

entitlements are diminished if the defence is successful, operates unfairly in fatal accident cases and in breach of statutory duty cases.

***fatal accidents.*** In fatal accident cases the family of a breadwinner negligently killed by another is entitled to compensation for the economic losses flowing from the death. However the family will lose compensation to the extent that the deceased was contributorily negligent in causing the accident. The family is therefore deprived of compensation due to no fault of their own. In very many cases no insurance is carried by families to cover this loss whereas the negligent parties is almost always insured and can pay full compensation to the family.

***breach of statutory duty.*** In breach of statutory duty cases, an employer who has failed to maintain statutory safety standards can be sued by an employee injured as a result of such failure. The employer can argue that the accident was partly caused by the injured employee and thus less compensation should be paid. The Commission argues that the defence of contributory negligence is unfair in these cases because one of the main purposes of the safety regulations is to protect workers against their own lapses.

***more reports.*** The report foreshadows two further reports which will be tabled in the very near future on loss of consortium and domestic violence in the ACT.

***community awareness.*** In an effort to raise community awareness of the program Commissioner Seddon, a Senior Lecturer in Law from the Australian National University and President of the Canberra Community Legal Service recently took the unusual step of advertising on milk cartons in the ACT. The advertisement which will appear on half a million milk cartons in January depicts a be-wigged, and rather non-judicial-looking ass with the caption 'The law is not an ass! (Most of the time.) But sometimes it is'. It continues:

The Australian Law Reform Commission wants to hear from you if you consider that there are defects in the law in the ACT. We are interested in issues for law reform generally, rather than individual cases, unless an individual case shows that the law is not working well or fairly.

The advertisement invites members of the public to write to Mr Nicholas Seddon, Australian Law Reform Commission, PO Box 1996, Canberra City 2601.

## **aids — the law's response — part 2**

***discrimination.*** The NSW Anti-Discrimination Board recently released its annual Human Rights Day list identifying 12 advances and 11 setbacks to human rights. Included in the list of setbacks was the recent NSW 'anti-AIDS' legislation in the passage of the Public Health (Proclaimed Diseases) Amendment Act 1985:

The President of the board, Ms Carmel Niland, said AIDS had been the biggest threat to rights this year. 'There is a real danger the fear of AIDS could legitimise a whole new wave of discrimination against people presumed to be at risk'. (*The Australian*, 11 December 1985)

***two types of discrimination.*** At a recent Symposium on AIDS in The Workforce (Sheraton Wentworth Hotel, Sydney, 3 December 1985) Mr Greg Tillet, a conciliation officer with the NSW Anti-Discrimination Board identified two types of AIDS-related discrimination in the community:

AIDS-related discrimination is most often directed against people in two categories:

1. those who are assumed to 'have AIDS'
2. those who 'have AIDS'. (Symposium, Paper)

Included in the first category are homosexuals or persons *perceived* as homosexual, haemophiliacs, some ethnic minorities, children of these groups, and health professionals working with people who have, or who are assumed to have AIDS. The second category includes persons who have been tested antibody positive.

**discrimination at work.** Mr Tillett said that AIDS-related discrimination was predominantly taking place in the area of employment. He relayed some of the actual incidents that had been brought to the attention of the board:

- a manager transferred a Melanesian employee from the front counter to a storeroom saying that customers might not wish to deal with someone they suspected of having AIDS;
- after his return to work following a minor operation, an employee generally believed to be gay was told he would have to have an AIDS blood test, and make the results available to all the staff so fellow employees could decide whether they would go on working with him;
- employees in a small office refused to answer the telephone or touch documents belonging to a man they knew to be a haemophiliac, saying that there was a risk of AIDS.

(Symposium, Paper)

**other discrimination.** Other forms of discrimination addressed at the Symposium occur in relation to the provision of goods and services, education, and trade unions.

**legislation.** The increased occurrence of AIDS-related discrimination raises the issue of the need for existing anti-discrimination laws (at both State and federal levels) to be reviewed in the light of the appearance of AIDS in the community. For example, although the NSW Anti-Discrimination Act makes direct and indirect discrimination on the grounds of physical impairment unlawful it is unclear whether persons with antibody positive conditions are covered by its provisions.

Again, if anti-discrimination laws are to effectively protect homosexuals and persons perceived as such it would appear necessary to enact amendments so as to preclude discrimination on the basis of sexual preference

where such criterion is not included in existing legislation. (The first part of this article appeared in the last issue, [1985] *Reform*, 144.)

## bill of rights

Toute loi qui viole les droits imprescriptibles de l'homme, est essentiellement injuste et tyrannique; elle n'est point une loi.

Any law which violates the infeasible rights of man is essentially unjust and tyrannical; it is not a law at all.

Maximilien Robespierre,  
*Declaration des Droits de l'homme*,  
24 April 1793, xviii

**an australian bill of rights emerges.** After a long period of gestation, it appears that Australia may be close to obtaining its own Bill of Rights. The legislation which would make the Bill of Rights part of Australian law was approved by the Federal Cabinet on 30 September 1985, introduced into the House of Representatives by the Attorney-General, Mr Bowen, on 9 October 1985 and passed by the House on 15 November 1985. The Bill implements the Australian Labor Party's policy providing for a Bill of Rights and reflects Australia's role as a State Party to the International Covenant on Civil and Political Rights. The Covenant was adopted by the General Assembly of the United Nations on 16 December 1966. Australia became a party to the Covenant in December 1972 under the Whitlam Government and ratified the Covenant in 1980 under the Fraser Government. An Australian Bill of Rights was first proposed by the then Federal Attorney-General, Senator Lionel Murphy, but the draft legislation was not enacted. In 1984, draft legislation was prepared under the supervision of the previous Attorney-General Senator Gareth Evans and became one of the issues at the general election held on 1 December 1984. After the election, the present Attorney-General Mr Bowen decided not to proceed with Senator Evans' bill.

**criticisms of the bill of rights concept.** There has been no shortage of people who assert