everybody involved in workers' compensation, including the legal profession, the proposals have been attacked by the Victorian Law Institute (amongst others) as 'lightweight', 'drawn up hastily to suit the timing of the next election', unsympathetic to 'the needs of small business' and marred by 'blatantly contradictory figures' (*Age*, 13 December 1984). Battles over compensation reform are not, it seems, confined to the 'premier State'.

crime and punishment

The three never-failing accompaniments of advancing civilisation are a racecourse, a public house and a gaol.
John Dunmore Lang

prisons for the ACT. In the report of the Review of Welfare Services and Policies in the ACT, chaired by Professor Tony Vinson, it is recommended that a prison system catering for all but maximum security adult prisoners should be created in the ACT. This would involve construction of new remand and detention facilities for juveniles and a new remand centre for adult male and female offenders. The existing remand prison at Belconnen would be converted into a medium to low security prison for convicted offenders. Although there has been no official response, there appears to be widespread support for correctional facilities in the ACT. The matter will also be considered by the ALRC in its final report on the reference relating to Federal and ACT offenders.

new sentencing option for the ACT. The sentencing options of ACT Courts will soon be expanded to include a system where adult offenders can be ordered to perform community-service work as an alternative to short-term jail sentences. The House of Assembly recently agreed to amendments to the ACT Crimes Ordinance which will enable Courts to impose community-service orders of up to 208 hours. At the same time, it agreed to a Supervision of Offenders (Community-Service Orders) Ordinance which will establish the machinery to administer the scheme. The scheme will be extended at some stage to include juvenile offenders, but it is not known when this will occur or when the adult scheme will begin to operate. Judges and Magistrates in the ACT have for years been criticising the lack of sentencing options available to them compared with those in other jurisdictions. The option will be open to consenting offenders convicted of an offence punishable by a jail sentence, or liable to jail for the non-payment of a fine. The operation of the scheme will be one of the matters considered in the general review of non-custodial sentencing options conducted as part of the ALRC's reference on the sentencing of Federal and ACT Offenders.

how committed do you have to be? Until recently, it was thought that the existence of a prima facie case in committal proceedings in NSW did not necessarily entail that the defendant be committed for jury trial. The Magistrate, it was thought, had a power to dismiss the matter on the basis that notwithstanding the prima facie case, no reasonable jury properly instructed would convict on the evidence. Late last year the NSW Court of Criminal Appeal in the case of *Wentworth v Rogers* held that no such additional power existed. In a flurry of activity which many would-be law reformers sometimes wish they could emulate, the NSW Government introduced legislation with the intention of restoring the perceived status quo ante. The NSW Law Reform Commission is presently examining a wider range of issues related to committal proceedings as part of its reference on Criminal Procedure. It is anticipated that a working paper will be published towards the middle of this year.

tasmanian law reform commission seminar on fines. Tasmania is the latest in a number of jurisdictions to turn its attention to the problems of fines and fine default. A comprehensive research paper on fines prepared for the Tasmanian Law Reform Commission by Ms CA Warner of the University of Tasmania Law School, was considered at a Seminar on 15 March 1985. The seminar was addressed by Professor Richard Fox of Monash University Law School who reviewed the Victorian situation and Mr George Zdenkowski of the Australian Law Reform Commission who commented on ALRC proposals and NSW developments.

Studies by Mr Dennis Challinger in Victoria, Ms Leanne Weber in South Australia, Ms Jan Houghton of the NSW Bureau of Crime Statistics and Research and by Ms Warner in Tasmania all appeared to indicate that fines were used as a major sentencing measure and that imprisonment for fine default was an unsatisfactory response because the majority of persons defaulting did so for reasons of financial hardship. The seminar canvassed numerous issues including: the use of a fine as a penal sanction; prison-fine correlates; sentencing principles relating to fines; procedure for non-payment of fines; the impact of inflation; disparity in fine provisions; imprisonment for default; penalty units; Swedish day fines; and means enquiries.

a farewell to arms? Legislation proposed by the NSW Government to control the use of guns has come under fire. The legislation was introduced in the aftermath of the so-called 'Milperra Bikie Massacre'. Dr David Fine of Macquarie University, Law School, has said that the proposed legislation would do nothing to reduce the problem of violent crime. The main proposal is that all firearms (except some antiques) will have to be registered with the Police Commissioner. Anyone wishing to use a gun will need a shooter's licence. Dr Fine claims that the NSW legislation will: be a drain on Police resources; prove expensive; increase the possibility for law abiding gun-users to fall foul of the law and face hefty fines; and not necessarily decrease the incidence of violent crimes. In a book entitled *Firearms Laws in Australia* to be published later this year, Dr Fine advocates the formulation of nationally co-ordinated legislation to control the abuse of firearms. Because different approaches to the regulation of firearms is taken in the various States, the result is 'a hotch-potch'. It would be possible, according to Dr Fine, for the Federal Government to draft model legislation for the ACT and for the Customs Department to implement national standards for the importation of firearms.

high court to resolve role of courts and parliament in sentencing. As a result of recent legislative changes, one third remission is automatically deducted from the non-parole period (for first offenders) in NSW, the ACT and South Australia. The situation has prevailed in Victoria for well over 20 years. Judicial dissatisfaction has been expressed recently in various quarters about the interference with judicial sentencing discretion that thereby inevitably results. Opinion is divided as to whether a sentencing tribunal can, in fixing the non-parole period, take into account that there will be such an automatic entitlement or whether it should only have regard to the appropriate non-parole period, and ignore the remission factor. It has been held by the Courts of Criminal Appeal in both Victoria and NSW, that a Court should not have regard to the remission deduction. This principle was affirmed in a majority decision of the Federal Court on appeal from the ACT Supreme Court in the case of *Paivinen.* The Director of Public Prosecutions has sought special leave to appeal to the High Court of Australia which will hopefully resolve the matter. It is important that the issue of principle be clarified as allegations have been made that judges have been surreptitiously taking account of the deduction of remissions without articulating that they are doing so. Mr Frank Morgan, of the South Australian Department of Corrective Services, in a paper to the Australian Institute of Criminology earlier this year, said that a study of cases since the introduction of the new legislation to South Australia in late 1983 revealed that there had been a gradual increase in the normal non-parole period from about ⅓ of the head sentence to almost ⅔. Dr Don Weatherburn of the NSW Bureau of Crime Statistics and Research, addressing the same seminar, observed that similar trends were apparently taking place since the introduction of the relevant NSW legislation in early 1984.

According to a report in the Age, 16 March 1985, the Victorian Attorney-General, Mr Kennan, has said that administrative interference in Victorian prison sentences would be reduced, although it might take legislation to ensure that what a judge wanted was what the prisoner got. There has been considerable criticism from judges and police that sentencing in Victoria is a 'charade' because early release and remissions reduce minimum sentences to a

shadow of judges' intentions. The Victorian Court of Appeal has ruled that judges cannot take the possibility of remissions or early release into account when sentencing. Mr Kennan said this could be overcome by passing legislation.

jury trials in criminal cases

The NSW Law Reform Commission is conducting a thorough examination of the system of trial by jury. A number of surveys are planned in addition to a comprehensive statistical collection. A study of jury instructions is proposed in co-operation with the Australian Institute of Criminology. A working paper will be published in due course.

odds and ends

■ ***withdrawal of international covenant reservations.*** When Australia ratified the *International Covenant on Civil and Political Rights* in 1980 it entered reservations and declarations affecting Australia's obligations under 13 articles of the Covenant. Following a review of these reservations and declarations by the Federal Government with the co-operation of the State Governments, the former Federal Attorney-General, Senator Evans, announced on 10 December 1984 that all but three reservations and declarations were to be withdrawn and that the declaration regarding responsibility for implementation of the Covenant in accordance with Australia's federal system was to be substantially modified.

The three reservations remaining relate to:

- the segregation of accused persons from convicted persons and of juveniles from adults within the prison system (art10(2));
- the provision of compensation to persons for certain miscarriages of justice (art14(6)); and
- the proscription of propaganda inciting war or racial hatred (art20).

■ ***unconstitutional nuclear system.*** A computer specialist from Stanford University in California is seeking a declaration from the 9th Circuit Court of Appeals, a federal court, that one aspect of America's nuclear strategy is unconstitutional. Clifford Johnson's brief alleges that a recent nuclear strategy, launch-on-warning-capability (LOWC), is unconstitutional because it relies upon computers to launch nuclear weapons in response to the warning of an attack. This, the brief asserts, would be contrary to the Constitution which does not permit the President or Congress to abrogate political power, over foreign policy specifically, to a machine. The US Government has not confirmed that LOWC exists, but Mr Johnson alleges that LOWC became 'actionably unconstitutional' in December 1983, the month in which Pershing 2 missiles were first deployed in Europe. The crux of Mr Johnson's argument is that LOWC involves the launch of nuclear missiles within a very short time, perhaps as little as three minutes or even less, of the first warning of an attack. Within this short time it might not be possible to confirm with the other side that they have launched their missiles. And it may be that the computers controlling LOWC are not responding to an attack but acting upon computer error. Johnson's brief lists a number of false alarms which have occurred as a result of computer error, including one case in 1980 where a silicon chip worth 46 cents occasionally generated the figure 2 instead of 0. The computer involved thus reported that there were first 2, then 22, then 222 enemy missiles approaching. Missile launching stations and bombers were readied for a counter-attack. Finally the error was discovered. An inquiry into the incident concluded that there had been no risk of nuclear war.

■ ***court costs.*** From July 1, 1984 prosecutors were permitted to seek costs against unsuccessful defendants in Canberra Petty Sessions actions. During the first ten days of the new policy, 11 unsuccessful defendants were ordered to pay an average of $140 toward to the prosecution's costs. However, during the three months from August 1, only three unsuccessful defendants were obliged to pay costs. These averaged $90. The new policy was introduced by the then Attorney-General, Senator Evans, who in-