

FINAL REPORT CALLS FOR HIV/AIDS LAW REFORM

The AIDS epidemic presents the Australian community with wide-ranging ethical, social and political challenges. It has also created significant ramifications for our legal system. Alison Orme discusses the release of a final report by the Legal Working Party of the Intergovernmental Committee on AIDS. The recommendations are for adoption by Commonwealth, State and Territory governments.

HIV/AIDS and the law

A final report recommending reform of Australian laws in light of the HIV/AIDS epidemic was released in November last year by the Intergovernmental Committee on AIDS. The report canvasses disparate areas of the law, such as public health, homosexuality, civil liability, employment, therapeutic goods and injecting drug use.

This breadth is indicative of the broad challenges facing the law in light of the HIV/AIDS epidemic. The following is just a sample of some of the issues which the final report tackles:

- **Public health.** How should public health laws relating to the control of infectious diseases be amended to promote the fine balance required between individual human rights and the need to protect the community from HIV infection?
- **The media.** What steps should be taken to alter the regulation of the Australian media to ensure that HIV/AIDS health campaigns are not subject to inappropriate censorship, while on the other hand ensuring that people living with HIV/AIDS are protected from unjustified media incursions into their private lives?
- **Sex workers and their clients.** What impact do laws criminalising the sex industry have on the ability of sex workers and health educators to ensure a safe working environment?

- **Anti-discrimination law.** What changes are required to existing human rights legislation to allow people living with HIV/AIDS to lodge complaints about the discrimination they so often face, in areas like health care and employment?
- **Injecting drug use.** How should laws which deal with injecting drug use be modified to facilitate the operation of needle and syringe distribution and exchange programs, which have been crucial to Australia's success in minimising HIV/AIDS infection rates among people who inject drugs?

The process

The need for a review of the impact of HIV/AIDS on the law was identified in Australia's policy blueprint on HIV/AIDS — *The National HIV/AIDS Strategy* ('the White Paper'), released in 1989. The recommendations in the White Paper on the law were largely based on the report of the panel on 'Discrimination and other Legal Issues', which held public hearings in each capital city. The White Paper recommended the establishment of the Legal Working Party of the Intergovernmental Committee on AIDS. Membership of the Legal Working Party consists of legal policy experts from Commonwealth, State and Territory Departments of Health and Attorneys-General.

The urgency of the epidemic demanded a law reform process which, while thorough in its consultative mechanisms, was also speedier than the usual pace of law reform in Australia. The Legal Working Party

published nine comprehensive discussion papers in a little over two years. These papers cover public health law, civil liability for HIV transmission, anti-discrimination legislation, homosexuality, sex workers and their clients, employment law, injecting drug use, therapeutic goods and media law.

The Working Party invited public comment in the form of written submissions on the proposals for law reform identified in these papers. Over 300 submissions arrived and the Working Party redrafted its preferred options on the basis of these submissions. The plan is to place the final report before meetings of Commonwealth, State and Territory Attorneys-General and Health Ministers for adoption of the report's recommendations.

This process of comprehensively reviewing Australia's laws in response to HIV/AIDS is unique internationally. It also reflects the Australian community's innovative and largely successful approach to the epidemic, which has promoted our recognition as a world leader in managing the disease.

Copies of the *Discussion Papers* and the *Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS* can be obtained by phoning Helen Couper, Department of Health, Housing and Community Services on (06) 289 7969.

Guiding principles

The Legal Working Party had to confront the difficult task of preparing balanced law reform proposals in an often politically charged and emotive climate. It adopted certain guiding principles in pursuing its task. The *National HIV/AIDS Strategy* identifies the role of the law as complementing and assisting education and other public health measures. Other principles which helped to frame the final recommendations are:

- that law reform should take a rational, humane and responsive approach to the problems of the epidemic;
- that laws specially created to deal with HIV/AIDS alone require particular justification; and
- that reform measures should be as uniform as possible across the different jurisdictions, to deal with an epidemic which does not recognise political or geographic boundaries and to ensure that consistent recognition is given to the rights of all Australians.