

AUSTRALIAN LAW JOURNAL

BOOK REVIEWS

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Knightley Media, GPO Box 3021 Canberra, ACT, 2601 - One
100 - 3 day hire \$33.

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Discrimination" Forum/Workshop - Collected Papers: Available
Law Institute of Victoria: *Gratis*

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Epidemic: Report of the Inquiry into HIV and AIDS
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These are three items of relevance to the AIDS epidemic. The legal consequences of that epidemic have been noted in earlier contributions to this Journal (see eg 60 ALJ 324). A growing body of case law is bringing home to lawyers the reality of the epidemic and its social and legal implications. Recently the *Law Society Journal*, published by the Law Society of New South Wales, contained a forum of papers on the legal issues presented by HIV and AIDS. See (1992) 30 NSW Law Soc J #4, 56. It is in this context that the three items reviewed here must be considered.

The video cassette was produced by the staff of the newest Medical School in Britain, at Leicester. It is one of a series of videos designed to provide information in graphic, visual form to professional audiences throughout the English-speaking world. The instant cassette was released in Australia and New Zealand in January 1992. It contains information about the epidemic as at

November 1991.

The first thing to say is that, although offered for review in this Journal, the video has no specific legal content. The Advisory Board for its production comprised healthcare workers in various disciplines: only two in the area of health promotion. That defines the content of the presentation and the limitation of its usefulness to a specifically legal audience.

The most outstanding aspect of the video is the graphical presentation it affords of the insidious way in which the human immunodeficiency virus (HIV) attacks the immune system of the subject and gradually gains control until it destroys the host. The computer-graphics and animation are the best I have seen - and attending many international conferences on AIDS, I have witnessed a vast array of slides and diagrams. They are the constant armoury of scientific speakers. For those who know very little about the body's immune system, the nature of HIV and its impact on an individual, this video is an outstanding introduction. It starts with a description of the sexual, non-sexual and perinatal modes of transmission of HIV. This is followed by an explanation of the biology of the virus, including its life cycle and its inter-action with the human immune system. There is then a description, with appropriate film illustrations, of the opportunistic infections, cancers and other systems that attend the spread of the disease in individual human subjects.

The variety of tests which are available to ascertain the presence of the virus (including the defects of such tests and the "window period" before the necessary antibodies appear) are thoroughly explained. The point is then made that the treatments which are available, although useful, promise no cure. Indeed, the video explains the enormous difficulties of ever securing a treatment which wholly extracts such a variable, mutating virus from the

subject. There is an examination of the prospects of vaccination which look much more promising than cure. A reasonably candid exploration followed of the modes of prevention of the spread of the virus in perinatal and non-sexual, medical and sexual activities. This is followed by a plain-speaking explanation of the precautions which must be followed by travellers venturing to areas of the world where HIV is prevalent. Procedures for testing for HIV and the services available to persons living with AIDS in England are examined. The graphics on sexual activity are explicit without being prurient. There is no on-camera exploration of the actual predicament of persons with HIV. The same innocuous filmclips are repeated several times. The whole exercise has a clinical, almost dehumanised air. Perhaps that is what happens in a Royal Infirmary.

Various criticisms could be ventured of the video. The sales promotion put out by the agents lists the range of HIV/AIDS litigation which may arise. But anyone purchasing the video in the hope of having clarification of the legal issues will be disappointed. There is no mention of such issues, still less exploration.

The video mentions homosexual modes of transmission but it is overwhelmingly about heterosexual activities. Whilst this secures top marks for non-discrimination, it scarcely reflects the major concerns which have so far faced countries such as Britain, the United States, Australia and New Zealand. A more candid treatment of homosexual and bisexual HIV transmission would have been more relevant, at least to the problems which the legal system is now facing.

The lack of any real exploration of social and individual problems of interest to lawyers perhaps reflects nothing more than the limited object of the video. This is to explain this strange new

virus and to explore its pathology, mainly to a health care audience.

This is not to say that the video is of no use to lawyers. Most lawyers know little or nothing about HIV and AIDS. For a rapid briefing on the medical side, they could scarcely do better than to watch this half-hour film. Perhaps it will provoke a legal group in Australia to produce a similar briefing film on some of the legal problems which have already arisen in connection with HIV/AIDS.

There is another utility in the video. Sound policies and good judicial decisions on HIV/AIDS will only be achieved if they are based upon a thorough understanding of the epidemic, and of the virus, which overwhelming scientific opinion believes is its cause. Good laws, like good ethics, will be grounded in a thorough understanding of the scientific data. So far as I could see this video provides its audience with the necessary scientific material presented in a graphic, simple way. The low-key matter-of-fact approach of the commentator cannot take away the horrendous implications of this new and unexpected phenomenon.

The collection of papers given to a forum on the same topic in Melbourne in July 1991 has only now been published by the Law Institute of Victoria. After introductory remarks by this reviewer, the session began with a talk by a patient (not homosexual) who had been diagnosed HIV positive. He presented the audience of lawyers and non-lawyers with the acute dilemma of HIV/AIDS as it affects an individual and society.

This contribution was followed by one by Ms Bebe Loff of the Health Department of Victoria. This put the responses to AIDS in the context of that State's general public health law strategies.

There then followed a presentation by Ms Angela Palombo, Solicitor, on behalf of the Fitzroy Legal Service. In the nature of

his activities, that Service has to deal with many people living with HIV/AIDS. Ms Palombo recounted the kinds of problems she had encountered, including with insurers, prison officials and employers guilty of various horrors of unjustifiable discrimination.

This contribution led naturally to the next paper by Ms Meg Green of the ANZ Banking Group Limited. She explained the enlightened strategies adopted by that employer. Dr Peter Meese, a specialist in HIV treatment, described what it is like to treat and counsel people living with AIDS. The session was rounded off with a contribution by Ms Moira Rayner, Victoria's Equal Opportunity Commissioner. She explained the steps being taken in Victoria to secure effective protection by anti-discrimination laws and practices of HIV infected persons.

Although this record has all the defects of a verbatim transcript of a public seminar, it also has the authenticity of a multi-disciplinary examination of some of the social problems HIV/AIDS presents to the Australian community and its lawyers. The boldest represents an excellent initiative of the Young Lawyers Section of the Victorian Law Institute. It may be hoped that there will be similar initiatives in other States of Australia, equally enlightened.

In New South Wales, the Anti-Discrimination Board has now released its report of the inquiry into discrimination related to HIV and AIDS. The report opens with the arresting assertion of the ironical fact that whilst people discriminate, the HIV virus does not. The report collects the various forms of discrimination against people who are HIV positive and who have brought their concerns to the attention of the Board. The illustrations from the case records of the Board are shattering to those who still nurture the illusion

that Australia is a generally tolerant society dedicated to a fair-go for all. Even more disturbing is the ignorance displayed in the instances cited concerning even the rudiments of HIV, its modes of transmission and consequences for persons infected. The report contains useful recommendations on educational initiatives in schools and in the public media. There are also recommendations concerning HIV testing in employment, the provision of services to infected persons and the right to confidentiality in medical investigations.

From the point of view of lawyers, the most relevant part of the report is the section which provides an analysis of the current provisions of the *Public Health Act 1991 (NSW)* and the *Crimes Act 1900 (NSW)*. Recommendations for the amendment of these Acts and of the *Drug Misuse and Trafficking Act* are put forward. In respect of all of the recommendations, times are fixed by the Board within which it is proposed that the New South Wales Government's considerations should be completed. Time will tell whether these ideals are met by the political process.

The report concludes that the *Anti-Discrimination Act 1977 (NSW)*, as presently written, is inadequate to address the new and unpredicted problems raised by HIV and AIDS. Specific proposals are made for the removal of the "considerable doubt" as to whether asymptomatic HIV-positive status is covered by the definition of "physical impairment" under the Act (s 49A(1)).

The report is very clearly written and presented. It was launched by Professor Peter Baume, who played such a notable rôle in Federal Parliament in shaping Australia's bipartisan response to HIV/AIDS. The report is under the close attention of the New South Wales Government. It contains much material that would be of use in other States of Australia. For those remaining lawyers who have a lingering doubt about the need for anti-discrimination law, it may be

recommended that they sit down with this report and read the horrors which are inflicted by their fellow citizens on people suffering from HIV or imputed to have this condition. Balancing society's legitimate responses, out of self-protection, to the HIV epidemic with individual rights is difficult enough. Hate and ignorance should be taken out of the equation. This report illustrates the long struggle that lies ahead. In that struggle, lawyers, such as those who contributed to this report, will have a rôle to play, just as they did alongside Dr Martin Luther King Jr in an earlier struggle against similar hatred and ignorance.