

view from the west

The West can teach the East how to get a living, but the East must eventually be asked to show the West how to live.

Tehyi Hsieh, *Chinese Epigrams Inside Out and Proverbs*, 1948.

Co-operation between law commissions in consideration of proposals for Australia-wide law reform took a step forward on 10 November 1980 when the first joint public hearings were held in Perth by the Australian and Western Australian Commissions to deal with privacy law proposals. In response to invitations issued on behalf of the two bodies, some 50 written submissions were received by WALRC. At the public hearings about 20 oral submissions were made. The Chairman of the ALRC was not able to attend because of an airline strike. But the ALRC was represented by Commissioner J. Mazza, while WALRC was represented by its Chairman, Mr. D.K. Malcolm Q.C. and by Messrs. E.G. Freeman, the WA Commissioner in charge, C.W. Ogilvie and H.H. Jackson. Due to the large number of oral submissions, the Commissions sat in two separate divisions during part of the day. On the following day the two Commissions participated in a seminar on Computers, Privacy and the Law, organised by the Australian Computer Society (WA Branch) at Perth's Parmelia Hilton Hotel. The Commissions have parallel terms of reference to inquire into privacy and the two Commissions have actively co-operated together in an endeavour to complement each other's understanding of the privacy problem. The Commissions have previously co-operated in their parallel consideration of defamation law reform. As with the defamation project, the Western Australian Commission expects to submit a report shortly after the report expected from ALRC in 1981. The WALRC report will be especially concerned to evaluate the ALRC's proposals at a State level.

Other projects which WALRC has actively in hand at present include a reconsideration of the rule limiting liability for unfenced animals established in *Searle v. Wallbank*. This rule was recently affirmed by the High Court in

S.G.I.C. v. Trigwell. That decision had special significance for Western Australia whose Full Court had in *Thomson v. Nix* in 1976 held the rule in *Searle v. Wallbank* to be inapplicable in Western Australia because of the historically different social conditions applying to that State. A working paper has been issued and a report should follow early in 1981. Another area of interest common to WALRC and the Australian Commission is in respect of debt recovery law reform. Whilst the ALRC's terms of reference extend more generally, the Western Australian Commission has under active consideration a number of areas involving debt recovery ailments. A working paper on the Absconding Debtors Act has been issued recently. A review of the Local Courts Act is also well in hand. Another working paper issued by the Western Australian Commission recently deals with the *Resealing of Interstate and Foreign Grants of Probate*. The Commission tentatively suggests that resealing of interstate grants is not necessary within the Australian federal structure and that practices and procedures in relation to the resealing of overseas grants be made uniform. The Western Australian Commission has also submitted reports recently on a number of projects which are now completed. These include reports on:

- Liability of Highway Authorities for Non-Feasance.
- The Unclaimed Moneys Act.
- Compensation for Persons Detained in Custody and Subsequently Acquitted or Pardoned.

This last report is expected to receive international interest. It raises a number of problems common to criminal justice systems internationally and in which there has been considerable debate.

It is noteworthy that the WALRC composition was changed by amendments in 1978 providing for the appointment of the first full-time Commissioners to the WALRC. Those appointments were made in late 1979. The Commission is now composed of two full-time Commissioners and the three part-time Com-

missioners, one of whom is required by the Act to be a barrister or solicitor in private practice, one a legal practitioner employed by the Crown Law Department and one a member of the University of Western Australia Law Faculty. The Commission is supported by a full-time research and administrative staff. The new arrangements have now been operating for over 12 months and the WALRC reports an improved ability to service the steady flow of new references from its Attorney-General. The WA Commissioners believe that the ability to combine full-time Commissioners with the independent input from private practitioner, Crown Law and University constitutes a sound basis for prompt, independent and constructive law reform proposals.

privacy progress

I might have been a goldfish in a glass bowl for all the privacy I got.

Saki, The Innocence of Reginald.

o e c d privacy guidelines. The last quarter opened with the adoption by the Council of the Organisation for Economic Co-operation and Development in Paris of recommendations to member countries of the OECD in the form of guidelines concerning the protection of privacy and trans border flows of personal data.

The OECD Council urged member countries to 'take into account in their domestic legislation' the principles concerning the protection of privacy outlined in the guidelines. The guidelines were developed by an Expert Group chaired by the ALRC Chairman, Mr. Justice Kirby. They seek to lay down an international regime which will strike the appropriate balance between the movement of information and protection of individual privacy of personal information. Though not confined, in terms, to computerised data, the Guidelines specifically address the problem posed by the rapid movement of personal data occasioned by the linkage of computers by telecommunications ('computications'). They are now before the ALRC in its privacy inquiry.

Allowing for exceptions and supplement, the 'basic principles of national application' will be of special use to countries such as Australia which are presently designing privacy or 'data protection' laws. A list of the titles of the privacy principles adopted will give some clue as to the subject matters dealt with in the OECD Council resolutions:

- Collection limitation.
- Data quality.
- Purpose specification.
- Use limitation.
- Security safeguards.
- Openness policy.
- Individual participation.
- Accountability principles.

The key provision is the so-called 'individual participation principle'. This urges that an individual should normally have the right to obtain confirmation of whether data is held relating to him and to have such data communicated to him. This is to be done within a reasonable time, and in a manner and form and at a charge, if any, that is not excessive. This 'right of access' is the so-called 'golden rule' of modern data protection laws. It provides a common link in privacy legislation so far enacted in the Western world. Accompanying the OECD guidelines is a detailed Explanatory Memorandum. So far, the Australian Government has abstained from participating in the recommendation of the OECD, specifically to permit consultation with State Governments about their privacy initiatives. The Guidelines are placed before the international community in the attempt to promote harmonisation of the law in a technology which is at once universal and rapidly proliferating.

a l r c public hearing circuit. Within Australia, the ALRC public hearings and seminars have been completed. The last was held at the beginning of December 1980. They were an outstanding success, attended in several parts of Australia by State officials concerned with privacy laws. In Western Australia, a significant first took place, namely a joint sitting and joint seminar organised by