management of income and property, the nurture of their children and the management of their household. The way in which these responsibilities are shared between a husband and wife will vary from one marriage to another. One result of their efforts will be the acquisition of assets of various kinds. How should the law define the rights of the husband and the wife to these assets, both during their marriage and in the event that the marriage breaks down? The answer which the law gives to this question is not only vital to the nature of the relationship between the parties to a marriage. It also affects the capacity of each of them to enter into transactions with other people. Together with the laws of taxation and social security, the law defining the financial and property rights of spouses will determine the way in which the responsibility for support of needy members of the family is allocated between other members of the family and the taxpaying public.

no special rights. Under Australian law, marriage creates no special property rights. Each spouse retains whatever property he or she owned before the marriage. During the marriage, each of them can acquire and deal with property much as if they had never married. They may, of course, choose to own certain assets jointly, and many couples do so. If the marriage breaks down and the couple cannot agree on property arrangements, the Family Law Act 1975 gives to a judge of the Family Court wide discretion to consider all their property, no matter how or when it was acquired, and to re-allocate it between them in a way that the judge considers to be just and equitable. The judge must take into account the contributions each of them has made during the marriage, whether financial or non-financial (such as contributions made as a homemaker or parent) and their respective future needs and their ability to fulfil them. The division of the property will depend on the judge's assessment and balancing of all these factors. The reference requires the Commission to report on whether any changes should be made to the law relating to the rights of the parties to a marriage in respect of property acquired by either or both of them, whether before, during or after their marriage including their rights during marriage and upon its dissolution.

proposals. The Commission considered whether on dissolution of marriage a system prescribing fixed shares of some or all of the spouses' property should be introduced. It suggested a model of property allocation on breakdown of marriage with three stages:

(1) identify the pool of property available for division and divide it by reference to the spouses' 'contribution to the marriage partnership', on the basis of a presumption of equality;
(2) adjust the shares by reference to any disparity in the spouses' capacity to achieve a reasonable living standard after separation due to the division of the three functions of child care (both during and after the marriage), income-earning and home management; and
(3) assess maintenance for a spouse and the children in the light of the property order made.

final report. The Matrimonial Property reference is to be completed in the latter half of 1986. The Commission will now consider very carefully the written and oral submissions it has received before making its final recommendations to Parliament.

foi action

> The people may have to dance to the bureaucracy's tune, but they are entitled to a copy of the music.
> Judge Lazarus, County Court of Victoria

report and review. The third report by the Attorney-General's Department on the operation of the Freedom of Information Act 1982 (Cth), tabled in the House of Representatives by the Attorney-General, Mr Bowen, on 28 November, reveals that the facilities which the Act provides have become more

widely known and used. Applications under the Act for access to information increased to 32956 in 1984–85, a rise of 71 per cent on the previous year. The vast majority of access requests relate to personal information of applicants. However the report notes that the number of journalists and community representatives seeking access to information of public interest also increased during the year under review. There was also a rise in the cost of operation of the Act to $19.2 million, an increase of 9 per cent on costs for the previous year. Costs retrieved through charges to applicants increased 62 per cent to $21977, which represents only 0.1 per cent of total costs. The average cost per application decreased by 37 per cent to $584.

The report also noted that Commonwealth agencies' acceptance of FOI principles has continued to increase.

> What was once feared by some as legislation which could only release embarrassing facts and inhibit candid advice is more often seen to have benefits not only in enabling individual access to, and possibly correction of, documents of personal interest, but also as improving the quality, impartiality and objectivity of advice and of facilitating informed public discussion of matters of community concern.

However, the report noted that the Government's concern over costs had led to an increase in the fees charged for applications, and in the handling of requests for remission of fees. Subsequently, the Senate disallowed the fee increases on 14 November.

Commenting on the Act in the foreword to the report, the Attorney-General wrote that the costs associated with the Act caused the Government grave concern. While noting that efficiency in administration of the Act had improved, Mr Bowen observed that there remained room for improvement. The Government, he said, had issued new directions to agencies concerning administrative procedures.

> The directions ... should ensure that agencies only refuse requests (and defend their decisions on appeal) when there are sound reasons under the Act for doing so. There has been a tendency in some agencies to claim exemptions where technical justification exists for doing so without looking at whether real harm would follow from release of documents under the Act. Such tendencies lead to unnecessary costs in the operation of the Act. Excessively conservative decisions invite applications for review which are a substantial drain on resources.

Commenting on the Senate's disallowance of the increased fees, Mr Bowen said:

> In my view, however, disallowance in no way diminishes the need for revision of the charges. Indeed, the time has now come for a review of the operation of the Act and of its administration. The ... Act ... has gained acceptance both among the Australian community and in the Commonwealth administration. Undoubtedly it has brought benefits to both. Those benefits cannot and should not be denied. It is time, however, to weigh future benefits against future costs and this must be the basis for any review of the legislation.

On the same day as the report was tabled, the Senate passed a motion giving the Senate Standing Committee on Constitutional and Legal Affairs a reference on the operation and administration of the Freedom of Information legislation, thus fulfilling a commitment to review the legislation given when the Act was passed in 1982. Advertisements inviting written submissions from the public by 21 February 1986 have appeared in newspapers, and public hearings are expected to be held in March 1986.

infanticide. The regulations increasing fees for access to information have now been disallowed. However, at the time they were Gazetted and in subsequent months, much criticism was directed at the Government for its actions. The regulations not only increased fees, in some cases by as much as 150 per cent, but also curtailed the right to remission of fees for applicants seeking information about themselves and empowered agencies, before dealing with a request to demand a deposit of 50 per cent of the approxi-

mate cost of handling a request. The editor of the *Canberra Times* remarked on 20 June 1985:

> The changed fees and new charging procedure are fundamentally hostile to the idea that citizens have a right to know what the Government knows about them and to know what the Government is doing . . . the thrust of the charges is to cut the number of requests – more by frightening people off than by charges themselves.

The editorial acknowledged that the high cost of FOI was 'a matter of substantial concern', but noted that the greatest costs arose from agencies general reluctance – one 'honourable exception' being Veterans' Affairs – to accept the principles of FOI. The editorial also noted that:

> The cost [of FOI]] is, of course, a fraction of the cost of government propaganda: public relations, government advertising and so forth.

This point was also picked up by Mr Paul Chadwick, *Age* journalist and author of *FoI: How to Use the Freedom of Information Laws.* Mr Chadwick compared the cost of federal FOI legislation with the $108 million dollars estimated to be spent on propaganda. In the *Age* of 25 June Mr Chadwick was quoted as saying that:

> FoI rights are potentially quite strong. They are a tool for the public. But unless FoI is used more vigorously in Australia, the politicians will make it a dud.

Mr Chadwick was also reported as being critical of the Government's decision to cease publicity about FOI, an action the *Canberra Times* described as 'disgraceful'.

Mr Neil Brown, Deputy Opposition Leader, questioned whether the higher fees and changed charging procedures constituted a breach of Parliamentary privilege, saying the new procedures placed obstacles in the way of MP's seeking information in the performance of their duties. The Speaker of the House of Representatives, Dr Harry Jenkins, on 10 October ruled that the new procedures did not constitute a breach of privilege.

Senator Alan Missen, past head of the Standing Committee which recommended the adoption of FOI legislation, led moves to have the new regulations disallowed. In an *Age* article of 15 October, Senator Missen was reported to say that the Government was attempting to emasculate the FOI Act. He said that requiring people to pay large deposits before requests were processed, and therefore before people knew whether documents relevant to their requests existed and would be released, would be a way of discouraging the use of FOI, which had never been regarded as a scheme which would pay for itself.

The Law Institute of Victoria also criticised the charges and procedures, reportedly saying that:

> The recent charges regulations will, in our view, have the effect of substantially diminishing the willingness of ordinary people to apply for information. This is therefore an undesirable initiative since, by striking at applications, it strikes also at the capacity of the legislation to draw government to account for its actions.

In speaking on the motion for disallowance of the regulations, Senator Missen referred to a report by Paul Chadwick in the *Age* in which he commented that the FOI legislation was of recent origin, 'poorly understood and not a widely recognised social "good". If we are not careful, the politicians will smother it in its infancy.' The motion was supported by the Opposition and the Australian Democrats.

conflicts. Not all publicity surrounding the Act has been in relation to charges. A number of requests for and releases of information have raised awareness of potential problems with the operation of the exemption provisions of the Act.

One such instance involved a request by the NSW Right to Life Association to the Feder-

al Health Department for access to information relating to the provision of medical services, specifically abortion services, by several doctors for which Medicare benefits were paid (*Age*, 1 November). It was reported that the Association wanted the information for a Federal Court case concerning the legality of medical benefits being paid for abortions. The Executive Officer of the Abortion Providers Federation of Australasia, Ms Jo Wainer, said she had no objection to release of statistics, but disagreed that names of doctors and patients should be disclosed. She also warned that doctors would refuse to 'bulk bill' if their names and those of their patients were subject to disclosure under the FOI Act.

The Confederation of Australian Industy has released a guide to business on how to prevent the disclosure of trade secrets under the FOI Act (*Financial Review*, 11 November). Businesses are required to provide a great deal of information to a number of government agencies. There had been instances where sensitive information relating to business dealings and products had been disclosed under the Act, with potential detriment to the companies involved. While recognising the need for FOI, the guide outlines the type of information which may properly be withheld and advises how to go about securing confidentiality for sensitive or strategic information.

Two members of the Muslim community in Australia claimed their lives had been put at risk by the release of documents revealing that they had met the Minister for Immigration and Ethnic Affairs to criticise certain views of an Imam who has since been expelled from Australia (*Sydney Morning Herald* 3 December). The documents were apparently read out at a rally in support of the Imam, since which threats had been made against the two and their families. The two claimed that the Department had shown 'incredibile ignorance of Muslim community affairs' and that the documents should have been withheld under exemptions to access provided in the FOI Act. The Department responded to the criticism saying that it had no option but to release the documents, and that the two should have advised the Department that they wanted their meeting to be kept confidential.

gaol for fine defaulters

> Yes Your Honour. I know this is ridiculous – although – I'm 'in the news'. I couldn't bring myself to do one of those victimless crimes.
>
> Robert Adamson,
> 'Sonnets to be written from Prison'

The courts still have little choice other than to send fine defaulters to gaol according to amendments to the Crimes and Justices Acts introduced recently into the New South Wales Parliament. The amendments will reduce the time fine defaulters will spend in gaol by doubling the rate at which fines are paid for by time spent in gaol from $25 to $50 per day.

In an interview with the *Sydney Morning Herald* a Senior Law Lecturer at the University of New South Wales, Mr David Weisbrot, said the proposed legislation was intended to reduce the numbers of fine defaulters going to gaol but it did not go to the heart of the problem – namely the fact that (according to the New South Wales Bureau of Crimes Statistics and Research) 71% of fine defaulters did not pay because they could not pay. Mr Weisbrot said that the Victorian Penalties and Sentences Act introduced earlier this year was reportedly working well. That Act allows a court to issue a Community Service Order if the offender is unable to pay.

The Victorian Act imposes a positive obligation on the court to take into account an offender's continuing ability to pay. If the offender applies for an instalment order, a Victorian court is bound to make such an order. In contrast , the New South Wales amendments provide that although the court must have regard to such information as to the offender's means as is reasonably and practically available, the court can take into ac-