In the United States claims of access to early census returns have numbered millions since the last war. Access is often used to prove social security and other entitlements. Are the dangers to individual privacy arising from the universal and compulsory nature of the census such that we should be wary of preserving the individual return and permitting access to it?

Persons and organisations wishing to submit views on the A.L.R.C. suggestions can secure copy of the Discussion Paper, free of charge, by writing to Commissioner Kelly, Box 3708, G.P.O., Sydney.

Judicial Review Reviewed

> "Justice is like a train that's nearly always late."
> Y. Yevtushenko,
> *A Precocious Autobiography*, 1963.

Human rights are not just prisons and police stations. In quantum, more damage may be done to individual liberties over the bureaucratic counter. It is this realisation that has led law makers (domestic and international) to propose important reforms that will protect individual liberties in the age of big government.

In Australia, important reforms have been passed in the Commonwealth's sphere that show the way to the future. Prime Minister Fraser told a Convention in Brisbane in January 1979:

> "The Government has acted to protect the citizen against unwarranted interference by the bureaucracy. We have appointed the Ombudsman to investigate complaints, and the Administrative Appeals Tribunal now hears appeals from a wide range of bureaucratic decisions. We have also passed legislation requiring reasons to be given in writing for many administrative decisions made which affect individual citizens."

The Prime Minister was referring to the *Administrative Decisions (Judicial Review) Act* 1977. This Act was passed through Federal Parliament and assented to in August 1977. It has not yet come into operation. Senator Durack, the Federal Attorney-General, told Parliament why last year (9 November 1978):

> "The Administrative Review Council was asked to consider the question of exclusions of particular departments or agencies under that Act . . . [It] has recently completed what turned out to be a very large and difficult task and has now submitted to me a report in relation to the matter. The report is very extensive and raises a number of major questions and problems which I am just beginning to consider. The report will take a little time to consider."

The Second Annual Report of the Administrative Review Council, 1978, has now been tabled in Federal Parliament. It refers to the review by the A.R.C. of the exclusions of classes of decision from the operation of the *Judicial Review Act*. It records the discussions had with a large number of Commonwealth agencies, particularly trading corporations and meetings with the Crown Solicitor concerning judicial review of decisions made in the course of the administration of justice. Until the exclusions are settled, the Act will not come into operation. Among the important innovations of the Act (additional to the right to written reasons mentioned by the Prime Minister) are:

- the collection of the grounds of judicial review in a single Australian statute, available as an educative measure for the profession and the public;
- the simplification of review procedures replacing cumbersome old prerogative writs by a single "order for review";
- the channelling of judicial review of Commonwealth officers into the new Federal Court of Australia.

Judicial review is also in the news overseas. In Canada, the Working Paper #18 of the Law Reform Commission of Canada deals with judicial review in the Federal Court of that country. It identifies a number of problems and proposes that consideration should be given to empowering the court to join an action for damages against the Crown with proceedings for judicial review.

In England, Lord Scarman has again stressed his view that there is need for serious consideration about the necessity to introduce an effective method for judicial review of executive acts. Speaking to the Royal Institute of Public Administration, he mentioned the reluctance of English law makers to import effective judicial review in England, although this was commonplace in countries with a written constitution. He contrasted the attitudes inherent in the *Official Secrets Act* of

the United Kingdom with those reflected in the *Freedom of Information Act* of the United States.

The Council of Europe is also examining the reform of administrative law and the development of harmonious principles in the laws of the member countries. In December 1978, the A.L.R.C. Chairman addressed a meeting of the Committee of Experts on Administrative Law held at Council of Europe Headquarters, Strasbourg. The Committee had before it the Australian *Judicial Review Act*. Questions, particularly from the United Kingdom and Irish representatives, indicated a close interest in the Australian legislative developments. The United Kingdom delegate praised the Australian endeavour to reduce the complexities of judicial review and to collect the principles and procedures in a relatively short, clearly expressed act. His questions were addressed to a number of pertinent issues:

- the likely scope of the exempting regulations;
- the likely interpretation of the criterion "acts of an administrative character". Only such acts are subject to review;
- the limited standing rights conferred by the Act;
- the absence of provisions for monetary and other compensation to persons adversely affected by wrong administrative decisions.

Questions and comments on the Australian legislation came from many quarters, including the representatives of Austria, France, Germany, Greece, Ireland and Portugal.

Interest was also shown in the rapid developments of Federal administrative law in Australia when Mr. Justice Kirby met government and other officials in Israel. Comparisons were drawn between the beneficial right to reasons in the Australian *Judicial Review Act*, on the one hand, and the more limited rights conferred by the *Administrative Procedure Amendment (Statement of Reason) Act* 1958 of the State of Israel. The right to reasons is seen as the key to effective judicial review. So long as the reviewing body is limited to the "face of the record", and cannot get to the true reasons of the decision, the effectiveness of judicial review is strictly limited and artificialities persist.

Not everybody agrees with the approach adopted in the Australian legislation. That this is so is shown in the latest publication of the Public and Administrative Law Reform Committee of New Zealand. That Committee in its Report, *Judicial Review of Administrative Acts* (1978), has recommended against adoption of legislation of the Australian type in New Zealand. It has rightly pointed to innovative developments of the common law and has preferred to leave matters develop for the time being. But against the advantages of innovation must be weighed the disadvantages of ignorance, confusion, complexity and professional timidity. Collection of a simple procedure and the main themes in a single statute could have a major effect in stimulating judicial review of unlawful and otherwise wrongful administrative decisions.

What still has to be worked out is the relationship between the Ombudsman, the Administrative Appeals Tribunal and the new judicial review in the Federal Court. The President of the A.A.T. Mr. Justice Brennan calls attention to this in his foreword to the Second Annual Report of the Administrative Review Council:

> "These reforms do not simplify administration. The Tribunal and Ombudsman are independent institutions, external to the administration. By design, the invoking of their jurisdictions affects the internal workings of departments and statutory authorities. A department or authority may find it necessary to re-examine, explain and, where appropriate, defend either a decision under review by the Tribunal or administrative action under investigation by the Ombudsman. The objective of these reforms is to make administration responsive to the interests of the individuals affected by it; but some may see these innovations as intrusions into an orderly process of administration . . . Both of these propositions are true. . . . Administrative review has its proper limits; it is not a substitute for sound primary administration. On the other hand, the theory of responsibility to a Minister does not mask the real risks of administrative injustice . . ."

The A.R.C. Report identifies a number of major issues in the implementation of the new Commonwealth administrative law. The factor of cost of the systems of review is mentioned with a recognition that "the benefits to the citizen and to the operation of government

which a particular reform would secure should bear some reasonable relationship to the costs of implementing the reform". The problems of decentralising administrative review processes and of providing facilities and personnel to cope with the expanding jurisdiction of the A.A.T. are called to attention. Brennan J. sums it up:

> "The system is new and novelty is not always welcome. The way in which the system can serve the individual and the administration must be learned, and learning can be difficult. But sufficient is known of the new system to say that it is apt to secure a better measure of justice to the individual and to improve the administration's perceptions of its own functions."

Annexed to the A.R.C. Report are the statistics showing the growth of jurisdiction and the breakdown of successful applications. Address for inquiries about administrative law reform is: Dr. G. D. S. Taylor, Director of Research, Administrative Review Council, Box 9955, Canberra, A.C.T. 2601.

Injury Compensation Laws

> "It is a characteristic of the human mind to hate the man one has injured."
>
> Tacitus, *Agricola* (Circa 98 AD).

The organisation by the *Legal Service Bulletin* of Monash University of a Health and Safety at Work Conference at Sydney University in February 1979 directed attention once again to Australia's State and Federal laws dealing with the prevention of injuries and compensation for their victims. The visit to Australia of Sir Owen Woodhouse (originator of the New Zealand National Compensation Scheme and Chairman of the National Committee of Inquiry into Compensation and Rehabilitation) coinciding with television features on the operation of the New Zealand scheme, particularly in respect of injured sportsmen, raised the question once again of reform of the law as it deals with injured and disabled persons.

Nearly 6,800 Australians are killed every year as a result of injury caused by accident. Many of these are on the road, some at work, and quite a few in sport and recreational pursuits. The disadvantages in the common law's approach to injury prevention and compensation have been identified many times:

- it depends upon the chance factor of establishing the fault of somebody who has funds to provide compensation;
- it proceeds through a "stately" labour-intensive calculation of individual loss;
- since the advent of various forms of compulsory insurance, it has lost something of the deterrence that arises from potential individual financial responsibility.

These themes have been mentioned many times. They were returned to in the Sydney University Conference. Professor Harold Luntz pointed out that in the year 1976-77 over 1.5 billion dollars was collected in liability insurance premiums in Australia. The artificialities and bizarre injustices inflicted by present compensation legislation were well summarised by Professor Luntz. He referred to the "scandalously expensive and wasteful administration" which the present system of paying damages involves:

> "We have no adequate statistics for Australia but the following information from the Report of the Royal Commission on Civil Liability and Compensation for Personal Injury in the United Kingdom is probably representative of the picture hereto. In a survey throughout Great Britain, the Commission interviewed over 3,000 accident victims and determined that only 6½% received some tort payment. Motor accident victims were the most likely to recover, but even of these only 25% received some payment. Of industrial accident victims, 10½% received such payments. . . ."

Recent proposals for the reform of the law in Australia have been followed by the extension of no fault liability. This principle, adopted for many years in the area of workers' compensation, has now been extended to victims of motor accident cases in Tasmania and Victoria. Statutory modifications have tacked certain sports victims on to the workers' compensation legislation of some States. The recent Report of the Board of Inquiry into Motor Vehicle Accident Compensation in Victoria (by Sir John Minogue) acknowledged flaws in the system. However, whilst recommending extension of no fault motor accident entitlements, it refused to agree to the abolition of the fault system which co-exists with the statutory scheme. A similar conclusion