

are other methods of consultation, still untried in this country, by which the general public's contribution to the process of law reform may be realised".

Closely analysed are the A.L.R.C. public hearings and the announced intention to hold them at night, as well as in the day. Since the Warwick Symposium, the Class Action public hearings of the A.L.R.C. have been held and the night sessions were a success in Sydney and Melbourne. To get through the numbers of persons attending, the A.L.R.C. Commissioners had to sit on after 10 p.m.! For a report on the Class Actions hearings see below, p. 24.

The *New Law Journal* concluded that public hearings should be considered in Britain:

"When all the expedient arguments for public hearings have been recited, there remains, Mr. Justice Kirby said, "a point of principle". It is that "the business of law reform is not just a technical exercise ... [It] involves a consideration of competing values. ... There is a greater chance of avoiding lawyers' myopia if a window is opened to the law community and the myriad of interests, lobbies and groups that make it up. ..." Unless we in this country are prepared to deny the validity of the "point of principle" the case for public hearings ... [is] more than strong enough to impose an obligation on us to reconsider their introduction here, in aid of the none-too-successful process of public consultation now existing".

Law and Computations

"Computers can figure out all kinds of problems, except the things in the world that just don't add up".

James Magary

When Thoreau warned against men becoming "the tools of their tools", he was writing long before the invention of the first computer. Now a new technological revolution is on us, namely the link between computers and telecommunications. Surprisingly enough, it was the French Minister for Telecommunications, Mr. N. Segar, who gave the stamp of approval to the new word "computations". He did so when opening a high level French Government Conference on Informatique et

Société (Information Technology and Society), Paris, 24 September 1979.

The conference arose out of an idea of the French President, Mr. Valéry Giscard d'Estaing, who subsequently addressed the closing session. The aim was to alert public opinion to the realities and future prospects of computerisation and its impact on many aspects of society, including the law. A feature of the conference was the detailed consideration given to a national report by Professor Simon Nora, *L'informatisation de la société*, which painted a gloomy picture about many of the effects of computerisation on French society. The concerns about these subjects in Australia are not yet as active as they are in France. But they will be. Put shortly, they involve especially:

- *Employment*: computations will reduce manpower needs in the tertiary sector, just as earlier automation reduced needs in farming and manufacturing. The new jobs created will often not be suitable for those displaced.
- *Individual liberties*: with memories of the War and foreign occupation still fresh in mind, the French regard the peril of computerised dossiers, linked instantaneously in all parts of the country and beyond, as a practical horror to be avoided by strict legal regulation.
- *Culture and language*: in a world of Anglophone databanks, the French fear that the protection and preservation of their language may be endangered by the international pressure of computations. Although Australia is an Anglophone country, danger to cultural identity still exists because of the overwhelming predominance of the United States, Japan and Western Europe in data processing. Satellites and computations have reduced Australia's tyranny of distance.

So far, the law on these subjects is muted in Australia. The National Inquiry into Technological Change (Chairman, Professor Rupert Myers) and the Law Reform Commission's project on privacy protection amount to

important efforts to identify the policy options open to government to respond to the impact of computations.

In the capacity of Chairman of the Intergovernmental Group of Experts formed by the Organisation for Economic Co-operation and Development (O.E.C.D.), Mr. Justice Kirby reported to the French Government Conference on the development of guidelines to harmonise privacy laws in Western countries. Precisely because of the instantaneous and universal nature of the technology available today, privacy protection legislation in one country alone can be rendered ineffective by the simple expedient of keeping data bases beyond the jurisdiction.

The major effort of the O.E.C.D. Committee has been to identify the "basic rules" of privacy protection. These "basic rules" are reflected in European and North American privacy legislation already in force. They will form the framework of the A.L.R.C. proposals on privacy protection. A discussion paper on privacy is due to be published by the A.L.R.C. early in 1980.

At the heart of the privacy legislation of all O.E.C.D. countries is a "central principle", readily discovered when the search began for the basis upon which privacy laws could be harmonised:

"Despite differences of language, culture and legal traditions, what is remarkable when one looks at domestic laws on information privacy is the recurring nature of the principles laid down. The "golden rule" of national laws on this subject is the right of individual access to personal data about oneself. This principle is at the core of the O.E.C.D. guidelines and Council of Europe Draft Convention. If nothing else is achieved in domestic privacy protection and in international efforts to protect privacy in trans border data flows, than agreement about this "right of access", such accord will, in itself, be a most significant legal development".

The O.E.C.D. Expert Group has now reported its findings to the Council of the O.E.C.D. In addition to the individual access principle, a number of other important privacy protection principles are listed as the "basic rules" around which effective privacy legislation should be developed.

- *Collection limitation*: Rules should be laid down governing the amount and method of collecting personal data.
- *Information quality*: Information should be accurate, complete and up to date for the purposes for which it may be used.
- *Purpose specification*: Purposes for which personal data are collected should be identified at the time of collection and the use made of the data generally limited to those purposes or others agreed to or permitted by law.
- *Disclosure limitation*: Personal data should not be disclosed or made available except by consent, common and routine practice or legal authority.
- *Security Safeguards*: Personal data should be protected by adequate security.
- *Accountability*: There should be an identifiable person accountable in law for complying with privacy protection principles.

In November 1979, at the request of the A.L.R.C., a survey was conducted of the members of the Australian Computer Society. The response rates to questions based on the O.E.C.D. principles showed overwhelming majorities in favour of them.

An interesting result was the relative lack of confidence of computer personnel in "self-regulation". Asked to rank remedies for privacy protection in the order in which they considered them most appropriate and necessary for effective enforcement of a fair system of data protection and security in Australia, the computerists preferred: (1) civil court remedies; (2) licensing of systems; (3) administrative remedies; (4) criminal court remedies; (5) registration; (6) self-regulation.

Does this privacy debate have any importance in practical terms? In Britain, in the last quarter, a controversy has raged about the use of computers to vet potential jurors. *The Guardian* disclosed that the police had produced the files on 19 of the 93 jurors summoned for jury service in a particular trial. Some were described as the "friends or relatives of cri-

minals". One woman was identified as having previously complained about the police. A leader in *The Guardian* (21 September) described reasons for "unease" about the vetting, the computer method and the potential for the future:

"Memories fade and sins are blotted out in hazy recollection. Computers, by contrast, can print out long-forgotten indiscretions as though they happened yesterday. The human mind, which is what we ought to be concerned with, does not work that way. We depend heavily on its frailty. A computer has no such endearing quality. It cries for ever over spilt milk. It remembers little events which the law, under the Rehabilitation of Offenders Act, has forgotten".

The newspaper, and many others, questioned the use of the information collected for one legitimate purpose (crime intelligence), for another quite different purpose altogether (jury vetting).

As we launch into the 1980s, and approach 1984, there will be many more debates about this subject. Computations will present many tasks to the law reformers of the eighties, as the law struggles to assert the values of individualism and humanity against the merciless machine.

Privacy and the Census

"The only statistic I can ever remember is that if all the people who go to sleep in church were laid end to end, they would be a lot more comfortable".

Mrs. Robert A. Taft

Still on the subject of privacy protection, the A.L.R.C. report, *Privacy and the Census* (ALRC 12) was tabled in Federal Parliament on 15 November by Attorney-General Durack. It is the second report by the A.L.R.C. following its reference to propose laws for privacy protection in Australia. The first was the recent report, *Unfair Publication* (ALRC 11). See below, p. 12.

The A.L.R.C. reported separately on the privacy implications of the Census for three reasons, explained in the report:

- The Attorney-General specifically asked for a report on the Census, following the

controversy about the privacy implications of the last Australian Census in 1976.

- The next Census will be held on 30 June 1981 and forward planning is now well advanced.
- The Census is the one universal and compulsory personal information system in Australia.

A number of specific recommendations are made about the conduct of the Census including:

- Greater information, in advance of the Census, to explain its purposes and measures taken for confidentiality.
- The precise questions to be asked in a Census should be tabled in Parliament, as they are in England. Until now only the topics have been tabled in Australia.
- Greater efforts should be made to publicise the facility of special procedures of "personal slip" and "special envelopes" available to people who have a concern about giving returns to the Census collector.

A major controversy in the report relates to whether Census forms should, after translation to statistics, continue to be destroyed. In Britain and the United States, Census forms are kept under strict archival conditions, with access forbidden for 100 and 75 years respectively. In Australia, the forms of personally identifiable information are destroyed.

The A.L.R.C. Commissioners point out that privacy is a relative and not an absolute value. It must be measured against the utility of the information in question and the steps taken for its protection. The A.L.R.C. report proposes that, at least for the time being, the Census material should be kept under conditions of strict security. Three basic reasons are advanced:

- *Medical utility:* Increasingly, overseas Census material is being used for tracing genetic diseases in families, not possible when personally identifiable data is destroyed.