tee. Its view was that powers to tap telephones should be limited, rather than extended as proposed by the Bill. In particular, the Council urged the Committee to reject the proposal that phone tapping powers be extended to State and Territory police forces and to reject the Stuart Commission proposals that warrants be available in relation to any serious or 'grave' offences – in that respect, the Council pointed out that no definition had been offered of these offences.

The Council's submission also drew attention to the state of the Telecommunications (Interception) Act 1979 (Cth).

> With the proposed 1986 amendments tacked on, the Acts will start to rival the Tax Act for complexity and obtuseness. Such complexity can only be due to either deliberate or mistaken excesses of power by police and disadvantage to the rights of defendants and all citizens.

The Council's submission questioned whether judicial warrants were a realistic protection against excesses of police power. Using American research, it made the same comment about annual reports. It further criticised police claims that phone tap powers were essential to the investigation of offences.

> When police use emotive images of kidnapping, murder and the need for a 'war on the crime' the Joint Committee should keep in mind the following issues:
>
> 1. State and Federal Police already have the power to tap in relation to 'life-threatening situations' . . .
> 2. It is a universal police practice to call for greater powers to cope with what is presented as an 'emergency' situation in crime control.
> 3. Once such powers are obtained, they are often not extensively used but presented potential for abuse.

The Council echoed the comments made in the ALRC submission about the need for concordance between telephone tap powers and powers to undertake other forms of secret surveillance.

These were but the tail-end of a lengthy list of submissions to the Committee. Earlier, the NSW Privacy Committee had made a large submission to the Joint Select Committee at hearings in Melbourne on 29 September 1986. The Privacy Committee's submission argued that the current and proposed legal definitions of narcotics were inappropriate and that for that reason it was not satisfied that there was sufficient justification for the Australian Federal Police to retain present phone tapping powers. In this regard, the Privacy Committee pointed to the relative costs of alcohol abuse compared with drug abuse and suggested that police use of telephone tapping powers was unnecessary because the NSW Police Departments statistics for 1984/85 showed that, even without telephone interception powers, the claim 'clear up' rate for unlawful manufacture and supply of drugs was 100% and 96.06% for the supply of drugs.

If police telephone tapping powers are to be maintained, or such powers extend to State police, the Committee recommend that a series of detailed controls broadly similar to those suggested by ALRC and other submissions.

The Joint Select Committee expects to report by 20 November 1986.

prisoners' rights

> The vilest deeds like poison-weeds
> Bloom well in prison air;
> It is only what is good in Man
> That wastes and withers there.
>
> Oscar Wilde, *The Ballad of Reading Gaol*

With the recent demise of the Human Rights Bill a potential source of protection for prisoners' rights was lost. The rights in the Bill were to be subject 'only to such reasonable limitations prescribed by law as can be demonstrably justified in a free and democratic society' (art 3(1)) and this would have meant that any restrictions imposed upon the rights and freedoms of prisoners by prison authorities would have had to be justifiable

under article 3(1) of the Bill. Arguably many of the current restrictions, such as mail censorship, would not have been so justifiable. Whilst an infringement of the Bill of Rights would not have given rise to an action, where it was felt that restrictions were not reasonably justified Part V of the Bill would have empowered the Human Rights and Equal Opportunity Commission to inquire into the infringing act or practice and 'endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry' (s 25(a)(i)).

The government's decision not to pursue the Bill was particularly significant for prisoners because prisoners are perhaps the most 'rightless' group in Australia. For, as Professor Hawkins, a former Member of the Australian Law Reform Commission, noted:

> In the sense in which 'having a right' requires effective recognition by the society to which the right holder belongs, prisoners in Australia are 'rightless or close to rightlessness'. (G Hawkins, Prisoner's Rights, The John Barry Memorial Lecture (1985) 18 ANZJ Crim 196-205 at p 202).

prisoners' rights report. The issue of prisoners' rights was the topic for a study commissioned by the Human Rights Commission and recently completed by Gordon Hawkins (G Hawkins, *Prisoners Rights: A Study of Human Rights and Commonwealth Prisoners*, Occasional Paper No 12, AGPS, Canberra, July 1986). In the study Professor Hawkins begins by presenting convincing arguments for the need to protect prisoners' rights. He notes, *inter alia*, that because prisoners are out of sight they are 'at a greater risk than any other section of the community of suffering the kinds of harm, deprivation or restriction which constitute an infringement of rights' (id, p 7). He then proceeds to consider the current state of prisoners' rights in Australia examining the various Australian Prisons Acts and Regulations, the approaches of the courts to the issue and the provisions of the International Covenant on Civil and Political Rights (ICCPR). This is followed by an examination of prisoners' rights in the United Kingdom, America and Canada. The comparative aspect of the study was designed to discover whether or not there are any fundamental rights for prisoners that appear in the same form in all or most systems.

main findings. In summary the main conclusions reached by Professor Hawkins were that:

- Prisoners in Australia possess virtually no rights as such, 'not even (to) the basic necessities of life' (id p25). Rather, what the prison rules and regulations provide are 'a variety of restrictions, concessions or privileges which at the discretion of the administration are subject to forfeiture, revocation or postponement' (id p25-26).
- Although Australia has now ratified the ICCPR, and is thus obliged to give effect to its provisions, the covenant does not guarantee far reaching protection for prisoners rights. This was concluded because the relevant rights have either been qualified or have been phrased in such abstract terms that without some form of elaboration being given to them they are devoid of practical content.
- The Australian courts have been reluctant to interpret prison legislation as granting prisoners legal rights that can be litigated.
- No generally accepted rules or principles, in relation to prisoners' rights, could be discovered that were seen as fundamental by the Western Democratic States surveyed. Instead a variety of rules were discovered that were 'in no instance embodied in coherent and comprehensive codes' (id p 66).

recommendations. The enactment of a list or rights for prisoners will not guarantee the protection of such rights without sufficient back-up mechanisms to ensure that the rights are complied with. Professor Hawkins nevertheless concluded that:

> At some point it becomes necessary to translate the 'compendious or generic expression' (prisoners' rights) into a fairly precise set of rule-requirements which are specific enough to be tangibly expressed in penal practice. Otherwise the assertion of prisoners' rights will merely (be) . . . emotive rhetoric . . . (id, p 70)

He recommends that a statement of standards for the treatment of prisoners be formulated, reflecting the provisions of the ICCPR. He suggests that the draft *Minimum Standard Guidelines for Australian Prisons*, which are based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, and were published in an updated form by the Australian Institute of Criminology in 1984, form the basis for discussing the proposed standards. In order that the standards, when formulated, are recognised and accepted by prison authorities he recommends that the National Correctional Standards Council, which is comprised of prison administrators from each state, continues to be the body charged with the task of formulating the standards.

The Report's failure to consider prisoners' grievance mechanisms in any detail meant that it did not present a complete picture of the current position of prisoners' rights in Australia. To the extent, however, that the major finding of the report was that prisoners, whilst possessing discretionary privileges, have no rights, the report's findings coincide with the findings of the Australian Law Reform Commission's research. The major recommendation of the report, that standards be formulated for the treatment of prisoners, is in line with the recommendation made by the Commission in its 1980 interim report on the Sentencing of Federal Offenders (ALRC15; Recommendation 80). The Commission continues to endorse the urgent need for standards to be formulated and implemented as well as the need for appropriate procedures to be established to ensure that prison management conforms with such standards.

reforms in victoria. Having briefly surveyed the current dismal state of prisoners' rights in Australia it is encouraging to note that in the Victorian Corrections Bill, which is yet to come before the State Parliament, there is a Division entitled Prisoners' Rights (Division4 – s49). The rights currently provided by the Bill are fairly limited and relate only to a selection of the most basic subject matter. For example, s49(b) provides 'the right to be provided with food that is adequate to maintain the health and well-being of the prisoner'. As the bill is yet to be finalised views as to its content will not be included at this stage, except to note that the Bill, as currently formulated, provides no machinery for the enforcement of the rights provided.

judicial commission

> Do not judge, and you will not be judged; because the judgments you give are the judgments you will get, and the amount you measure out is the amount you will be given.
>
> Matthew, 7:1

The New South Wales Government has released proposals for reform of the State's court system. The proposals include the following:

- a Judicial Commission whose prime responsibility would be the education and training of judges and magistrates, particularly in establishing guidelines for sentencing;
- a Conduct Division within the Judicial Commission to consider any complaint concerning a sitting judge or magistrate;
- a Director of Public Prosecutions to conduct criminal prosecutions in the higher courts and decide applications for no-bills (which result in the discontinuance of a case and are at present decided by the Attorney-General);
- a Justice Information System to collate sentencing statistics;
- legislation to give the Supreme Court and District Court the responsibility