

three times the national murder average in Australia and the second highest incidence of rape after South Australia, according to the Institute of Criminology. But the Institute cautions that the South Australian rape figures could be the highest only because of the assistance being given to victims of rape at special centres. In other States, women might be less ready to report rape. Rape law reform has now been foreshadowed in New South Wales, including a controversial provision relating to rape within marriage.

understanding and capacities' for racial and ethnic minorities, including Asian migrants and Aboriginals.

A Perth businessman, who was forcibly injected with drugs and given shock treatment at a hospital six years ago, failed in a Supreme Court action against the State of Western Australia. Mr. Justice Jones said that the plaintiff had been sent to hospital by a magistrate for assessment. At the hospital he had been dealt with in accordance with legally permissible treatment. The patient was unrequited. He urged reform of the law, including the requirement that more than one psychiatrist should be needed to diagnose mental illness and to submit a person to compulsory shock treatment, such as he suffered, wrongly as he claimed.

To similar point was a letter to *The Age* (12 September 1980) by the President of the Psychiatrists' Association of Victoria, calling for reform of the Victorian Mental Health Act 1959. Among anomalies listed were:

- inappropriate grouping together of intellectually handicapped and emotionally disturbed patients;
- automatic freezing of the financial affairs of involuntary patients;
- vague and unqualified reference to 'mental illness' as a ground for involuntary admission.

In Britain, a report in *The Times* (27 November 1980) records that a doctor has claimed that mental patients have had portions of their brain removed for research purposes, without their consent.

**reform directions.** At the end of September 1980, the ALRC Chairman delivered the 20th Barton Pope Lecture in Adelaide for the South Australian Association for Mental Health. Among areas of mental health law needing reform were identified:

- clearer specification for grounds of involuntary commitment to a mental hospital;
- compulsory provision for free repre-

## mental health reform and i y d p

We are all born mad. Some remain so  
Samuel Beckett, *Waiting for Godot*, 1952.

**a second wave?** The prospect of a 'second wave' of mental health law reform was raised by a number of speakers during the past quarter, on the eve of the International Year of the Disabled Person (IYDP).

Opening the 1980 Congress of the Royal Australian & New Zealand College of Psychiatrists in Sydney on 13 October 1980, the Governor-General, Sir Zelman Cowen, cited the College's recent report, *'Discrimination Against the Mentally Ill'*. The report revealed that a 1979 study suggested that one in every four contacts with general practitioners in Australia was for emotional rather than physical illness. The growth in post-war society both of stresses and tensions and of a more organised approach to psychiatry has taken those specialists outside the walls of mental hospitals to practise 'predominantly in the general community and with a substantial influence on a broad spectrum of community activities and with access to many effective treatments'. Among achievements listed by Sir Zelman were improved drug treatment for psychiatric disorders which has 'sharply decreased the numbers of severely ill patients in mental hospitals'. Specifically, Sir Zelman asked whether there were enough psychiatric services available with 'special and relevant

sentation of patients disputing mental ill-health;

- decriminalisation of the crime of suicide, where he survives;
- attention to the separate and special problems of intellectually handicapped people;
- provision of facilities for mental health problems created by drugs of addiction; and
- a review of the rights of persons held during the Governor-General's or Governor's pleasure.

Identifying the 'first wave' of mental health law reform which occurred in Australia during the 1950s, the lecturer suggested that new mental health law reforms were now moving through the Australian legal system:

When the high walls which physically guarded the 'asylums' came down, the community's attitudes to mental health began to change. Let no-one doubt that these were salutary, overdue beneficial developments.

But, it was suggested, it was now important to prepare for the 'second wave' which would involve:

- measures to provide more effective scrutiny of medical decisions to commit unwilling people to mental hospitals;
- stricter definitions of criteria justifying involuntary commitment;
- provision of legal and other representation for mental patients;
- automatic review of the status of involuntary patients in mental hospitals;
- general reduction in the numbers in mental hospitals; and
- reduction in the average period of compulsory commitment before review.

We are not dealing here with trifling numbers of our fellow citizens. More than 60,000 people enter Australian mental hospitals every year. Between 25 and 30% of this number are committed as involuntary patients. What we are dealing with, then, is the personal freedom and individual liberty of a large and probably growing section of the community. One can see the problem in better perspective if it is remembered that, on average, the number con-

finied in Australian prisons is in the order of 10,000 people. Rightly, we devote a good deal of the law's attention to highly detailed, protective machinery, which has been refined over the centuries, to ensure that individuals are not unlawfully or needlessly committed to prisons. ... The same forces which lead us, in the area of criminal punishment, to question closely the utility of institutional confinement, require similar questions to be asked in respect of society's response to those diagnosed as 'mentally ill'. Not only are institutions extremely expensive. ... They are frequently oppressive to the individual, destructive of self-reliance and sometimes brutalising. ...

Contrasting procedures adopted in most parts of Australia for involuntary admission to a mental hospital, Mr. Justice Kirby asked:

Imagine what an outcry there would be if a person were sent to imprisonment in Australia without a public trial or for a generalised purpose such as 'the protection of others'?

It was suggested that the probable pattern of legislation appropriate for Australia was to be found both in recent South Australian amendments to the Mental Health Act and in the Ontario Mental Health Act. These provisions ensure stricter criteria and better protective machinery.

*links to privacy.* On 27 November 1980, Associate Professor Robert Hayes, the ALRC Commissioner in charge of the privacy reference, addressed the Victorian Hospital Associations' Annual Conference in Melbourne. Professor Hayes spoke of the risks in residential care institutions for the elderly, the mentally retarded and the mentally ill. He said that privacy and confidentiality and even more basic human values such as bodily integrity and freedom to give and withhold consent to 'treatment' were sometimes at risk. Specifically, Professor Hayes said that in one institution for mentally retarded children and adults, the Directors' annual report had showed research projects which had been conducted on residents without the informed consent of the subject or of a person legally entitled to give it. The research programmes involved:

- monitoring immunological reactions to hepatitis and antigen B;

- monitoring the effect of poliomyelitis vaccinations;
- detection of chromosomal abnormalities.

Professor Hayes said that physical abuse and medical experimentation without consent were clearly within the scope of conduct 'abusing a person's privacy'. He pointed out that at present there were no general and effective individual rights in hospitals and other areas where privacy tended to be at risk. He urged mental health authorities to consider the protections suggested in the ALRC discussion paper on *Privacy and Personal Information*.

**atavistic fears?** 1981 is the International Year of the Disabled Person. There will surely be a role for lawyers and for law reform in the efforts of the Year. The disabled include the mentally disabled. A lawyer in charge of the New York Handicapped Persons' Legal Support Unit, himself confined to a wheelchair since boyhood polio, explained society's difficulty in coming to grips with these problems:

Looking at why the handicapped are discriminated against ... I attribute it to an unconscious fear of injury or death. When able-bodied people come into contact with someone with a disability, they see a potential threat to themselves — a reminder of the fragile nature of life. And able-bodied people don't want to be reminded.

Will able-bodied lawyers concerned about disability law reform please stand up.

## new reports

### Australia

- ALRC : 17 : *Annual Report, 1980.*  
 : DP 15: *Sentencing of Federal Offenders, 1980.*  
 : DP 16: *Reform of Evidence Law, 1980.*  
 : DP 17: *Aboriginal Customary Law - Recognition?, 1980.*  
 : IP 3 : *Reform of Evidence Law, 1980.*
- NSWLRC: BP 3 : *Legal Profession Inquiry : Comments DP 2 on Complaints, Discipline & Professional Standards (Part 1), 198.*

- SALRC : 57 : *Relating to the Companies Bill, 1980.*  
 : 59 : *In respect of Imperial Laws Application within this State in relation to the Criminal Law, 1980.*  
 : 61 : *Relating to the Inherited Imperial Law and the Civil Jurisdiction & Procedure of the Supreme Court, 1980.*
- TasLRC : *Report on the operation and reform of the Rule Against Perpetuities and Accumulations, by R.J. Hoyle.*
- VCJC : *Report on Unincorporated Associations, 1980.*
- VLRC : 9 : *Duress, Necessity and Coercion, 1980.*
- VSLRC : D-1 : *Progress Report on the Protection of Animals Act 1966 — Rodeos, 1980.*  
 : D-7 : *Progress Report on the Protection of Animals Act 1966 — Riding Schools, 1980.*  
 : D-13 : *Report on the Statute Law Revision Bill, 1979-1980.*
- WALRC : 27 : *Part 1 — Report on the Admissibility in Evidence of Computer Records and other Documentary Statements, 1980.*  
 : WP 73: *The Absconding Debtors Act 1877-1965, 1980.*

### Law Council of Australia

- : C 71 : *Commonwealth Employees (Employment Provisions) Act 1977.*  
 : C 72 : *Companies Bill 1980.*  
 : C 73 : *Report on the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules).*  
 : C 74 : *Specialisation (Draft Committee Report).*  
 : C 75 : *Part AA of the Conciliation & Arbitration Act.*  
 : C 76 : *Report of the Privacy Law Committee to the Law Reform Commission DP No 2 'Privacy & Publication — Proposals for Protection'.*  
 : C 77 : *Submissions to His Honour the Chief Justice and Their Honours the Justices of the High Court of Australia for an increase in the High Court Scale of Costs.*

University of Sydney : *Institute of Criminology : 42: Problems of Delay in Criminal Proceedings, 1980.*

### Canada

- Alberta ILRR : *Annual Report, 1979-1980.*  
 : 36 : *Proposals for a new Alberta Business Corporation Act, 2 Vols, 1980.*