tion against HFC because the total refunds payable to consumers by HFC and other financial institutions could have totalled $22 million. The full court of the Supreme Court of Victoria found that HFC had miscalculated the rebate of interest. However this decision, which was not brought under the opt-in provisions, did not oblige the defendant to repay any other consumers whose rebate had been miscalculated because Mr Anderson was the only party to the proceedings. Representative proceedings could have been instituted, however the Legal Service would have had to identify all consumers and obtain their consent in writing before the commencement of the actions. Mr Nelthorpe points out that this is a classic case of the identity of consumers being within the knowledge of the defendant. The defendant, using its own records, could have identified each person who suffered loss, calculated the extent of the loss and made the appropriate adjustments. However because the Act obliges the plaintiff to identify and bring together all potential consumers affected by the breach of law, the defendant is protected. Mr Nelthorpe points out that the advantage of a system where consumers may be described as a group rather than named as parties to the proceeding means that defendants cannot retain ill gotten gains merely because the cost to each individual of litigating for the return of $57 is not economic.

alrc. The alrc has a reference on class actions which is nearing completion. Draft proposals are currently being circulated to consultants for comment. The essence of the proposals is that a person can commence proceedings for him or herself as well as for all members of a group and conduct the proceedings on their behalf. The proposals are subject to two overriding principles. The management of the case by the court, especially in relation to any settlement, which will have to be scrutinised by the court to ensure that it is fair to all group members, and the entitlement of any group member to give notice opting out of the proceedings. The effect of opting out is that the group member will neither be entitled to share in the benefits of any success of the proceeding nor be bound by its dismissal. For constitutional as well as practical reasons it is proposed that proceedings of this kind only be brought in the Federal Court. Advantage can then be taken of the active role that the Federal Court plays in managing cases before trial.

conclusion. The concept of describing rather than naming plaintiffs in court proceedings is not novel. It is currently provided for in the traditional representative procedure. However this procedure does not extend to claims for damages in cases such as mass disasters, injuries from defective products or errors in financial transactions. If citizens suffering loss, however small, in situations such as these are to be compensated through the court system then one practical solution is a representative or group procedure incorporating an opt out scheme.

* * *

the commonwealth prisoners act

I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who lie in gaol
Is that the wall is strong;

> And that each day is like a year,
> A year whose days are long.
>
> Oscar Wilde,
> *The Ballad of Reading Gaol*

report tabled. An interim report on the ALRC's Sentencing reference: *The Commonwealth Prisoners Act* (ALRC 43), was tabled in the federal Parliament on 24 March 1988. The report was written to provide advice to the Government on ways to correct the anomalies and difficulties arising out of the present law governing the release on parole of federal prisoners. It recommends that the Commonwealth Prisoners Act 1967 (Cth) should be substantially amended and includes a draft amendment Bill.

general approach. The specific recommendations in the report are based on a number of basic principles adopted by the Commission.

- Commonwealth legislation governing the release of federal prisoners from prison before the end of their terms of imprisonment should be consistent with Commonwealth policy on the matter.

- Decisions as to whether to release a prisoner on parole, the earliest possible time of release, actual release, revocation of parole and the consequences of breach of parole should, as far as possible, be made according to law and not left to a general discretion.

- In those areas where State or Territory law is to apply, Commonwealth law should be flexible enough to pick up all the relevant law, existing and future, of all jurisdictions.

- The administration of the early release regime of the Commonwealth should be simplified.

- The relevant Commonwealth legislation should be simplified.

entitlement to parole. Existing Commonwealth policy is that federal offenders be given the same parole entitlements as equivalent offenders in the same State. Consistent with this, the report recommends that the law governing the entitlement to parole of a federal offender should, generally speaking, be the law of the State or Territory in which the offender is convicted. This rule is subject to a proviso that where the court has a discretion to decline to make an order that the person is eligible for parole when it is dealing with a State or Territory offender, it should not be able to exercise that discretion when dealing with a federal offender. In passing a sentence of imprisonment on a federal offender, the court should be required to specify a minimum term of imprisonment. The minimum term should be the same, as nearly as possible, as that which would apply to a State or Territory offender. In specifying the minimum term, the court should apply all relevant State and Territory law. In jurisdictions where the minimum term is prescribed by statute (and where the Commonwealth Prisoners Act does not currently operate), the court should specify what the minimum term would be under the relevant legislation. The only circumstances in which a court should not specify a minimum term is if the sentence is of a kind which does not attract parole under State or Territory law, that is,

- in the case of a fixed term of imprisonment — a minimum term

may not be fixed or cannot be ascertained in respect of a sentence of that duration under State or Territory law.

- In the case of an indeterminate sentence — a minimum term may not be fixed or cannot be ascertained in respect of such a sentence under State or Territory law.

Remissions available to local prisoners in the jurisdiction in which a federal offender is imprisoned should continue to be available for federal offenders.

release on parole. Perhaps the most significant of the recommendations of the report is that, where a minimum term has been specified by a court for a federal offender, the offender should be released automatically on the appropriate day, unless the offender is, for some other reason, not to be released where for example, he or she is serving another sentence of imprisonment. This would remove the discretionary power, currently exercised by the Governor-General acting with the advice of the Attorney-General, to release (or not to release) prisoners at the end of their non-parole periods. Federal offenders sentenced to life imprisonment for whom a minimum term has not been specified, should be able to be released on parole by order of the appropriate Minister. This should not occur, however, before the offender has served 10 years imprisonment unless the Minister is satisfied that exceptional circumstances exist. No condition of parole, including supervision, should be mandatory. The power to set conditions for the release on parole of federal offenders should be vested in the Minister.

liability to serve remainder of term. The report recommends that a parolee should be liable to serve the remainder of the imprisonment to which the parole order relates if and only if

- the parole is revoked or
- the parolee is sentenced to a term of imprisonment for an offence committed while on parole.

The circumstances in which a person's parole should be able to be revoked should be limited to breach of a condition of a parole and the power to revoke a person's parole should be vested in the Minister alone. If a person becomes liable to serve the balance of imprisonment to which the parole relates, the time spent on parole should be deducted from the time that is deemed to remain to be served, that is, 'clean street time' should apply. A minimum term of imprisonment should be specified for the unserved period of imprisonment and the person should be released on parole again after serving the minimum term. When a person is sentenced to imprisonment for an offence committed while on parole, the unserved balance of the term should be treated as another sentence imposed contemporaneously with the new sentence. The court should be able to order that the unserved period be served concurrently with, or cumulatively or partly cumulatively upon, the new sentence.

release on licence. If the recommendations in the report are adopted, it should no longer be necessary to rely on the release on licence procedure in s 19A of the Crimes Act 1914 (Cth) to implement Commonwealth policy on parole. However, the report recommends that the Commonwealth should retain a discretionary power to release federal prisoners on licence before they are entitled to be released on parole and that this power should remain with the Governor-General. However,

the circumstances in which a person may apply to be released on licence should be limited to 'exceptional circumstances'. The consequences of revocation of a licence should be the same as the consequences of revocation of parole.

* * *

the right to refuse medical treatment

> Such as be sick of incurable diseases they comfort with sitting by them, with talking with them, and, to be short, with all manner of helps that may be. But if the disease be not only uncurable, but also full of continual pain and anguish, then the priests and the magistrates exhort the man, seeing he is not able to do any duty of life, but by overliving his own death is noisome and irksome to others and greivous to himself, that he will determine with himself no longer to cherish that pestilent and painful disease. And seeing his life is to him but a torment, that will not be unwilling to die, but rather take a good hope to him, and either dispatch himself out of that painful life, as out of a prison, or a rack of torment, or else suffer himself willingly to be rid out of it by others. And in so doing they tell him he shall do wisely, seeing by his death he shall lose no commodity but end his pain.
>
> St Thomas More, *Utopia*, 1516

legislation opposed in victoria. The Victorian government's 'dying with dignity' legislation appears to face certain defeat with the Opposition's announcement that it would not support it. Without that support the Bill would be brought down in the State's Upper House. Under the Bill it would be an offence for a medical practitioner to provide medical treatment knowing that the patient had refused it. The refusal by the patient must be 'clearly expressed or indicated'. A medical practitioner and another person must be satisfied as to that. They must be satisfied also and certify that the patient's decision is made voluntarily and without inducement or compulsion. The patient must have been sufficiently informed about his or her condition and be able to make a decision. However a person may provide for decisions about medical treatment to be made after he or she becomes incompetent by appointing another person as his or her agent.

The Bill states that it is desirable 'to encourage community and professional understanding of the changing forms of treatment from cure to pain relief for terminally ill patients and to ensure that dying patients receive maximum relief from pain and suffering.'

The Opposition legal affairs spokesman, Mr Bruce Chamberlain, explained that 'the legislation was a step into the unknown'. He criticised the Bill on the following grounds:

- There were static definitions in the Bill for conditions which were continually changing.
- The Bill applied not only to intrinsically terminal illnesses but also to conditions that could be lethal if left untreated but were reversible with treatment. (*Canberra Times* 14 April 1988.)

The Australian Medical Association was reported to have warned that a refusal of medical treatment