reason is invalid under the Australian Constitution. This issue has yet to be litigated.

The injustice of the damages ceiling is compounded by the absence in the Act of a provision allowing interest to accrue on damages. Also absent are other provisions which would provide incentives for early settlement, particularly once liability has been established.[9]

The limitation period the Act prescribes for making complaints is another deficiency identified by the AIS case. Complaints must be made within six months of the discriminatory conduct occurring, although the President of the ADB has a discretion to accept complaints after this time 'on good cause being shown' (s.88(4)). For people who are not aware of the Act, and people from another culture who do not speak English would loom large in this category, the six month requirement is clearly unreasonable. The complaints of many of the AIS women were made well after the discriminatory conduct of the late 1970s and early 1980s. Most of the women did not know they had a right to complain to the ADB until many years later; some who did know were afraid to complain. Although there is a discretion to accept 'late' complaints, it is not clear how far this could reasonably be taken and to date, there has been no litigation as to what might constitute 'good cause'. The lateness of many of the complaints was taken into account in discounting the amount of compensation they were paid in the settlement.

Law reform

Finally, the AIS case is important in showing areas of the law that still require reform. The NSW Law Reform Commission is currently carrying out a 'Review of the Anti-Discrimination Act, 1977'. The Commission released a discussion paper in February 1993 and will soon be releasing a further discussion paper containing tentative proposals for reform. Submissions have been made to it that specifically draw on lessons learned from the AIS case. It is likely that the Commission will make recommendations consistent with these lessons with respect to damages, reversing the onus of proof of reasonableness and others. The question then will be whether there is the necessary commitment on the part of the Government to implement these recommendations. Given that the Government has recently increased the ADB's funding and has introduced legislation amending the *ADA* in several significant respects, there is room for optimism.

References

1. For discussion of the campaign, see Fredericks, Karen, 'Jobs for women: how BHP was made to change its tune', *Green Left Weekly*, 9 March 1994.
2. Tongue, Sue, 'Indirect Discrimination: Some recent overseas cases and developments', Occasional Paper No. 6, Sex Discrimination Commissioner, Papers from the *Indirect Discrimination and the Sex Discrimination Act Seminar*, Human Rights and Equal Opportunity Commission, Sydney, June 1991 at p.41.
3. Mason, Chloe, 'Investigating Indirect Discrimination' in Occasional Paper No.6, above, p.52.
4. *Human Rights and Equal Opportunity Commission v Mount Isa Mines* (1993) 118 ALR 80 (Full Federal Court), and in the United States, *International Union, UAW et al v Johnson Controls Inc.* 111 S.Ct. 1196 (1991).
5. Identical or similar definitions also appear in: s.5(2) *SDA* (Cth); s.8(2) *Equal Opportunity Act 1984* (WA); s.17(5) *Equal Opportunity Act 1984* (Vic.); s.29(2) *Equal Opportunity Act 1984* (SA). The Queensland and ACT provisions differ in various respects: s.11 *Anti-Discrimination Act 1991* (Qld); s.8 *Discrimination Act 1991* (ACT).
6. Basten, John, 'Indirect Discrimination and the Sex Discrimination Act', Occasional Paper No. 6, above, p.6. This paper contains a detailed discussion of the aspects of indirect discrimination discussed below; Hunter, Rosemary, 'Discrimination: Women v AIS', (1990) 15 *LSB* 40.
7. For discussion of a Western Australian case applying these aspects of the AIS judgment, see Hocking, Barbara, 'Steps in the Obstacle Race' (1991) 16 *LSB* 144.
8. Basten, J., above, pp.16-17, who also argues that the defence should be more restrictive than mere 'reasonableness'.
9. Bernstein, Jodi, 'The long wait for justice', *Sydney Morning Herald*, 17.3.94.

Letters

Dear Editor,

I recently received your invitation to re-subscribe to the *Alternative Law Journal*. I have decided not to do so, and thought you may be interested to know why.

I was a keen reader of the *Legal Services Bulletin* (sic) from its inception some 20 years ago. I have always been sympathetic to the protection of minority interests and the defence of the oppressed. In the 1970s that meant women and children, aboriginals, gays and lesbians and prisoners. Except for prisoners, who will be mistreated and abused so long as there are prisons, all of these groups now have substantial power and impressive advocates. They are no longer, unequivocally, 'the oppressed'.

I get a tired deja vu feeling reading the *Alternative Law Journal*. Now, in the 1990s, it is *still* pushing the claims of women against men, Aboriginals against whites, gays and lesbians against heterosexuals and children against their parents. There is, so far as I can tell, no critical analysis within the Journal of whether these politically correct polarisations still represent the oppressed.

Wake up, *Alternative Law Journal*! What about the inequities against men perpetrated through Family Law? What about the displacement of poor inner city whites by programmes to advance urban blacks? What about the injustices now evident in the health and welfare systems as a result of the promotion of a gay and lesbian agenda? What about the disruption to family life by the over-publicising of children's rights vis a vis their parents? What about the abuses of psychiatric patients?

Get off your backsides and think critically again.

Hal Ginges
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References

1. See, generally, Graycar, Regina and Morgan, Jennifer, *The Hidden Gender of Law*, Federation Press, Sydney, 1990; Scutt, Jocelynne, *Women and The Law*, Law Book Company, Sydney, 1990; Dahl, Tove Stang, *Women's Law: An Introduction to Feminist Jurisprudence*, Norwegian University Press, Oxford University Press, 1988; O'Donovan, Katherine, *Sexual Divisions in Law*, Weidenfield and Nicolson, London, 1985.
2. See respectively, *Commonwealth v Tasmania* (the *Tasmanian Dam case*) (1983) 158 CLR 1 at 51; *Parramatta City Council v Brickworks Ltd* (1970) 72 SR (NSW) 642; *R v Murphy (1986)* 64 ALR 498; *United States Tobacco Company v Minister For Consumer Affairs* (1988) 20 FCR 520; *Bropho v Tickner (1993)* 40 FCR 165 at 172-3.
3. See *Corporate Affairs Commission v Bradley; Commonwealth of Australia (intervenor)* [1974] 1 NSWLR 391; *R v Murphy*, above; *United States Tobacco Company v Minister for Consumer Affairs*, above.
4. See Krislov, S., 'The Amicus Curiae Brief; From Friendship to Advocacy' (1963) 72 *Yale LJ* 694.
5. Supreme Court of Victoria, Court of Criminal Appeal, (unreported, 11 December 1991). Other examples: *R v Seaboyer* (1991) 48 OAC 81; *Canadian Newspapers Co. Ltd v AG of Canada* (1985) 17 CCC (3d) 385. For further discussion see Fudge, 'The Public Private Distinction: The Possibilities of and the Limits to the Use of Charter Litigation to Further Feminist Struggles' (1987) 25 *Osgoode Hall Law Journal* 485, 527 ff.
6. The recent High Court decision in *Capital Duplicators Pty Ltd v Australian Capital Territory [No.2]* (1993) 118 ALR 1, a constitutional tax case involving pornographic videos, is also a good example. It was possible that the Court could make an assessment of whether the videos were 'harmful' to the public. Ultimately, the case did not turn on this point, however, we argue that such an assessment would be inappropriate in the absence of representations from women's groups. See Toohey and Gaudron JJ at 42-3. See also the Canadian case *Andrews v Law Society of British Columbia* (1989) 56 DLR (4th) 1, a case involving discrimination against a man on the grounds of citizenship. Intervention was permitted, given the likelihood that the Supreme Court would formulate general statements about the nature of equality rights in the Charter.
7. See Fudge, above.
8. See, for example, McHugh J., 'The Law-making Function of the Judicial Process' (1988) 62 *ALJ* 15; Mason CJ, 'Changing the Law in a Changing Society' (1993) 67 *ALJ* 568; Lord Reid, 'The Judge as Lawmaker' (1972) 12 *JSPTL* 22.

Letters

Dear Editor

I should like to acknowledge Beth Wilson's useful review of my book *Community Mental Health* (in (1994) 19(2) *Alt.LJ* 97) and would like to comment on two matters raised in the review.

With regard to Beth Wilson's point that only NSW was treated in detail in the chapter on law and mental illness I should like to point out that all Australian States' legislation is required to be changed by 1998 in accordance with the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (Report of the National Inquiry into Human Rights of People with Mental Illness* [Burdekin Report] 1993, p.31 and pp.989-1005). These required changes are significant because, as the Human Rights and Equal Opportunity Commission states in its *Mental Health Legislation and Human Rights* (1992: p.1), 'The legislation in every Australian jurisdiction breaches the standards prescribed in the UN Principles in a number of ways. In some jurisdictions these breaches constitute fundamental violations of basic human rights.' Of all Australian States the NSW legislation comes closest to these UN Principles and is therefore the least likely to be changed. This is why it was dealt with at length in the chapter. There seems little point in introducing mental health students to legislation which is unlikely to remain for long on the statute books and therefore I dealt with the other States' legislation in tabular form. Beth Wilson in her review states that the table conveys a misleading impression in regard to the involuntary admission criteria in Victoria. However, even given the potential for oversimplifying the statutory provision for involuntary admission I do not believe the table does convey a misleading impression if the columns in the table are read as a whole, i.e. the criteria for own health/safety, protection of the public are read in conjunction with the existence of compulsory community treatment, the latter defined in the text (p.375) as enshrining the principle of the least restrictive alternative.

Aside from the question of Victorian law, Beth Wilson makes a general point about the text being oversimplified because of the too great a range of topics covered. It is impossible for me as author to pronounce on whether such oversimplification exists as this must be decided by appropriate experts in their fields and by experienced practitioners in community mental health but I believe that it is readily apparent that the range of topics covered was essential if the integrity of the subject were to be fulfilled. Otherwise students would have been presented with an incomplete and unbalanced perspective, highly dangerous in a complex issue such as mental illness.

Alan Puckett
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