THE SOUTH BRISBANE HOSPITALS BOARD

PRINCESS ALEXANDRA HOSPITAL JUBILEE WEEK 1981

BRISBANE, FRIDAY 24 JULY 1981

DISABILITY AND THE LAW

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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WHO ARE THE 'DISABLED'?

Lawyers tend to be irritating people who insist on precision of language. When I recently called attention to the difficulty which the English language faces in securing precision (because of its mixture of Germanic and Norman French origins) I was taken to task by Dr. Earle Hackett. In one of his splendid radio broadcasts (he still calls it 'wireless programmes') Dr. Hackett endeavoured to translate a medical journal into 'plain English', omitting the Norman French excesses and sticking closely to the language of our Saxon forebears. The result was odd.

I hope I will not equally irritate this audience if I spend a few minutes on defining the 'disabled'. I will do it lightly because I know that Dr. Hopkin proposes to deal with the subject. Inevitably it will arise in all of the other papers. It is perhaps surprising that in the International Year of Disabled Persons, relatively little attention has been paid to defining just who we mean by 'the disabled'. Some will say that this is just a lawyer's fancy. It is not. Unless we have an idea of whom we are talking about, it is likely that our efforts at practical help and legal reform will concentrate on the numerous and significant group who suffer visible, external and readily identifiable physical disabilities, to the exclusion of those whose disabilities are equally important and possibly even more profound.

Let us start this exploration by a frank acknowledgement that not everybody with a disadvantage wants to be described as 'disabled'. In my family, two of my siblings had what was called at school 'red hair'. They were true Celts. Our parents might say they had 'golden hair'. But as far as the rude school children of the western suburbs of Sydney were concerned, they had 'red hair'. For some reason I never understood, they were described as 'blue'. I can only assume that this confusion between red and blue was the result of significant colour-blindness in the English-speaking people. But whether

red, blue or gold, one would not really describe this point of difference as a 'disability'. Doubtless it seemed so from time to time. Perhaps in the cruel sun of Australia, it may be a medical disability of sorts. But certainly it is not the kind of disability that requires law reform.

One of these siblings of mine, a twin, is left handed. Efforts were made to force him at school to write with his right hand. A protest in strong terms terminated this endeavour. Had this effort persisted, it might have warranted law reform. Fortunately today no-one is so misguided as to try to force left-handed children to write with their right hand. Yet no-one would describe this as a 'disability' requiring law reform.

Even people with physical disabilities sometimes object to efforts of law reform or public endeavours on their behalf. They want to get on with life, having no special privileges, whether from the law or from society. They object to a generic description, lumping them together as 'disabled'. This attitude came to light recently in Melbourne when a group objected to a telethon seeking to raise funds by concentrating on the pathetic disadvantages of disabled people. The Secretary of the Victorian Council of Disabled Persons put it this way:

> Speaking personally, I think it is important to educate the public to a new image of a person with a handicap. We have got to concentrate on their abilities and not their disabilities. You don't discuss a normal person in terms of what he can't do. You talk about what he can. We want to be treated as people first, and as people with a handicap a long way second.[1]

Further evidence that the term 'disability' is no longer universally accepted as a friendly word can be found from a recent item in the English Listener. On Ash Wednesday, Dr. Robert Runcie, Archbishop of Canterbury, made ecclesiastical history by subjecting himself to cross examination on a live BBC phone-in. He was called upon to defend a recent statement of his, that homosexuality was a 'handicap'. His phone-in interrogator asked him whether he realised that:

> the real handicap suffered by homosexuals is the difficulty of living in a predominantly heterosexual society with its strongly anti-homosexial prejudices which are largely based on traditional church teaching?[2]

Dr. Runcie defended his choice of the word by maintaining that it implied a recognition of:

> How shall I put it — an incapacity to fulfil what seems to be the Christian tradition of heterosexual relationships.

But he hurried on to remind his caller that:

> The disabled can often teach us a great deal more about life than we know in the complacency of our own securities.

His caller, whilst thanking the Archbishop for his careful answer, replied simply that 'No self-respecting homosexual will accept the word 'disability' or 'handicap'.[3]

Perhaps even sadder, and certainly more widespread, is the discrimination between different classes of the disabled. Recently, the only survivor of one of the carriages crushed in the 1977 Granville train smash in Sydney was awarded record damages of $2.6 million. Certainly, this is one of the biggest verdicts awarded in this country to the victim of disabilities suffered in an accident case. The plaintiff's left leg was amputated as a result of the accident. She had undergone 18 operations since 1977. She had respiratory problems and required constant attention whilst eating, because of swallowing difficulties. She was obviously a brave and sensitive person. When interviewed on television, her appeal for community understanding for the disabled was couched in terms of the need to realise that people with physical disabilities were not mentally retarded. Of course, she meant no harm to her brothers and sisters in disability. Her statement was merely a reflection of the special atavistic fear which exists in the community towards those with mental disabilities. The fact remains that just as there are needs for law reform to deal with the problems of the physically disabled, so there are needs in the case of the mentally ill and the intellectually handicapped. We do the cause of law reform for the disabled a dis-service by promoting a hierarchy in which it is more acceptable to help the physically disabled and in which it is permissible to neglect the separate but equally pressing problems of those with mental disabilities.

I have not exhausted the definition of the 'disabled'. A recent report, 'States of Confusion', compiled by Miss Jan Carter, a Visiting Fellow at the University of Western Australia, contends that Australian society neglects the senile and the dying.[4] About 57,000 old people in Australian nursing homes and other institutions fall in this class. It is interesting to reflect upon the fact that these people equal the population of Ballarat. But they do not fit into any single administrative category and they often tend to be overlooked by government, lawyers and even the healing professions.

Dr. Murray Lloyd, a Consultant Physician to the Palliative Care Unit at Mount Carmel Private Hospital near Sydney, believes that one reason for the neglect of this class of the disabled is the reluctance of people, including politicans, to talk about death:

> Planning for the final stages of life is something most of us put off, it's too painful to face up to and politicians aren't any different to the rest of us.[5]

According to Dr. Lloyd, the 'classical large hospital is very poorly equipped for the care of the terminally ill'.[6] Going around Australia, as I do, I have been struck by the concern expressed in many quarters and amongst thinking members of the community about our reaction, as a society, to the problems of an ageing population. There is a deep concern about the perceived offence to human dignity of officiously striving to keep alive people who cannot enjoy anything but a most artificial existence. In two jurisdictions of Australia legislation has been introduced by private Members, designed to permit people, whilst they are competent to do so, to prohibit extraordinary medical procedures, in the case that they come to suffer a terminal illness and are not then able to give instructions. Legislation along these lines for a 'living will' has been enacted in five jurisdictions of the United States. We will probably see it come to Australia.

But before we get carried away with neatly pigeon-holeing old or even dying people as 'disabled' it is important to remember that many people in these categories also resent labelling. A recent letter to the Sydney Morning Herald, referring to a seminar in Melbourne called around the theme 'To Hell With Ageing', declared it a welcome protest against the 'tame acceptance of taboos and myths':

> The injustice done to women down the centuries bears no comparison with that done to the aged. It is time that a national as well as world-wide organisation was formed to protest against victimisation because of age; legal or other demands for a declaration of age; the very mention of a person's age in public except on his or her initiative; retirement on the basis of age rather than stipulated period of service. The fact that Australia, in particular, will have a growing proportion of elderly people is an additional reason why they should be relieved of all convention restrictions, helped to recover the self-confidence of their youth and encouraged to fully participate in the life of the community.[7]

The point of all this is to stress the obvious. In talking about the 'disabled' and the law, we must allow for individual resilience and even individual resentment of categorisation as 'disabled'. We must recognise that not everybody in society who has a disadvantage is keen to invite social, let alone legal, discrimination intended to be in their favour. Many groups in today's community would positively resent being described as 'disabled' though they may still suffer disadvantages under the law that require law reform. Plainly, disability, though it embraces physical handicaps, goes beyond to the 'often vulnerable and powerless group in the community' who suffer mental illness or intellectual handicaps.[8] The law's role in dealing with the problems of the disabled, whether physical or mental, temporary or permanent, curable or terminal, is distinctly limited. One cannot pass laws to abolish disability. One cannot enact legislation to sweep away the public's unjust stereotypes and unfair discrimination. For all that, the law can sometimes be of help. Where, as occasionally, it is a hindrance, the attention of law reformers should be directed towards modernisation of the law, so that it meets the needs, so far as possible, of disabled persons in a way that is just to them and fair to society.

There are many topics to which one could give attention in a discussion of disability and the law.[9] Time requires me to confine my observations to two topics, each of them recently in the news in Australia. The first relates to legal moves against unfair discrimination against disabled persons. The second relate to the whole subject of compensation for those who are disabled in accidents. There will be no time to talk of the law and mental disability, though I have dealt with this vital subject elsewhere.[10]

DISCRIMINATION AGAINST THE DISABLED

In the United States awareness of the special needs of the handicapped is growing. One of the most remarkable features of the last few years has been a series of law suits by which, using anti-discrimination legislation, handicapped people and their legal representatives are fighting to gain further rights for the handicapped. In the forefront of the effort towards erasing discrimination against the handicapped are various legal service programmes. A typical example is the Handicapped Person's Legal Support Unit set up in New York City's Community Action for Legal Services. The head of the unit, a lawyer, has himself been in braces and on crutches since the age of one when he had polio. Accordingly, he is in a good position to know what it means to be handicapped.

According to the latest legal literature now reaching us from the United States, 'handicap law' is the new area of the law. It is being expanded. A large number of legal questions are now being brought out in the courts of that country. Handicap legislation was formulated in the United States by the passage of the Vocational Rehabilition Act in 1973. That Act provides that nobody (whether it is a school, hospital or other facility) may receive supportive Federal funds in the United States if it is shown that the body discriminates against 'an otherwise qualified handicapped individual ... solely by reason of his handicap' (Rehabilitation Act 1973, para.504 (U.S.)).

This general statement of principle has been adopted with vigour in the United States. It has encouraged large national programmes to cater for the needs of the disabled. The Act has been used in precisely the areas where handicapped people are at a particular disadvantage: housing, employment, education and access to public facilities. The experience of the United States has been that the area in which the greatest number of complaints come is discrimination in employment. The weapon provided by the Act is a denial of Federal funding, if it can be shown that discrimination has occurred against a person otherwise suitable for a job, solely because of a handicap.

Of course, some people do not get to first base. An epileptic pilot could not be said to be 'otherwise qualified'. A nearly blind person could not demand to be an opthalmic surgeon. The limits of the U.S. legislation are obvious. In the first place, it is limited to the public sector or those depending on its funds. In the second place, it puts the handicapped person to the test of establishing discrimination and this is not always easy.

As recently as last June, the Supreme Court of the United States had to deal with a difficult case in South Eastern Community College v. Davis.[11] Frances Davis suffered from a serious hearing disability. She wanted to be a registered nurse. She was denied admission to the College, a body that was receiving Federal funds. Medical evidence showed that she could not understand speech directed at her, except through lip reading. The College refused to accept her into the course. She claimed discrimination. She was supported by the Court of Appeals. The Supreme Court, however, held otherwise. In doing so, the judges pointed to the difficulty of deciding such cases and the way in which times change:

> We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program.

> Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances also may enable attainment of these goals without imposing undue financial and administrative burdens upon a State. Thus, situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory. Identification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped continues to be an important responsibility of [the Department of Health, Education and Welfare].[12]

In Australia, we have constitutional arrangements which are somewhat different to those in the United States. We have nothing equivalent to the Rehabilitation Act of 1973 of the United States. But in the State sphere, legislation forbidding unjust discrimination against the disabled has commenced. In New South Wales, on 25 March 1981, the Parliament completed passage of extensive amendments to the State Anti-Discrimination Act of 1977. These amendments add a new ground of forbidden discrimination 'on the basis of physical impairment'. Discrimination against a handicapped person on the ground of his or her physical impairment becomes unlawful in the areas of employment, education, accommodation, registered clubs and the provision of goods and services. It should be noted that the legislation is, so far, limited to physical impairment. But the step has been taken. New South Wales has become the first Australian State to pass legislation rendering discrimination against handicapped persons unlawful in the main areas of public life. The legislation came into effect on 22 April 1981. The President of the Anti-Discrimination Board of New South Wales, Mr. Paul Stein, has said that he hopes that most problems arising under the legislation can be solved by conciliation. The New South Wales Board proposes to issue a report, 'Discrimination and Intellectual Handicaps', later in 1981. Legislation on this subject may be expected in due course. The recently introduced legislation to amend child welfare law in New South Wales contains specific provisions to deal with mentally handicapped children.

New South Wales is not alone in this development. In South Australia, under the initiative of the Attorney-General, Mr. Trevor Griffin, a Handicapped Persons Equal Opportunities Bill has been introduced into the South Australian Parliament based upon the first report of the committee chaired by Sir Charles Bright on 'The Rights of Persons With Physical Handicaps'. This Bill, which is yet to pass the South Australian Parliament, follows lines similar to those in the New South Wales Act. The report by Sir Charles Bright's committee on the Rights of Persons with Mental Handicaps has now been delivered. People with handicaps, whether physical or mental, cannot expect the law to protect them against all discrimination.

Sometimes their handicaps will, in the nature of things, prevent them from enjoying rights and privileges they might otherwise have. But it is against discrimination based on community stereotypes, unfair and irrelevant prejudices and foolish assumptions that are simply not supported by objective data, that the law may have a part to play in influencing community attitudes. We may only require one generation to 'break the spell' of stereotypes. Legislation against discrimination is plainly not the whole answer. But it may sometimes be a help, particularly if procedures of education and conciliation are stressed rather than courtroom litigation and the adversary process. Senator Grimes, the Federal Opposition's Social Security spokesman, recently told the Senate that our community had created a virtually 'apartheid system' for disabled people because the disabled had been silent and powerless:

> Simply because people are disabled we have made the fact of their disability the focus of all our thinking about them. In community planning this concentration on difference instead of similarity has resulted in separate and special education, employment, recreation and accommodation. Disabled apartheid is not too strong a description of this situation.[13]

The legislation in New South Wales and South Australia represent the first legal steps towards dismantling this form of 'separate development'. I am sure that much of the focus of legal, health care and social effort in dealing with the disabled in the future will be addressed to integration and normalcy rather than 'separate development'.

ACCIDENT COMPENSATION FOR SOME DISABLED

Can I now turn to a different problem of accident compensation? After the jury gave its verdict of $2.6 million to the grossly injured survivor of the Granville train smash, referred to above, Mr. Justice Lee in the Supreme Court of New South Wales made some thinly veiled criticisms of the damages system we follow in this country. He said that juries were expected to look at a person with a life expectancy of half a century or more and to try to compensate that person for loss of earnings, hospital and nursing attention over the whole of that time:

> Many people might think that this goes dangerously close to playing God, but whether it is viewed that way or not it can at the best only be regarded as an exercise in sheer fantasy. ... Only Parliament can alter the present system, but the need for a system which, while attending to the injured person's requirements arising from his injuries avoids placing huge sums of money in his hands, is pressing.[14]

Concern about the inefficiencies of our damages system is once again building to a head in Australia. Late in 1980 the Chief Justice of the Northern Territory voiced his concern about the lump sum once-and-for-all damages in the case of a grossly injured Aboriginal boy aged 9 1/2 years who had suffered devastating head injuries:

> This case constitutes in itself a strong plea for some system of awarding damages on a period basis. ... Because of the numerous uncertainties which exist here, the amount of damages which I ultimately assess, is very likely to be proved wrong and therefore unjust either to the plaintiff or the defendants and this will be shown as the plaintiff's life unfolds.[15]

The same theme was picked up in papers delivered to the recent Australian Legal Convention in Hobart. Mr. Jeffrey Sher QC of Melbourne said that courts should stop awarding lump sum payments for future economic loss and instead be so organised as to make an annual award.[16] He pointed to the increase in verdicts awarded as a consequence of courts trying to protect successful plaintiffs against future inflation. He described the estimation of damages as 'sophisticated guesswork':

> If the plaintiff gets too little, eventually he is thrown on the charity of friends and relatives or the State. If he gets too much, some relatives receive a windfall. Neither situation is desirable and both should be avoided.[17]

According to Mr. Sher when an award is made for an accident victim almost everyone leaves the court confident that an error has been made. His paper poses the question whether this is a rational and acceptable state of the law.

The Melbourne Age, commenting on the paper, described the proposal for annual awards of damages as 'an excellent suggestion' and urged the Victorian Government to be 'prompt to act on it'. However, for some commentators at the Hobart Legal Convention, Mr. Sher's proposals did not go anyway far enough. Professor Harold Luntz of the Melbourne Law School described the Australian system of recovering damages for personal injury as an 'unjust, unworkable system which is breaking down'. He said that the Australian system of suing in court favoured disproportionately the lawyers and others who became involved in the system and only those disabled persons who could prove, in the fleeting moment of the cause of their disability, that someone else was at fault. Professor Luntz pointed out that very many injured people in Australia received absolutely nothing from compensation schemes of this kind. A study of the spinal injuries at the Austin Hospital in Victoria had showed that less than half of the quadriplegics and paraplegics there received damages from the present system:

> Lawyers are apt to overlook those who never get before the court or who never receive any settlement in out of court discussions. They tend to under-estimate the numbers of people who receive nothing or very little and they tend to disbelieve the figures when they are produced'.[18]

Calling in aid a recent inquiry by the Pearson Committee in England, Professor Luntz said that its statistics found that only 6 1/2% of injured people received anything from suing in court. Even amongst seriously injured people, only 25% received compensation. The figures in Australia are probably not dissimilar. According to Luntz, the provision of annual awards for compensation or even no-fault entitlement for work injuries, motor vehicle injuries and crime injuries will leave many of our fellow citizens disabled and without adequate, just compensation. Professor Luntz proposes that we take out and dust off the Woodhouse scheme which in 1974 suggested a national compensation system for Australia.

If one stands back from the developments of law reform in the area of accident compensation, one can perceive a gradual move from fault to social welfare. That is to say, one can see legal institutions and legal rules moving from the determination of rights based upon the proof of negligence supported by private insurance to rights based upon entitlements established under social security legislation supported by the community as a whole. The industrial revolution, the development of the internal combustion engine and other technological and social changes have produced a world in which the proof of fault has become an obviously inadequate way of dealing with the human and social problems caused by traumatic injury and disease.

The first fruits of the realisation of this fact were the Workers' Compensation Acts which spread from Germany to England and later throughout most of the developed world. It was not until the 1930s that proposals for a more general no-fault liability scheme gained widespread currency. The advent of the motor car and the growing toll it took upon life and limb provided the impetus.

In 1933 a Select Committee of the House of Lords proposed no-fault compensation for motor car accidents. But schemes of this kind were usually frustrated by the vigorous opposition of the legal profession and insurance interests.

In 1967 a Royal Commission was established in New Zealand under the chairmanship of Mr. Justice Woodhouse. The terms of reference related to compensation for all personal injuries. Woodhouse proposed a national compensation scheme. The legislation to establish the scheme was introduced by a conservative Government. Damages actions were abolished. The price was undoubtedly a level of compensation which is lower than that which we enjoy for Australia in that small class of case in which compensation is presently awarded. But a choice has to be made. Is it better in society to compensate handsomely that very small proportion who can prove fault — fewer than 7% of English figures are comparable? Or is it better to devise a scheme which gives less compensation to some people, but assures more people of some measure of compensation and reduces the labour-intensive activity of lawyerly courtroom litigation? Is the reduction of legal involvement, with the consequent expansion of the funds available for distribution to the disabled themselves a price worth paying? Or would the alternative procedures be unacceptably bureaucratic?

In New Zealand, the scheme continues to function. Lawyers and officials I spoke to there on a recent visit would not contemplate a return to the damages actions of the past. They are now devoting their energies to new areas of the law which were hitherto neglected : local government law, environment and town planning law, protection of citizens against unjust administration and so on.

When Sir Owen Woodhouse's report on the Australian national compensation scheme was delivered in 1974[19] it attracted the opposition of an unaccustomed trinity : the legal profession, the insurance industry and the trade union movement. At the heart of the opposition was the protection of established interests. But there was also an appeal to the contention that the notion of 'fault' is deeply ingrained in our society. It was said to offend against the general sense of community justice that people who bring accidents upon themselves should recover equally with those who are innocent victims of the fault of others. The feeling of blameworthiness and the belief that people injured wrongfully should be fully compensated is certainly one that is strongly held in Australian society and reinforced by current laws and procedures for compensation for the disabled who can prove it.

After the Bill based on the Woodhouse report in Australia reached the Commonwealth Parliament, it was referred to a Senate Committee. The committee questioned the constitutional validity of the Bill. Other assaults on the scheme arose from quarters closer to the then government. The trade union movement was concerned that its members would lose 100% accident compensation in the building industry, an advance that had just been secured by industrial litigation. Various anomalies were pointed out in the scheme. Criticism was made of the method of funding. A departmental working committee was about to produce a major report when the Labor Government was dismissed in November 1975.

On 18 November 1975 the Caretaker Government of Mr. Fraser announced its proposals for a national compensation scheme. In essence it supported the 'no-fault' entitlement in principle. However, it favoured the maintenance of common law rights and the achievement of a national scheme by co-operation with State Governments, the trade union movement and the insurance industry.[20] Following the 1975 election, the new Minister, Senator Guilfoyle, estabished a steering committee. However, no Federal legislation has been introduced. Without a change of heart among the States or, possibly, a change in the economic climate, no great progress can be anticipated towards enactment of fundamental reforms in our approach to compensation of the victims of injuries and disease. Marginal changes will continue to occur. Compensation rates will improve. The scope of entitlements and of those embraced by no-fault legislation will continue to expand. Reforms of the more fundamental kind for the compensation of the disabled as proposed by the National Committee of Inquiry do not appear to be on the legislative horizon in Australia.

One law teacher in Australia has recently suggested new and urgent reasons that are now building up requiring attention to reform of accident compensation law. First amongst these are the pressures of inflation, huge verdicts and the stress these place upon the insurance approach to compensating the disabled who can prove a case:

> Clearly the common law cannot be left to itself, mainly for the reasons that have been eloquently expressed in the Woodhouse Report, but also because of the increasing stresses that the insurance system is coming under as inflation continues and the courts go even further in refining the methods by which they calculate full restitution. In the consideration and analysis of the problems and possible solutions to this pressing social issue, the Woodhouse proposals will remain of major importance. ...[21]

Tasmania, Victoria, South Australia and the Northern Territory have now introduced various forms of no-fault compensation for the victims of accidents. The scope of social security in the modern state continues to expand. Society grows increasingly intolerant of the injustices inherent in the fault principle. Unacceptable legal anomalies may be curred by ad hoc legislation along the lines proposed at the Legal Convention for annual awards of damages. But the fundamental problem remains for the handicapped victims of accidents, the maimed and their relatives, the deceased and their dependants. There would seem to me to be little doubt that no-fault liability schemes will continue to exert their influence in Australia. Whether they should be to the exclusion of common law and other rights is a matter of judgment. The Pearson Royal Commission in Britain thought not.

Mr. Justice Woodhouse in New Zealand thought that without the demise of the mentality of damages actions and the construction of a universal social welfare compensation attitude, an effective alternative approach could simply not be built and accepted throughout society. Whilst some people get big verdicts, the acceptance of a more modest but comprehensive and universal compensation scheme is difficult to sell.

The last part of the 20th century will undoubtedly see the continuation of these debates in Australia. It seems likely that we will give further attention to the prevention of accidents causing disability. Perhaps we will establish a National Safety Office as has been done in the United States. Prevention is plainly better than cure and rehabilition after the event should attract the support of the law. New attention will be given to the scope of the Commonwealth's constitutional power in Australia to expedite the modernisation, simplification and uniformity of safety laws, particularly in interstate industry. The Federal Arbitration Commission may come to have an increasing role as the concerns of the unions and their advocates become more diverse, focused on conditions and safety as well as wages and money compensation.

CONCLUSIONS

The law as it affects the handicapped has only a small part to play. Nevertheless, enough has been said to make it plain that some laws should be repealed, others modified and others enacted to promote a society more sensitive to the needs of the disabled. Law reform is certainly no panacea for the problems of disabled persons in Australia. But one value of the International Year of Disabled Persons is that it requires each of us, in his own vocation, to look to the ways in which he or she can promote a kindlier and more supportive and co-operative society. Law reform bodies can play a part in helping busy parliaments and distracted politicans. They can point the way ahead. They can mobilize expert and community opinion and can identify problem areas in the law. I hope that the future of the Australian Law Reform Commission will see, long after the Year of Disabled Persons has passed into history, a continuing, useful role in helping the Federal Parliament adapt our laws to the needs and opportunities of the disabled in our country.

FOOTNOTES

1. S. Downes, 'Development with Dignity', The Age, 5 December 1980.

2. 'Faith and Morals', the Listener, 12 March 1981, 344.

3. ibid.

4. Reported, The Sydney Morning Herald, 9 February 1981, 9.

5. ibid.

6. ibid.

7. G. Jones, 'Injustice to the Aged', Sydney Morning Herald 20 January 1981, 6.

8. The report of a group of psychiatrists affiliated with the NSW Branch of the Australian Medical Association, cited in 'Forgotten Group', an editorial in the Sydney Morning Herald, 2 December 1980, 6.

9. M.D. Kirby, 'Law Reform and the Disabled', National Association for Retraining Disabled in Office Work, Annual Presentation of NADOW Awards, Sydney, February 1980.

10. M.D. Kirby, 'Mental Health Law Reform', 20th Barton Pope Lecture, Adelaide, September 1980, mimeo.

11. 47 LW 4689 (1979).

12. id., 4693.

13. As cited in The Age, 6 March, 1981 14.

14. Mr. Justice Lee in the case of Debbie Skow, reported in The Age, 11 July 1981, 1.

15. Chief Justice Forster, Jabanabi v. A.M.P. Insurance, noted [1980] Reform 57.

16. J. Sher, 'Damages for Personal Injuries : Current Developments, Future Trends and Suggested Reforms', a paper presented on 7 July 1981 at the 21st Australian Legal Convention Hobart, mimeo, to be published in the Australian Law Journal.

17. ibid.

18. H. Luntz cited in The Age, 8 July 1981, 16.

19. National Committee of Inquiry into Compensation and Rehabilitation in Australia, AGPS, 1974 (the Woodhouse Report).

20. Australian Financial Review, 18 November 1981, 1, 13.

21. J. Keeler, book review (1981) 7 Adelaide Law Review 526, 538.