*the press.* *The Financial Review* (5 March 1987) was quick to criticise the VLRC's recommendations:

> It appears that not only can the law be an ass, but so can a Law Reform Commission . . . The football louts who destroy holidays for thousands of ordinary Australians, the drunken revellers who exploit a new-found freedom to drink in public at every New Year's celebration or every special public occasion, the crude neo-intellectuals who flaunt what they call 'freedom' and what is actually 'licence' will all benefit . . .

The Chairperson of the VLRC, David StL Kelly, responded in a letter to the Editor (6 March 1987):

> The editorial speaks of the report and the issues it dealt with as if they were concerned with 'drunkenness'. That is quite wrong. The Commission was dealing with a tiny number of cases where a jury is satisfied that the accused was so intoxicated whether by alcohol or drugs that a fundamental change took place in his mental state, which prevented him from acting voluntarily or intentionally. The closest analogy is with a person suffering from an epileptic fit or from gross concussion. The fact that a person is drunk is, and will continue to be, quite irrelevant to general criminal responsibility . . . Your suggestion that [football louts and drunken revellers will be readily acquitted] is not only false: it is dangerously irresponsible. The Commission's Report offers no solace at all for football louts and drunken revellers.

The two reports in *The Age* (5 and 19 March 1987) emphasised that the *O'Connor* rule accorded with general criminal law principles and hardly ever led to an acquittal. Nevertheless, its Editorial (30 March 1987), headed 'Law reformers get it wrong', called for the creation of 'a new offence, analogous to culpable driving or to manslaughter, for criminal acts committed while in a state of diminished responsibility' for people who offend while grossly intoxicated. This is one option that will be considered by the VLRC in the course of its new Reference.

## smokers – disappearing in a puff of smoke?

> Tobacco is a dirty weed . . .
> It satisfies no normal need . . .
> It makes you thin, it makes you lean,
> It takes the hair right off your bean
> Its the worst darn stuff I've ever seen.
> I like it.
> Tobacco, Graham Lee Hemminger

*public service.* Severe restrictions on smoking in government offices are being introduced after advice from the Attorney-General that public servants could successfully sue the Commonwealth for injuries resulting from smoking.

The Public Service Board has a policy of totally banning smoking in the work place by March 1988, but in many offices smoking will be severely restricted in the interim months. A spokeswoman for the board said that the ban would result in some savings for taxpayers.

The Attorney-General's Department advised government bodies last August that employees could sue for smoke-related injuries and that the secretary of a department had the power to ban smoking when the health and safety of employees was affected.

In a memorandum to the board the Attorney-General's office noted that smoking had been acknowledged as a health hazard by the Administrative Appeals Tribunal in several workers' compensation cases.

The director of working practices for the Public Service Board, Miss Helen Swift, said that under the common law principle of 'duty of care' employees could argue that their employers could reasonably foresee the health hazards of a smoke-filled workplace. She said the weight of

medical evidence that smoking, even passively, was dangerous, would make it hard for the public service to argue it had not foreseen a risk to workers.

Ms Swift said that savings to the taxpayer would arise as an incidental effect of the ban. She said damage to furniture and equipment would be lessened and offices would not have to be painted as often to cover nicotine stains.

Public service unions have questioned the board's ban. However, they and the ACTU agree with the principle of providing smoke-free offices.

The Victorian branch secretary of the Administrative and Clerical Officers Association, Mr Doug Lilley, said areas should be provided for workers who could not or would not quit the habit.

*inter-city trains.* Smoking will be banned on inter-city trains in NSW for a six-month trial from April 5.

This will complement the existing ban on smoking on suburban trains, and means all trains operating on the total electric network bounded by Newcastle, Lithgow and Wollongong, and including the metropolitan area, will be non-smoking. The trial ban will also apply on State Rail Authority road coaches where the journey is less than three hours.

Announcing the ban, the Minister of Transport, Mr Mulock said the trial restrictions were introduced following a review of smoking on SRA country trains and road coaches, and said they were supported by the NSW Commuter Council.

He promised that the reactions of passengers to the ban would be closely monitored.

The chief executive of the Tobacco Institute of Australia, Dr Blair Hunt, said polls showed that Mr Mulock should actually allow smoking on suburban trains rather than ban it on inter-city trains. He said a survey conducted for the Institute last year showed Sydney people supported the idea of providing carriages for smokers on the suburban network.

It was fair to presume that people would want the same on inter-city routes.

'Support came from non-smokers as well as smokers', he said.

'Respondents who agreed with the proposition agreed that it was a smoker's right or choice to smoke on trains, particularly on the longer journeys'.

Dr Hunt also said the move was further evidence of the failure of anti-smoking compaigns in trying to persuade smokers to give up, 'so now the smoker is going to be bludgeoned into quitting'.

*deny treatment?* Some members of the medical profession do not agree with the views of the Tobacco Institute.

Patients who keep smoking after they have been in hospital for tobacco-related diseases could be denied readmission in the future, a senior thoracic physician has warned.

'Can we continue to afford persistent smokers in under-funded, resource-scarce public hospitals?' Dr Peter Gianoutsos asks.

'Premiers, ministers of health, hospital administrators, surgeons and physicians may all be obliged to make a decision regarding the readmission to hospital of patients with acute exacerbations of airways obstruction and other smoking-related diseases who continue to smoke,' he says.

'It is possible to envisage in the not-too-distant future circumstances in which hospital beds may no longer be available for those who continue to smoke. This may seem far-fetched but relates to the rational and principled apportionment of medical therapy for individuals.'

By way of example, Dr Gianoutsos, of the Royal Prince Alfred Hospital, says neonatal doctors may consider it a gross misuse of resources to give these patients a bed while babies who need intensive care have to be transported 160 kilometres in order to be treated.

Dr Gianoutsos's comments appeared in the *Medical Journal of Australia*. He wrote about a study which found that 22% of patients with chronic respiratory illness had continued smoking despite advanced lung disease.

The study, conducted by the departments of psychiatry and medicine at the Flinders Medical Centre in Adelaide, says these patients continued smoking despite medical advice.

He says it was well documented that continued smoking contributed to the frequency and severity of acute exacerbations of obstructive airways disease.

In a separate article, the executive director of health promotion for the West Australian Health Department, Mr Michael Daube, estimates that by the year 2001 about one million Australians will have died from smoking-related diseases.

Mr Daube strongly criticises the tobacco industry and said its biggest achievement was that it still was regarded as respectable.

## odds and ends

*community involvement and law reform in NSW*. The NSWLRC is currently inviting and encouraging more widespread public involvement in its Community Law Reform Program (CLRP). The program was established in 1982 to allow the Commission to respond to suggestions for reform emanating from the general public. Before 1982 the Commission had no formal way of responding to the many suggestions for reform which it received from judges, legal practitioners and other members of the community and it was felt that a valuable source of ideas for law reform was being neglected.

The idea for broadly based community involvement in law reform arose from a proposal made by the ALRC in its Annual Report for 1980, that it should act as a clearing house for the collection and dissemination of suggestions for reform to the various state law reform authorities. In 1982 the NSW Commission took up the idea and was authorised by the Attorney-General to receive and inquire into suggestions for law reform received from the public. The CLRP allows the Commission to conduct preliminary investigations into these issues, and where appropriate, request a formal reference from the Attorney-General.

As part of the current drive, the Commission has produced a pamphlet entitled 'The Community Law Reform Program: An Invitation to Reform', which has been distributed to legal centres throughout New South Wales, as well as to government departments, members of state parliament and a wide range of community and social welfare organisations. The pamphlet carries a brief outline of the purposes of community law reform, and also suggests how individuals may contribute.

The intention behind the renewed publicity for the CLRP is not only to encourage suggestions from the public, but also to establish contact with community groups to provide a network through which the Commission can work in the future. Thus,