

The N.S.W. Attorney-General, Mr. Frank Walker, has expressed the hope that the N.S.W.L.R.C. reference on the Legal Profession will include a facility for public sittings. Such a facility was provided by another N.S.W. Inquiry. This is the inquiry being conducted by Mr. E.A. Lusher Q.C. concerning the introduction of Casinos into N.S.W. One participant before Mr. Lusher even sought (unsuccessfully) an order from the Supreme Court of N.S.W. to control the proceedings of the Inquiry.

Mr. Justice Nagle, presently conducting the Royal Commission into N.S.W. Prisons, is reported to have said that the "inquiry is in danger of being aborted by cumbersome legal procedures". (Daily Telegraph, 30 Nov. 1976).

It would be much more comfortable to keep the public out and leave it to experts. That was the way of the past. The latest Memorandum of the Scottish Law Commission (No. 32) suggests that it may still be the view in the United Kingdom (p.46). It is not the view now widely held in Australia. But as the demand for public participation in the lawmaking process increases and open government take further strides, new machinery will be needed to facilitate the reception of evidence and ideas from the community. Is this a future task for law reform, close to its heart? The Alberta L.R.R. in 1972 produced a Report on public inquiries. The India L.C. in 1962 produced a like report. The time is surely approaching when an Australian project on this subject will be needed.

Privacy : What's Happening?

"Q. How would you sum up the campaign? What have been the important themes?

A. There ought to be additional openness in Government. Strip away secrecy. Have a greater respect for personal privacy."

Mr. J. Carter,
President-Elect of the United States,
November 1976.

"As every man goes through life he fills in a number of forms for the record, each containing a number of questions ... There are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web. ... They are not visible, they are not material, but every man is constantly aware of their existence. ... Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads".

Alexander Solzhenitsyn
- The Cancer Ward

On 15 December 1976, Federal Attorney-General Ellicott opened the first meeting of the Administrative Review Council. The Council, established under the Administrative Appeals Tribunal Act 1975, has functions which include the overall review of administrative decisions and procedures of the Commonwealth of Australia. The President of the Council is Mr. Justice Brennan, who is President of the Administrative Appeals Tribunal. The A.L.R.C. Chairman and the Federal Ombudsman are ex-officio members. Other members include senior Public Servants and persons with a background in business and law.

In opening the Council, the Attorney stressed the need to see the developments in administrative law as part of a total reform of administrative law and procedure. He also foreshadowed legislation to simplify administrative procedures which would complete what is nothing less than a revolution in Australian administrative law. It is a happy sign that this revolution has been achieved with bi-partisan support of successive governments and based upon important reports to different Commonwealth Governments.

In his opening speech, Mr. Ellicott referred to other moves being taken, including the Privacy Reference to the A.L.R.C. These should also be seen as part of a total initiative. He mentioned the proposal to introduce freedom of information legislation in Australia as well as the Privacy Reference. He expressed the hope that "all of these initiatives will come together hopefully in the next twelve months".

The Attorney-General's announcement of the intention to introduce freedom of information legislation in 1977 was closely followed by the announced intention to establish a Human Rights Commission. Although the A.L.R.C. reference on Privacy does not have a time limit attached to it, it is clear that the Attorney will be looking to the A.L.R.C. for a Report in good time to include legislation on privacy in the work of the current Australian Parliament.

Well, what is the A.L.R.C. doing about it? On 8 November 1976 Mr. Justice Kirby answered this question to a meeting of more than 60 representatives from all Departments of the Commonwealth Government. His paper "The Privacy Reference : Where Are We Going?" has been widely distributed within the Commonwealth Departments. The A.L.R.C. has been concentrating its enquiry so far upon the problems of privacy as they arise in government. Most of the departments and many statutory agencies of the Commonwealth have already been visited. The Commission is also considering the problems for privacy that will be thrown up by the proposed Freedom of Information Act.

In his paper, Mr. Justice Kirby outlined the way in which Australians have tended to polarise when providing remedies against privacy intrusion. Some have held out for a statutory tort, enforceable in the courts, to redress substantial and unreasonable intrusions into privacy. Others have argued for watchdog committees modelled on the N.S.W. Privacy Committee. The A.L.R.C. Chairman has asked whether, in addition to specific remedies, a general remedy could not be provided, fusing these two models.

Since the Chairman's paper, two Bills have been received from countries grappling with the problem of privacy protection. Significantly, each of them do so in the context of a Human Rights Commission. In Canada, Bill C-25 of 1976 establishes a Canadian Human Rights Commission with powers in respect of racial and other discrimination. One Commissioner is designated as "Privacy Commissioner" (c.57) with power to receive, investigate and report on complaints from individuals who allege that they are not being accorded rights guaranteed to them in connection with information banks..

In New Zealand, a Human Rights Commission Bill was introduced in the last week of the sittings of the House of Representatives in 1976. The Bill is open for public comment and submission. It establishes a Human Rights Commission to exercise powers in relation to unlawful discrimination and in relation to privacy. The Commission has an Ombudsman-like function in respect of complaints about privacy intrusion. It may draw intrusion to the attention of the Prime Minister and suggest legislative, administrative or other action to give protection to the privacy of the individual. However, the power to investigate an individual complaint is limited. No specific access is granted to the courts.

If there is to be a Human Rights Commission in Australia, should it, like its Canadian and New Zealand counterparts, have a role in privacy protection? The proliferation of citizens' watchdogs must have limits. Not only is expense involved. Multiplicity of such bodies (especially in a federation) can only confuse the citizen and diminish the effectiveness of the watchdog's bark. The A.L.R.C. will shortly distribute study papers on the results of enquiries in the public sector. It is said that finding the problems for privacy is the easy task. Fashioning the instruments of protection is more difficult. But it would not be surprising if the A.L.R.C.'s proposed remedies included a role for the foreshadowed Human Rights Commission. Perhaps this will be combined with a facility for the enforcement of decisions, in appropriate cases, in the courts. Why the courts? The A.L.R.C. Chairman told the Commonwealth officers:

"I find it difficult to accept that there is no role for the courts in privacy protection. They have been the traditional protectors of our liberties for eight centuries ... I should be sorry to think that they are now to be hived off to old-fashioned remedies of historical interest only. Might it not be possible to combine, in an effective way, judicial and administrative remedies so that our society can respond adequately to this prime problem of the 20th Century?"

Law Reform in New Zealand

"The 1975 Annual Report of the A.L.R.C. noted that New Zealand has produced ideas of legal innovation quite disproportionate to its size and the resources devoted to its task. Gratifying though that statement may be, it should not obscure the deficiencies in many laws that remain unchanged".

Editorial [1976] N.Z.L.J. 313

This issue of *Reform* sees a more vigorous N.Z. participation than in the past. Already a large number of representatives of the N.Z. law reform committees have indicated an intention to attend the Fourth Law Reform Conference in Sydney on 1 July 1977. At the Third Conference the Australian participants expressed the unanimous hope that the participation of the N.Z.L.R.C. and P.N.G.L.R.C. would become a permanent feature of the Conference.

The *Annual Report* of the N.Z. Department of Justice 1975-76 details the voluntary, part-time organisation of law reform in New Zealand. During the year a separate Law Reform Division was established in the Ministry to service the Law Reform Council and the five Law Reform Committees. The Division will assist the Minister of Justice in securing the passage through the Government and parliamentary machinery of Bills relating to law reform. The Secretary comments:

"These duties, large as they are, leave a good deal that ought desirably to be done but that because of the division's limited numbers has had to be neglected. In particular I believe that more should be done to inform and enforce - to tell the public of legislation sponsored by the department that affects their rights and responsibilities and explain its substance in a simple and untechnical fashion and to take suitable action upon complaints that there has been a breach of the law". (p.5)

During the year under report, the "cumbersome Law Revision Commission" was replaced with a smaller and "more informal" Law Reform Council. This is made up of the Minister, the Solicitor-General, Chief Parliamentary Counsel, the Secretary for Justice and the Chairmen of the five standing Law Reform Committees.

"The Council held an initial meeting which enabled those who recommend reforms to discuss their problems with those responsible for implementing their recommendations and vice versa (pp.6-7)"

The Report points to "some modest achievements in carrying out a policy of progressive law reform". It comments that "in relation to the results achieved, the cost of law reform in New Zealand is remarkably small compared with most other countries". More "lavish expenditure" is doubted as a means of improving the quality of law reform in New Zealand but the Secretary concludes:

"What does concern me about law reform is that we are still only scratching the surface of what ought to be done, and I measure what ought to be done not by any theoretical or academic standard