that attempts to structure discretion often lead to adaptive behaviour, non-compliance, increased severity in marginal cases and in-

creases in the prison population. Attempts at decarceration did not appear to reduce the use of imprisonment, indeed it led to an expansion of the system and an escalation of correctional expenditure. The paper then addressed the gulf between intentions and consequences in penal reform. Ms Chan summarised this aspect of her paper as follows:

> Sentencing reform is seen as an attempt to rearrange the power to punish among the legislative, judicial and executive subsystems. The target of control depends on the perceived legitimacy and efficiency of the subsystem, as well as the relationship between the subsystem and its environment. Governments are more likely to tighten executive powers than judicial powers because of the political nature of reform.
> Reform initiatives in the form of structuring discretion are resisted by the subsystems wherever their interests and ideologies differ from the reform interests and ideologies. Politics dominate the formulation and implementation of reform proposals.

Finally, the paper posed the question whether the problems of political and bureaucratic resistance, deflection of goals, evasion of control and so on can be overcome. The answer is, perhaps unsurprisingly, not without difficulty and that one ought to recognise the various limits to reform initiatives: an unsound theoretical basis, 'social entropy' (which 'refers to the social forces which have a tendency to confound systems, such as incompetence, variability in the objects of control and the problem of coordination'), the implementation game etc.

a sanction hierarchy. Mr Arie Freiberg and Professor Richard Fox in a paper entitled 'Sentencing Structures and Sanction Hierarchies' urged those concerned with sentencing reform to focus on the 'grading of orders' in designing a sentencing structure. 'The establishment of sanction hierarchies has, in the past, generally been assumed to be non-problematic, intuitive and self-evident'. However, they say, a sanction hierarchy is needed for three main reasons: as a measure of severity against which to measure the relative effectiveness of sanctions; to provide graduated sanction scales to match rewly created graduated scales of offence seriousness in implementing 'just deserts' models of sentencing and to reduce problems of disparity in sentencing. Freiberg and Fox reviewed the recent Victorian legislation, Penalties and Sentences Act 1985, to illustrate the difficulties which they say are inevitable if a sentencing structure is not adopted. They argued that a sanction hierarchy should be made explicit and that

> to attempt to do so would be an improvement on a system which already contains a hierarchy in default, but one which is implicit, inchoate and inconsistent. How can consistency in sentencing be even approached if there is no agreement as to the relative severity of sentences, the principal purposes of each measure, and the order in which a sentencer should approach his or her task?

quantifying the tariff. Following a useful and informative review of the experience of the Minnesota Sentencing Guidelines Commission by Dr Kay Knapp, Dr Austin Lovegrove delivered a paper on 'A Model of Judicial Decision-Making towards quantifying the Tariff'. Dr Lovegrove was critical of the guidelines model for sentencing reform because the goal was uniformity of sentence rather than uniformity of approach. The guidelines grid systems developed in the US were unsuitable for Australia because: it would involve great changes; certain sentencing factors would be excluded or have minimal impact; the distinctions in the grid were too coarse; the sentence ranges were too narrow and judicial discretion would be greatly reduced resulting in a drastic reduction of individualised sentencing. Dr Lovegrove advocated the development of a legal model of how judges determine sentences. This should reflect modes of judicial thought and include case variables and principles drawn from appellate decisions.

a sentencing council. The President of the New South Wales Court of Appeal (and Former Chairman of the Australian Law Reform Commission) Justice Michael Kirby, in delivering an after-dinner address to conference

delegates, referred to the history of the proposal for a Sentencing Council and urged that the matter be considered afresh. He noted that the United States had recently set up a federal Sentencing Commission and that Sir Harry Gibbs, Chief Justice of the High Court of Australia, had said that he thought a Sentencing Council was 'prima facie a good idea' at the International Criminal Law Congress in Adelaide in October 1985.

alrc view. Mr George Zdenkowski, Commissioner-in-Charge of the Sentencing Reference at the Australian Law Reform Commission, spoke to a paper 'Sentencing of Federal and ACT Offenders: Some Reform Proposals'. He said that sentencing policy ought to be coherent, consistent, fair and widely accessible. In broad outline he advocated a policy along the following lines:

- *Aims of punishment.* The primary aims should be just desert for the offender and reparation for the victim. These aims should be spelt out in statutory form.

- *Deinstitutionalisation.* The reduction of the absolute prison population and the expanded use of non-custodial sentencing options. To be achieved through statutory limitations on the use of imprisonment, restructuring of penalty levels and the introduction of a wider range of non-custodial sentencing options.

- *Achieving consistency.* Through the structuring of discretionary decisions by the prosecution, the courts and correctional authorities; the introduction of fair procedures and the establishment of a Sentencing Commission.

- *Fair and humane conditions for prisoners.* The provision of statutory and/or guideline standards for prison conditions.

- *The Removal of certain civil disabilities flowing from conviction.*

- *Improving sentencing information.* Providing for the systematic collection, analysis and dissemination of information for participants in the sentencing process and for the community. To be achieved by the establishment of information collection systems and a Sentencing Commission.

- *A sentencing statute.* Codification where possible of relevant law and procedure for the sentencing of federal and ACT offenders.

welfare services in the Australian Capital Territory. Professor Tony Vinson of the Department of Social Work at the University of New South Wales and former chairman of the New South Wales Corrective Services Commission, outlined his experience in relation to the Report into Welfare Services in the ACT (a committee chaired by him) and its aftermath. Professor Vinson also gave an interesting account of his experiences in the Dutch penal system which he had been researching for a substantial part of 1985.

uniformity. Mr David Biles, Deputy Director, Australian Institute of Criminology, delivered a paper entitled 'A Matter of Comparative Injustice' in which he reviewed the difficulties of introducing reforms seeking to achieve uniformity in respect of the treatment of federal offenders in Australia. He argued that there were two types of uniformity (a) uniformity which sought to treat federal offenders in different geographical locations who had been charged with the same offence on the same basis (b) uniformity which sought to achieve parity as between a federal offender charged with a particular offence within a certain State and a State offender charged with a similar offence within the same jurisdiction. Mr Biles readily acknowledged that both approaches would inevitably produce injustice. However, he strongly urged that the latter approach (intra-state

uniformity) was productive of comparatively less injustice than the former approach and was critical of the Interim Report, *Sentencing of Federal Offenders* (ALRC15, 1980) for advocating national uniformity. In the ensuing discussion, Mr George Zdenkowski said that a compromise between the approaches may be desirable and referred to the discussion of this issue in the paper 'Sentencing of Federal and ACT Offenders: Some Reform Proposals'.

specialised issues. Because of the lack of time to address a number of other important issues, the Conference organisers had arranged for several speakers to deliver brief addresses on specialised reform issues. Dr Paul Wilson, Assistant Director (Research and Statistics) Australian Institute of Criminology gave an address on 'The Media, Crime and Sentencing'. Mr Ray Whitrod a former Queensland Police Commissioner now representing Victims of Crime Service, South Australia highlighted the role of the victim in the sentencing process. Ms Kayleen Hazlehurst, Senior Research Officer, Australian Institute of Criminology addressed the seminar on 'Sentencing: Perspectives on Aboriginal Offenders'.

models for reform. Following a lively general discussion session, Dr Andrew Ashworth summed up. He said he perceived that a number of important themes had been raised by seminar participants: the reduction of unjustifiable disparity; a respect for and a need for clear rules; a desire for a clear statement of punishment aims; a concern for the need to define the distribution of authority as to sentencing power as between the Parliament, the Judiciary and the Executive (although this matter had not been debated at length); a concern with the issue of discretion, the desirability or otherwise of structuring discretion and the mode, if any, to be adopted in seeking to regulate it; the need for 'truth-in-sentencing' and the danger of deceiving the public in relation to maxima and minima; the difficulties posed by parole and the equally difficult problems generated by proposals to abolish parole.

Dr Ashworth said that discussion at the seminar seemed to have proceeded upon three different possible models for sentencing reform. The first model which he termed 'the pregnant common law' gave primacy to the role of the appellate court whose decisions would be filtered to other courts lower in the hierarchy via law reports and, perhaps, via an institution such as the English Judicial Studies Board. This system leads to piecemeal guidance which encroaches upon the 'reservoir of discretion.' The second model which might be designated the 'gradualist approach' involved interaction between a Sentencing Council and the appellate courts as well as interaction between a Sentencing Council and a body such as the English Judicial Studies Board. The resultant guidelines and case reports would be filtered to the lower courts. This leads to a more systematic approach to guidance. Under this model, a Sentencing Council would be engaged in developing: general priniciples; procedures; offence maxima and sub-divisions and types of sentence (including ranking, guidance on how they are to be used and patterns of reasoning appropriate to various types of sentence). Dr Ashworth said that he favoured this second approach.

A third model which had emerged from the conference discussion was that of the sentencing guidelines approach as espoused by the Minnesota Sentencing Guidelines Commission the operation of which had been outlined in detail previously by Dr Knapp.

The Seminar proceedings are being edited by the Australian Institute of Criminology and will be published in due course.

sexual offences

> The West may have put men on the moon and produced the first authentic chess-playing machines, but it has made a thorough mess of eroticism, aggression and nurturance.
>
> Beatrice Faust, *Women, Sex and Pornography*