mandatory amount with increased on-going maintenance payments. Only where the non-custodial parent could not meet even an instalment order does the AIFS suggest that the State should provide child support payments at a minimum level

advantages of maintenance proposal. This proposal, it is said, would have a number of advantages. First, by incorporating payment of maintenance as part of the overall division of property, it is intended to ease the present burden on the State where sole parents are forced to rely on social security. Secondly, by taking the issue of maintenance out of the arena of post-separation negotiation, so that entitlement to maintenance will no longer provide the battleground for disputes over custody and access, it is hoped that relations between former spouses, and relations between non-custodial parents and their children should improve.

urgent need for further enquiry. The AIFS warns that even from the small amount of information obtained in their study, it became obvious that an enquiry into the issues of custody and maintenance is urgently required. The government has recently announced that it is preparing proposals on child maintenance, to be introduced this year.

One of the important issues which the ALRC's forthcoming report will be addressing is how best to achieve a balance between flexibility and consistency within a discretionary framework. In the July 1986 edition of *Reform* it was indicated that the current thinking of the ALRC was that there were compelling reasons for the formulation of guidelines within a new legislative scheme.

human rights and the hreoc

> All animals are equal, but some animals are more equal than others.
>
> George Orwell, *Animal Farm*

The question whether Australia needs a Bill of Rights was recorded in a recent issue of *Reform* (See [1986] *Reform* 10). Arguments for and against were recorded in some detail. In the 1986 Senate debates on the Bill of Rights and the Human Rights Commission some rather novel arguments were put forward. It was alleged that under the proposed Bill of Rights:

- a country could never be regarded as a Christian country;
- censorship would be abolished and pornography distributed freely to everyone;
- the police and the army would be prevented from functioning competently;
- children aged 14 would be allowed to do as they liked;
- there would be an end of Australia's federation and the constitutional rights of the States;
- the Constitution would become a useless anachronism;
- there would be an end to local government in Australia as we know it.

Perhaps Justice Marcus Einfeld had some of these arguments in mind when he spoke at the launching of the new Australian Human Rights and Equal Opportunity Commission (HREOC) in December 1986. He said in his speech:

> The birth of the Commission has been, to say the very least, traumatic and agonising. Its consideration by the nation and Parliament was marked by some of the most vitriolic, nasty and abysmally ill-informed fervour and by a standard of public debate for which the whole country should hang its head in shame.

In one of the lengthiest debates in the history of the Senate the Government argued that the International Covenant on Civil and Political Rights, which the Holt Government agreed to along with 105 other countries, and which was ratified by the Fraser Government in 1980, specifically committed Australia to adopting legislative measures to give effect to the rights contained in it.

There are many rights now enjoyed by Australian citizens which are not protected

under common law. The following facts were quoted during the debate in the Senate. The High Court in McKinlay's case had indicated equality of voting rights is not protected under the Constitution or the law. There is no right for the protection of private property. The guarantee of trial by jury has been severely weakened by both statute and decisions of the court. The High Court in *Grace Bible Church Inc v Reedman* had made it clear there was not a right to practice religion freely and the same court had made it clear in 1982 in the *Church of Scientology v Woodward* that there is no right to privacy in Australia. The Government argued that rights such as these need protection under a Bill of Rights although the proposed Bill did not protect some of them. The Opposition argued that such rights needed protection by mechanisms other than a Bill of Rights such as the Racial Discrimination Act and the Sex Discrimination Act.

One argument which was often repeated in the Senate was that a Bill of Rights would result in judges being called upon to make political decisions. It was alleged in the Senate they were unsuited for this by virtue of their education, attitudes, background and social standing. However the Government pointed out that judges are involved in determining sensitive issues in their administration of the common law — in particular, disputes that arise under the Constitution. Lord Scarman's words, from his 1980 Wilfred Fullager Memorial Lecture at Monash University, were quoted:

> There is nothing inappropriate in requiring judges to decide justiciable issues arising in a political struggle and no reason for judges not to be trusted to act judicially and according to law, though the case raises political as well as legal questions.

It was also pointed out that Canada has a Bill of Rights and Canadian judges have coped well with the task of making decisions under it.

The Government was finally forced to postpone further consideration of the Australian Bill of Rights Bill in the Senate in November after an Opposition amendment to extend the application of the Bill to 'acts or practices done by or on behalf of a trade union or a body corporate' was agreed to. The Government argued that a Bill of Rights protected a citizen against acts by a government. It is contrary to the philosphy behind a Bill of Rights to extend it in the way the Opposition proposed.

Because of a sunset clause in its enabling legislation the Human Rights Commission was due to cease its operations in December 1986. The activities of the former Human Rights Commission received senatorial praise during the debates. The late Senator Allen Missen said:

> The people on the Human Rights Commission . . . have done a mighty fine job. There have been some 10000 applicants. The Commission has done jobs which would never have been done by any committee of this Parliament. (Senate, *Hansard*, 14 February 1986, 373)

The Human Rights and Equal Opportunity Commission Bill 1985 and the Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Bill 1985 were passed by the Senate. One of the purposes of these Bills was to restructure the former Human Rights Commission and to established the Human Rights and Equal Opportunity Commission.

The Human Rights Commission was restructured for the following reasons:

- It had received additional responsibilities under the Sex Discrimination Act and additional workload had resulted from the Racial Discrimination Act.
- There was a need to integrate the work of the Human Rights Commission with the National and State Committees on Discrimination in Employment and Occupation. The structure of the former Human Rights Commis-

sion had been based on part-time membership and this was considered inadequate by the Government.

- The Commission had taken on additional activities in cities other than Canberra.

(Senate, *Hansard*, 26 November 1986, 2758)

The HREOC now comprises a Human Rights Commissioner, a Sex Discrimination Commissioner and a Race Discrimination Commission; the latter replacing the Commissioner for Community Relations. The Human Rights Commissioner has responsibilities for handling complaints under the International Covenant on Civil and Political Rights; the Convention Concerning Discrimination in Respect of Employment and Occupation; the Declaration on the Rights of the Child; and, the Declaration on the Rights of Mentally Retarded and the Declaration on the Rights of Disabled Persons.

Changes have also been made to procedural provisions, especially with respect to the Racial Discrimination Act, to provide a more effective method of handling complaints.

In his speech at the launching of the HREOC Mr Justice Einfeld said:

> I give Australians this firm assurance – the Human Rights and Equal Opportunity Commission exists to protect and enhance the fundamental rights of all Australians. That is what it will seek to ensure. The special attention that will of course be given to the rights of women, children, ethnic minorities and Aborigines, and other individuals and groups who suffer discrimination and prejudice, will reflect the needs and aspirations of the civilised and sophisticated society which all of us Australians want our country to be . . . In furtherance of the task given to the Commission by Parliament, educating Australians on human rights and major human rights issues will therefore be a priority task. These rights include the right to life and liberty and to live and work free from any form of unlawful discrimination such as, for example, on the grounds of race, sex, physical impairment or marital status. There will be en emphasis on the rights of children and the family unit to live and grow in conditions of equality of opportunity and freedom of decision within the law . . . We plan to seek the wisdom and support of leading Austalians from all walks of life for our work, and to enlist a panel of persons (dare I say 'eminent persons') to participate in our inquiries, both in relation to private disputes between citizens and to general issues of public importance.

Details of the composition of the HREOC and a short biography of its new President appear in Personalia in this issue.

sentencing reform in new south wales

> John Askmore, assigned to a person in Liverpool-street, was placed at the bar charged with being found in a house in Fraziers Lane, on the Rocks, after hours, tripping on the light fantastic toe, to the tune of 'Britons never will be slaves.' Thirty-six lashes.
>
> *Sydney Morning Herald*, 15 September 1834

On September 2, the NSW Attorney-General, Mr Sheahan, was quoted as saying that sentencing practices in NSW were not sufficiently inconsistent to cause concern. He added that the Court of Criminal Appeal performed a sufficient 'watchdog' role on sentencing practices; and that he had reservations about a Sentencing Council because he believed such a body could impinge on the independence of the judiciary.

Less than a week later a report entitled *Accountability and the Legal System* by Vinson, Cooney, Carroll, King and Bolzan was released, revealing certain disparities in sentences received by people charged with serious drug offences in the NSW District Court over the period 1980-2.

The report attracted wide media attention for two reasons: a suggestion of anomalous sentencing practices by a particular District Court judge and its proposal for a new body to examine judicial conduct. Both the validity of the statistical method and some of the inferences sought to be drawn were criticised. Likewise, the proposals for regulating judicial conduct drew some fire and crossfire. The latter debate culminated in the Judicial