In the United States, however, the issue of the 'right to smoke' is 'hotting up'. Jenni Hewett (*Sydney Morning Herald*, 15 May 1985) reports that a US man was allegedly kicked in the groin by a woman who had asked him either to stop smoking or leave the room at a Toastmasters' Meeting. He had refused. The man, Allan Wickman, was reported as saying:

> I don't see why people can't move if they don't like my pipe. I move if I don't like someone's body odour. The anti-smoking zealots have become worse and worse. Smokers are already treated like blacks were in the South – down the back of the bus. And they have acquiesced too easily. I want my constitutional rights, too.

Ms Hewett reports that tobacco companies, although concerned about substantial drops in the percentage of people who smoke, have given up questioning the evidence that smoking is bad for the smoker's health. But the new battle field concerns the effect smoking has on the health of those nearby – so called passive smoking. Philip Morris and another tobacco company accuse anti-smokers of being zealots who wish to abolish smoking altogether. They have entered the fray with advertisements including one questioning the bona fides of the anti-smoking lobby:

> Obviously, one way to make smoking non-acceptable socially would be to suggest that second-hand smoke would cause disease. So it is not surprising that we are now seeing a flurry of research seeking scientific support for these suggestions.

Results of a study recently completed at the University of California in San Diego reports that in a study of American women the non-smoking wives of smoking husbands had a 2.5 times worse history of terminal heart disease than non-smoking wives of non-smoking husbands. Perhaps surprisingly in the heart disease stakes smokers themselves only have 1.5 times worse record than non-smokers. (*The Health Report*, ABC Radio, 3 June 1985) Ms Hewett reported a spate of incidents in which violence has flared over disputes over a cigarette lit in a public place. The violence might come from either party. According to Ms Hewett, the United States is not quite Constantinople in the early 17th century where smokers were routinely executed. But in San Francisco smoking in an office is now illegal if one person objects, and Boeing now prohibits smoking on the job.

defamation

> I can assure you that a badly-cut coat would be the means of closing more doors upon you than would a doubtful reputation.
>
> Max O'Rell, *John Bull and Co*, 1894

a uniform approach? Uniform defamation law has been removed from the agenda of the Standing Committee of Attorneys-General (SCAG). The issue had been on the agenda since soon after the Australian Law Reform Commission presented its Report on *Unfair Publication: Defamation and Privacy* in 1979. The Federal and State Attorneys-General were unable to agree about a number of issues. The most notable was whether the defence of truth should defeat a defamation action, or whether it should be necessary to go further and show that the publication had not only been true but also for the public benefit, or some such.

After the SCAG decision in May the Victorian Attorney-General Mr Jim Kennan QC commented:

> Everyone agrees that uniform defamation laws are desirable but we have been unable to agree in particular on the central issue of the defence of justification. In Victoria it is truth alone but in some other States it also includes public interest or benefit.

He said that in the meantime there was a need to consider the desirability of amendments to Victoria's defamation laws.

alrc recommendations. The Commission in its 1979 Report (ALRC11) examined possible methods of enacting its recommendations. It said that ideally, from a legal point of view, there ought to be a reference of power by

each State to enable the Commonwealth to enact a single law covering all cases of unfair publication. In default of such references, the Commission argued, there were two alternatives. The first was reliance by the Commonwealth upon its existing constitutional powers. It said that those powers would probably support a law regulating publication:

- by the electronic media;
- by trading corporations, including most newspapers;
- under the external affairs power;
- in the course of interstate trade and commerce; and
- in the Territories.

The Commission argued that those categories covered the vast majority of cases. It said that the second alternative was uniform legislation enacted by each State and Territory. It is that alternative which up until now has been pursued. It will be interesting to see whether the Commonwealth now goes back to the method of implementation recommended by the ALRC, or whether, like Victoria, the Commonwealth looks to act on the Commission's recommendations only in its own land base – the Australian Capital Territory.

press reaction. Although the press had railed hard against some of the Commission's defamation proposals their editorialists were the first to volunteer at the funeral that the deceased had been 'not a bad bloke' (*Sydney Morning Herald* and *Canberra Times* 7 May 1985). The aspects of the Bill which they had most strenuously opposed were:

- provision for correction of a defamatory publication;
- proposals for an action in respect of defamation of the recently deceased (with the remedy not extending to damages, but being confined to correction).

The Federal Attorney-General argued in a letter to the *Sydney Morning Herald* (9 May 1985) that the paper, in rueing the demise of the uniform defamation project, was guilty of inconsistency.

in the public interest. The now retired Chief Justice of the ACT Sir Richard Blackburn earlier this year found for Comalco in a defamation action against the ABC. The case concerned a Four Corners program broadcast in 1979. The program consisted of a film produced by Granada Television of Britain about the Aboriginal community at Weipa, the activities of Comalco there and the effect of mining development on Aborigines. That film was followed by a studio debate between an Aborigine and Comalco's General Manager at Weipa. Both Comalco and the Weipa Aboriginal community had protested in advance to the ABC about the film.

According to the judgment, the ABC did not try to establish that it believed the defamatory material was true, nor that it had exercised reasonable care. Rather it argued that the defence of qualified privilege was made out as the broadcast was the subject of public interest made to the general public by journalists in the course of their duties. Sir Richard Blackburn found there was no legal basis for such a defence, saying that there was not any duty in law on the ABC to publish the program nor a corresponding interest in the viewers seeing it.

The ABC also argued that it had a duty to inform Australian viewers about what was being said in Britain about Australia. The trial judge said that the evidence showed that the principal reason for telecasting the program was not that it gave insights into the view of Australia held overseas 'but rather that it treated matters of public interest in a way which provided good television viewing and at the same time raised issues for consideration and judgment by the viewers'. Sir Richard said that in any event the claim to qualified privilege or fair comment would be defeated on the basis of malice in that the ABC did not believe the truth of the imputations made in the broadcast program. It did not matter whether or not Granada Tele-

vision had believed in them, he said. The ABC has appealed to the Full Bench of the Federal Court. (*Australian Financial Review*, 19 March 1985)

regulatory framework of the financial sector

> The Australian fiscal system which has evolved since World War II may then be seen as one which maximises the amount of political noise and minimises the degree of electoral accountability, financial responsibility, economic efficiency and effective policy choice.
>
> The Hon Justice Else-Mitchell, in Aldred & Wilkes, *A Fractured Federation?*

blurred boundaries. On 2 May 1985 the Chairman of the National Companies and Securities Commission, Mr Henry Bosch, announced that the NCSC is examining the regulatory framework of the financial sector to assess the extent to which there are regulatory overlaps, regulatory conflicts and regulatory gaps. Mr Bosch said that the NCSC had decided that an examination of the regulatory framework of the financial sector was warranted because of the substantive changes which have occurred as a result of deregulation, advances in technology, increased competition, growing internationalisation of the markets and blurring of traditional institutional boundaries. Mr Bosch said that regulation in Australia had developed along institutional rather than functional lines because, in the past, financial institutions tended to provide discrete financial services. For example, banks engaged in what were readily identified as traditional banking activities, insurance companies in life and general insurance activities, building societies in lending to members for housing, credit unions in lending to members who were related through a common interest and stockbrokers in underwriting and dealing in securities. Consequently, regulation of financial activities was achieved by regulating the relevant category of financial institutions rather than the activity itself. Thus, he said, to a large extent, banks are regulated under the Banking Act, insurance companies under the Life Insurance and Insurance Acts, building societies and credit unions under respective State co-operative legislation and stockbrokers under the Securities Industry legislation. However, Mr Bosch added that:

> competition, deregulation and technological advance have meant that institutions are engaging more and more in activities which cross their traditional functional boundaries. As part of this process institutions are forming conglomerate groupings to cover their diverse range of financial activities and ownership. Importantly, they have brought Australia into closer contact with the developing internationalisation of financial markets. This has brought into question the appropriateness of the existing regulatory system and whether there is a need to rationalise that regulatory framework so that it relates to financial activities rather than institutions.

strong opposition mooted. The *Sydney Morning Herald* (3 May 1985) predicted that the overhaul would arouse strong opposition. It predicted that the most vehement protests would come from the various regulatory bodies as powers and jurisdictions were bound to be completely realigned and rationalised. The *Sydney Morning Herald* noted that although financial institutions and markets had been granted greater freedom in the past two years, the laws which controlled them remained fixed in a framework which was designed for different types. The Herald gave examples of the sorts of regulatory gaps which had been opened, including:

- Although the NSW Permanent Building Society is approaching its depositors for equity funds as it prepares to transform itself into a bank, it is not required to issue a prospectus. A prospectus is generally required when a company seeks public money, but the law did not envisage the possibility of a building society converting itself into a bank.
- Life insurance companies are issuing the increasingly popular investment medium of insurance bonds, but are not regulated as would be any other company or institution.