Juvenile Justice and Community Welfare Bills recently introduced into the NT Legislative Assembly by Mr Ian Tuxworth, NT Minister for Community Development. The Minister acknowledged that a number of the proposals contained in draft Bills were based on parts of the draft Bill for ACT child welfare law reform attached to the ALRC Report on *Child Welfare* (ALRC 18). In addition, the NT Department of Community Development received assistance in developing its proposals from Dr John Seymour, formerly Commissioner in charge of the ALRC project on child welfare. The Department also had consultations with Professor James Crawford, Commissioner in Charge of the Aboriginal Customary Laws reference, concerning Aboriginal child welfare proposals. Introduced into the Assembly on 24 March 1983, the Bills have been tabled to permit public comment and 'feedback'. Clearly relying on the ALRC approach, Mr Tuxworth in his Second Reading Speech said:

> The draft Juvenile Justice Bill heralds a significant departure from existing law relating to the treatment of juvenile offenders. The current law contains these provisions within the child welfare legislation. The mixing of justice and welfare issues in legislation has been widely criticised as being both open to severe abuse, and being ineffective in terms of providing an adequate response to juvenile crime.

The proposed legislation creates both a Family Matter Court and a Juvenile Court. The former court will deal with 'children in need of care'. The latter will deal with juvenile offenders and, significantly, will be open to the public 'unless the magistrate orders otherwise'. Most children's courts are presently closed to the public.

Meanwhile, figures of Australia's imprisonment rates consistently show the Northern Territory as having the highest rate of imprisonment in the country. In an item in the *Australian* (3 May 1983) an unnamed officer of the Northern Territory Department of Correctional Services offered his explanation:

> We have a large population of tribal Aborigines grappling with European laws, a huge thinly populated area and a stressful climate. Add to that a predominantly young population with few extended families and a lot of drunkenness by blacks and whites and you will begin to understand our problems.

Liquor does seem to be behind many of the problems of the Territory. Addressing the ANZAAS Congress at the University of Western Australia in May 1983, Dr R O'Connor, an anthropologist, criticised amendments to the NT Summary Offences Act as 'discriminatory' against Aborigines. The amendments, known as the 'two kilometre law', make public drinking within two kilometres of licensed premises illegal. He said that it made Aboriginal drinking places on the Todd River outside Alice Springs illegal, whilst a white picnic area was exempted. Mr O'Connor said that the adverse effects of the law on the Aboriginal community could have been avoided, had anthropological evidence on Aboriginal drinking been considered. Progress and problems in law reform up north.

reform reflections

On the morning of the Opening of Parliament, I was asked by my brother Deane, did I have my lace ruffles and white gloves. Now, in common with most Australians, I have never owned a set of lace ruffles or a pair of white gloves . . .

Sir Daryl Dawson, Syd Uni Law Graduates Lunch, April 1983

back to bentham. With a few ironic reflections on ceremonial dress, the newest Justice of the High Court of Australia, Mr Justice Dawson, told the Sydney Law Graduates Luncheon on 28 April 1983 of the crisis of discovering the lack of proper lace and gloves. He knew that the High Court had abandoned silk hose and silver buckles [and he might have said the tricorn hat] years ago. His protest at the late discovery that lace and gloves were in, produced from the Chief Justice the reply that 'the abolition was only from the waist down'. The new Judge was almost about to join Mr Justice Murphy in plain clothes until Parliament's Black Rod came to his rescue. This little story was then put to gallant use. Jeremy Bentham, more than a hundred and fifty years ago, had condemned

ceremonial wigs and gowns. And, more to the point, he had urged a consistent philosophy for reform. In his case it was the philosophy of utilitarianism. Mr Justice Dawson suggested that law reformers in Australia should seek their own philosophy to avoid the criticism that they are simply making ad hoc value judgments, adopting a vague utilitarianism in lieu of consistent and principled decision-making:

> It would be fanciful to ask that there should be some specific agency telling us all the time how good our law is as an antidote to the constant reminders of the law reform commissions and other reformers of how bad it is ... But it *would* help, I think, if we were able after all this time to advance Bentham's theory of utility and provide a sound philosophic base for our law reforming enthusiasms. At least then we should be able more readily to identify and appreciate the good as well as the bad and to ensure that we don't dispense with what is worth while, as we change what ought to be changed.

The wide ranging speech of Mr Justice Dawson turned to the proposal for the integration of State and Federal courts. Everyone knew the problems, he said. The solutions were less clear. He was less enthusiastic for the idea of advisory opinions from the High Court:

> I don't think there is anyone who would suggest that the High Court's present workload does not fully extend it and it takes little imagination to recognise the possibility that advisory opinions could overload it so that there would have to be some alleviation of its other work. There are few of us, I think, who would not find just a little daunting a request for an advisory opinion, for instance, whether the *Trade Practices Act* is valid or invalid in any and what respect or respects.

His closing remarks were addressed to the lack of attention to law reform proposals, particularly in the Federal sphere. He found this last fact 'curious', having regard to the 'higher profile' of the ALRC, but attributed it to the distractions of a national Parliament which are even greater than of State Parliaments. But his prime point was that law reformers, a hundred and fifty years after Bentham, should be able to do better than 'a vague sort of utilitarianism'.

action on reform. Debate about action on reform reports, mentioned by Sir Daryl Dawson, is now hotting up:

- Federal Attorney-General Evans is scheduled to address the 8th ALRAC Conference in Brisbane in July. It is expected that he will here discuss the Federal Government's options for a Uniform Law Reform Council. Such a Council was foreshadowed in the ALP policy before the recent Federal election. See [1983] *Reform* 50. It is expected that Senator Evans will map out the details of the proposal for a better system of integrating the work of Federal and State law reform bodies, where uniformity is desirable. Unlike Canada and the United States, Australia has never developed an effective uniform law reform body.

- Also at the ALRAC Conference, Senator Evans will launch the ALRC *'Law Reform Digest'*. The Digest collects brief summaries of all law reform reports delivered in Australia, New Zealand and Papua New Guinea between 1916 and 1980. The reports are produced under familiar legal headings. It is expected that the Digest will sell well throughout the Commonwealth of Nations and will become the first port of call in LRCs embarking on a new reforms project. The existence of a short summary of LRC reports may reduce duplication and maximise the use of work done by other bodies.

- Presenting his commission to the Full Bench of the Supreme Court of South Australia, SA Attorney-General Chris Sumner referred to the 1979 report of the Senate Standing Committee on Constitutional and Legal Affairs pleading for better machinery to implement law reform reports and to promote uniformity, where appropriate. 'On law re-

form generally' he said 'there is plethora of bodies recommending reform but few mechanisms to ensure Parliamentary consideration of them. I would like to see the development of a Parliamentary Standing Committee in this State, whose primary concern would be to look at proposals for law reform and to ensure their consideration by Parliament. The best method of achieving maximum effectiveness from such a body requires examination. This will be pursued by the government.

- In tune with this comment were remarks made by members of the Senate Standing Committee on Constitutional and Legal Affairs when they met ALRC Commissioners in Sydney on 21 June 1983. The new chairman of the committee (Senator Michael Tate) and the past chairman (Senator Alan Missen) led Senators and ALRC Commissioners in an exploration of various ways in which the committee could expedite consideration of ALRC reports – by stimulating the Executive Government into action.

complaints department

'When people cease to complain, they cease to think'.
Napoleon I, *Maxims*, 1804

too many cases. Reflecting the cautionary words offered by Mr Justice Dawson above, another High Court Judge, Mr Justice Deane, in June 1983 twice called specific attention to the suggested need to reconsider the High Court's jurisdiction 'as of right'. Within 15 minutes of finishing the fifth day of the Tasmanian Dam case, he began hearing a complaint by Outboard Marine Pty Ltd under one of the constitutional prerogative writs. The case involved alleged 'dumping' of imported outboard motors in Australia. Said Mr Justice Deane:

> This court is burdened and over burdened. One would have thought that a statutory provision would have been made to fill these gaps.

According to the report in the *Canberra Times* (8 June 1983) Mr Justice Deane's frustration was directed 'not so much at the workload of himself and fellow Justices but at the effect that workload has on parties coming to the High Court for relief'. Clearly, the bigger the workload, the more bottle necks and the longer the delay in the delivery of justice. Another concern in some quarters is that the pressure of work might even reduce the traditional high standard of judgments of the High Court of Australia. The way ahead may involve reduction or removal of the non-discretionary jurisdiction of the High Court so that, as in the United States, virtually the whole of the court's docket is determined by the court itself, in accordance with the importance of the case. The March 1983 issue of *The Third Branch* (Bulletin of the Federal Courts of the United States) records that US Chief Justice Warren Burger, in an address at a mid-year meeting of the American Bar Association in New Orleans on 6 February 1983, struck a note of 'increasing urgency' concerning the workload burden on the Supreme Court of the United States. He described the burden as a 'crushing case load'. For relief in the United States, he suggested the creation of a temporary, experimental panel, composed of existing Federal judges serving on rotation for six months or a year. They would have the limited function of deciding 'all intercircuit conflicts and possibly, in addition, a defined category of statutory interpretation cases'. The Supreme Court would retain certiorari jurisdiction over the new panel's cases, virtually interposing a further level of appeal in Federal cases in the United States. A competing suggestion for relief of the highest court was offered by Justice Powell at the ABA meeting in San Francisco in 1982: evidence that the pressure on the highest court in the United States, as in Australia, is becoming unacceptable.

reform complaints. One of the items in the new Federal Labor Government's policy on law and justice was the adoption of a Federal system of community law reform. The objective was to encourage people, who have felt