priority, videoed evidence and closed-circuit television. Testifying in court can be a frightening experience for children. The Bill attempts to reduce the trauma of a court appearance by giving cases involving children priority in prosecution, providing an option whereby a video or audio-recording of an interview of a child complainant may be admitted as evidence and permitting the court to modify the environment in which a child gives evidence (eg allow the child to testify from another room by closed-circuit television). The latter two initiatives apply to people with impaired mental functioning as well as children.

late complaints. The Bill provides that if delay in making a complaint becomes an issue during the course of a trial, the judge must warn the jury against presuming that the delay reflects upon the truth of an allegation and that there may be good reasons why victims of sexual assault hesitate to complain.

closure of the court. The Bill amends the Supreme Court Act and the County Court Act to permit the judge or magistrate to close the court to the public to protect a complainant from undue distress and embarrassment. The Bill also provides that a complainant may have a support person present throughout the committal and trial proceedings, even if the court is closed to the public.

sexual history. The Bill tightens up the restriction on admission of evidence about the complainant's sexual history by amending the Evidence Act 1958 (Vic) to require a court to provide written reasons for allowing sexual history evidence to be admitted.

several recommendations not implemented. The Commission recommended the establishment of a pre-trial diversion program for people who commit sexual offences against children within their family. The proposed program, under which the court can order the offender to undergo counselling for two years, would only be available to accused who are charged and formally admit the commission of the offence at a court hearing. At the completion of the program the charges are dropped. If the program is not completed the accused is sent to trial and his or her admission can be used as evidence in the prosecution's case. The Commission also recommended that the reporting of child sexual offences be made mandatory. Neither of these recommendations has been implemented.

The Bill makes the law relating to sexual offences more relevant to today's society and reduces the stress of appearing in court in what are invariably traumatic circumstances.

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mental health laws

The mental health laws of the Australian Capital Territory are currently under review. A committee, chaired by ALRC Commissioner, Nicholas Seddon and consisting of mental health experts, lawyers, social workers, police and the ACT government, was asked in May by the ACT Health Minister, Mr Gary Humphries, to enquire into all aspects of ACT mental health laws.

It called for submissions and conducted public hearings and recently reported to the ACT Health Minister.

report on mental health. Its report *Balancing Rights, A review of the Mental Health Legislation in the ACT* contains 59 recommendations. The committee recommended new legislation, The Mental Health and Community Care Act, containing broad statements of basic rights and objectives. It should replace the Lunacy Act 1898, should re-enact the Mental Health Act 1962 (which deals with 'transportation' of mental health patients in New South Wales) and should replace parts of the Mental Health Act 1983 and re-enact other parts. Matters arising out of the legislation should be dealt with by a specially constituted Mental Health Review Tribunal or, in some cases, a Community Care Tribunal consisting of a Magistrate and two non-legal assessors. The Tribunal's procedures should be flexible and informal. The principal relatibve or carer responsible for

the welfare of the person before the Tribunal should have a right to appear in Tribunal proceedings.

voluntary treatment. The committee emphasised that voluntary treatment should be the norm if possible and that voluntary patients should be accorded certain prescribed rights, such as the right to be assessed by a medical practitioner.

involuntary detention and treatment. The report's principal recommendations relate to changes to the law on involuntary detention and treatment. The committee concluded that the rights of the person suffering from mental illness need to be balanced against the rights of others who are affected by the person's illness, particularly family and carers. At the same time the current law's requirement of mandatory court proceedings at an early stage of the involuntary treatment process was considered traumatising and alienating. It received strong public submissions to this effect. The committee recommended that a qualified doctor should be able to order involuntary detention and treatment in the first 24 days and a mandatory Tribunal hearing should be required if this period were to be extended. Most cases would be resolved without the need of a court hearing. The patient would be entitled to a court hearing at any stage of the involuntary detention and treatment procedure.

protecting the rights of patients. An integral part of this new procedure is the protective role of the proposed Community Advocate whose function would be to safeguard the interests and rights of the person who is undergoing involuntary detention and treatment. The committee recommended that the Community Advocate should also be a mediator, involving family, carers and health professionals so that voluntary procedures would be used as much as possible. The Community Advocate's primary function would be the protection of the rights of the patient.

The role of Community Advocate is similar to the proposed Public Advocate recommended in the ALRC report *Guardianship and Management of Property* (ALRC 52). The committee envisaged a Community Advocate whose tasks would cover both guardianship and mental health.

avoiding crisis situations. The committee recommended that the legal grounds (or gateways) for involuntary detention should be made less restrictive than is the present law. The definition of 'mental dysfunction' should be broadened very slightly. The current requirement that there be a serious risk of actual bodily harm was considered to be too restrictive, requiring as it does a crisis situation. This legal gateway prevents early intervention. Instead, the committee substantially adopted the Victorian model, namely, that a medical practitioner would need to be satisfied that a person

- is suffering from mental dysfunction
- as a consequence he or she requires immediate care and treatment, which he or she has refused
- requires detention for his or her own health or safety or the protection of others; and
- no other, less restrictive measure is viable.

catgories of treatment. The committee proposed that there should be five categories of treatment:

- routine psychiatric treatment, psychotherapy, nursing care and training under medical supervision (category A)
- electroconvulsive therapy (category B)
- psychosurgery (category C)
- care and support for mentally dysfunctional people who are classified as incurable and who are in a state of social breakdown (category D)
- a court order directing someone with a severe personality disorder to refrain from dangerous behaviour (category E)

The first three categories correspond to existing practice and no changes were recommended. The two last categories are new.

Category D is aimed at people who, for example, are chronic alcoholics, and who cannot cope with their live. The order would be described as a care order. To accommodate category D orders the committee recommended that the Tribunal be given clearly differentiated functions relating to both mental health and to care.

Category E is aimed at the difficult problem of a person who has a psychopathic personality and who cannot be treated appropriately by the mental health system. The committee decided that mental health facilities and mental health law should not be used to detain such people. Instead, they should be given a clear warning by a court order (analogous to an order made under the Domestic Violence Act 1986), breach of which would then be a criminal offence.

avoiding institutionalisation. In keeping with the philosophy of using the least restrictive alternative, the committee recommended that treatment should be carried out in the community as far as possible, rather than in mental health facilities. Compulsory community treatment orders would be backed by effective sanctions if the patient failed to adhere to the terms of the order.

criminals and mental health. The committee recommended more flexibility in the interaction between the criminal justice system and the mental health system. The schemebetter dealt with by the mental health system rather than the criminal justice system. A problem facing police and magistrates when confronted by someone who has offended is that often they do not have sufficient information to decide whether criminal proceedings would be inappropriate. The committee proposed that in such cases a Magistrate's Court could order an assessment of the person's state of mind.

New procedures relating to people who are unfit to plead to criminal charges were proposed, broadly based on a simplified version of the New South Wales model. More flexible options for dealing with convicted offenders or those found not guilty because of their mental condition were proposed so that, in appropriate cases, such persons could be referred to the mental health system. These recommendations complemented those made in the ALRC report *Sentencing* (ALRC 44).

The committee recommended that a review of the *M'Naghten Rules* relating to the defence of insanity should be conducted by a body such as the Australian Law Reform Commission.

other problems. The committee drew attention to a number of matters which it could not consider in depth:

- the lack of secure facilities in the ACT for dangerous mentally dysfunctional people
- the lack of facilities for young people with mental illness, particularly adolescents
- the drawing up of new legislation catering for drug dependent people and inebriates;
- the various problems arising from 'transportation' to NSW institutions
- the legal status of mentally dysfunctional residents of Jervis Bay; and
- the need for interpreters for those involved with mental health system.

treatment, not punishment. Meanwhile a report in the Canberra Times (26 November 1990) showed now difficult issues may arise in the mental health area. Headed 'No treatment but minister won't interfere', the report recounted now a violent schizophrenic patient under a compulsory treatment order was refused admission to Word 12B at Royal Canberra Hospital (South). The report quoted a Government spokesman who h ad

said that even though the patient had been compelled to submit to treatment it did not mean that it had to be provided. The Director of Mental Health had decided that this patient was best treated in the community. He had responded well at first but had then deteriorated. After a violent attack he had said that he wanted to be taken to Ward 12B but was refused admission.

The parents wrote to the Minister:

> Because Ward 12B refused to accept our son a criminal charge had to be laid. Staff of Ward 12B have disregarded the court order by refusing him admittance. As a result he has been charged with a criminal offence when he needs treatment, not punishment.

The parents said that:

> the police would take him to 12B gladly but 12B won't take him. You would think that if the authorities had decided to put him out in the community they would have to take him back when he needs help. His is a difficult case and it seems as if they don't want anything to do with him. If the system was right it would allow us to cope. It seems the only patients they like are those who are medicated like zombies. Our son didn't even get to see a doctor. He was turned away by telephone. If it takes examination by a psychiatric registrar to gain admission, how can it be that a nurse has this authority over the telephone?

The Minister said that he could not interfere in what were essentially medical decisions.

a right to assessment. The types of problems raised by this case was considered by the Seddon committee. One of its recommendations was that, though it was practically impossible to legislate for a right to treatment, it would have a direct bearing on this case. The Advocate's role in such a case would be to mediate so that possibly there would have been a different outcome.

The case shows how many of the problems relate to appropriate services rather than law as such. The committee was keenly aware of this problem but was limited in what it could say about services because its principal job concerned the law.

Nevertheless it was invited by the Minister to draw attention to services problems.

An article reviewing mental health law in New South Wales appeared in the April 1990 issue of *Reform,* [1990] *Reform* 77-82.

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domestic violence

In its 1986 report (ALRC 30) *Domestic Violence* the ALRC recommended the introduction of protection orders in the Australian Capital Territory to stop threatened or actual violence or harrassment. Legislation implementing some of the recommendations in the report came into operation on 1 October 1986. The legislation permitted married persons or those in de facto relationships to obtain a protection order if they were threatened with violence by their partner. The Commission also recommended that people in other domestic relationships would also benefit from the proposed protection orders. Where violence in the home arises in connection with a past marriage or past de facto relationship, as, for example, where a divorced person harrasses or assaults the former spouse, violence between parents and their children, including adult children, disputes between neighbours, etc. New legislation came into force on 3 October 1990 in the ACT which covers all family and household members. For the first time, children will be able to obtain protection orders from a violent parent.

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new procedures for interstate litigation

The federal Attorney-General, Michael Duffy, announced on 24 August 1990 that new procedures would be introduced for the conduct of interstate litigation in Australia.