

Office of Commonwealth Parliamentary Counsel. Commentary was led by two of Australia's most distinguished legal scholars : Emeritus Professor Geoffrey Sawer and Professor J.G. Starke, Q.C. The use of travaux préparatoires in statutory interpretation was referred to by Professor Sawer. He urged consultation by the courts of a wider spectrum of learned literature. Professor Starke referred to the need for precision in drafting. Mr. G. Kolts, Second Parliamentary Counsel, threw a spanner in the works by rejecting permanent appointment of draftsmen to L.R.C.s. He favoured scrutiny by independent draftsmen who were in constant contact with their colleagues. He referred to secondment on continuous rotation. Participants were sceptical about the priorities governments would be prepared to give to law reform drafting. Mr. Sexton's paper contained an excellent review of the Renton recommendations, as they apply in Australia.

The Conference then debated Mr. Justice Kirby's suggestions for the A.L.R.C. Law Reform Digest. Total agreement was reached on the form and organisation of the Digest. A number of proposals by participants were adopted. One suggestion made by the Standing Committee Officers, that there should be a confidential bulletin as a supplement to the Digest, was not favoured by participants.

The law reformers were then exposed to the government lawyers of Canberra. Led by Mr. C.W. Harders, O.B.E., Secretary of the Commonwealth Attorney-General's Department, the Deputy Secretaries and Branch Heads came forward to put their views on law reform. Mr. Harders stressed the value of independence of L.R.C.s. He urged that they should seek boldly to reform the law and not to tailor their recommendations to the imagined tolerance of governments. The different perspectives of departmental lawyers and law reformers were explained by Mr. L.J. Curtis, a First Assistant Secretary. Political compromise, however proper in a Department of State, was not apt for an L.R.C. Deputy Secretary E. Smith compared ad hoc committees and L.R.C.s. Acting Deputy Secretary H.T. Bennett referred to the desire of Ministers to keep control of policy charged areas. Mr. K.M.Crotty urged L.R.C.s to keep practical considerations and costs in mind.

On the last day of the Conference, Mr. Justice Blackburn (A.C.T.L.R.C.) led continued discussion on the techniques of law reform. Participants generally agreed that it was difficult to dissociate law reform from policy change. Mr. Cote spoke of current attitudes on this in Canada where the L.R.C. insisted on tackling the social aspect of law reform so that proposed legislation would be socially informed and relevant. Many overseas participants agreed with this view, notably the P.N.G.L.R.C.

At the end of the Conference, despite their exhaustion, the participants resolved to thank the A.L.R.C. for hosting the Conference. It was agreed that the next Conference would be held in Perth at a time to be determined after consultation among the agencies. Since then, the organisers of the Australian Legal Convention have proposed that Law Reform Conferences be held in conjunction with the Legal Convention. This proposal is being explored. In the United States and Canada, the Uniformity Commissioners meet in conjunction with the national Bar Association conventions. Perhaps the Law Reform Conference should follow this lead. We still have no Commissioners on uniform laws in Australia. With a little encouragement from the Standing Committee of Attorneys-General, the Law Reform Commissioners, in appropriate areas, could provide ideas for uniform law reform.

National Privacy Inquiry Announced

The national reference on privacy law reform, foreshadowed by the Prime Minister of Australia in his Policy Speech, was signed on 9 April 1976 by the Attorney-General, Mr. Ellicott. The reference relates to matters within the Commonwealth's lawmaking power for the whole of Australia, as well as the plenary

power to legislate in respect of the Australian Territories. The full terms of reference are set out in (1976) 2 L.S.B. 21. They require the Commission to scrutinise the current laws of the Commonwealth which impinge upon privacy and recommend any changes that are required in those laws to ensure proper respect for privacy. The reference also requires particular attention to be given to the privacy intrusive activities of Commonwealth Government Departments, the Medibank universal health scheme, power of entry and search of Commonwealth Police and other officials, summons powers of tribunals other than courts and information collection and dissemination by bodies licensed under Commonwealth laws. The latter will include broadcasting and television stations throughout Australia.

In a territorial context, where the Commonwealth has constitutional power in respect of the whole range of the private law, the Commission has been specifically directed to inquire into the following possible sources of privacy intrusion:

- * Data storage
- * The credit reference system
- * Debt collectors
- * Medical employment, banking and like records
- * Listening, optical, photographic and other like devices
- * Security guards, private investigators
- * Entry into private property by persons such as collectors, canvassers and salesmen
- * Employment agencies
- * Press, radio and television
- * Confidential relationships such as lawyer and client and doctor and patient.

The reference keeps the Commission out of the areas of national security and national defence. However, by including the privacy intrusions of Government, it is plainly a much wider inquiry than was conducted by the Younger Committee in the United Kingdom. That Committee, comprising seventeen Commissioners, laboured over several years. Its report has recently been followed up by two further reports on Computers and Privacy, each of which favours enactment of legislation to provide protection against unreasonable collection, exchange, inaccuracy and distribution of computer information. Computers and Privacy Cmnd. 6353-4 (1975).

The national debate on privacy protection quickens its pace. The Western Australian Government has now received a report from its Committee on the question of "Privacy and Databanks" (1976). The Protection of Privacy Bill introduced into the Tasmanian Parliament in 1974 has now been revived by a Joint Committee. It suggested a statutory tort enforceable in the courts. The First Annual Report of the Privacy Committee of New South Wales, 1975, has now been released. It is a gold mine of information on the kinds of intrusions into privacy that exist in our society.

The A.L.R.C. Chairman, Mr. Justice Kirby, has stated the approach of the A.L.R.C. to its reference: "This is not a job for a braintrust in a back room. It is vital that the public should be involved in this important inquiry. I have already found, from earlier statements, that the concern about privacy is very much alive in our community. Members of the public will have an important contribution to make in this exercise. The Commission will be conducting public sittings in all States to receive submissions".

To promote public awareness of the reference and to generate discussion the A.L.R.C. Chairman took part in a national television broadcast "Monday Conference" on 17 May 1976. This programme, which is said to have more than a million viewers, has attracted hundreds of letters from the general public and offers of assistance from special interest groups, concerned with privacy protection. In the broadcast,

and in other media interviews, Mr. Justice Kirby has stressed the importance of finding an indigenous Australian solution to privacy protection. Already papers have been prepared within the A.L.R.C., following speeches by the Chairman, on "Privacy and Civil Liberties", "Privacy and Psychology", "Privacy and Government Administration", "Privacy and Mental Health" and "Privacy and Aboriginals". The A.L.R.C. staff are presently preparing a study paper which will set out the problems raised by the reference and the solutions suggested overseas, notably in the United States, Canada, Great Britain and Scandinavia. Australian Embassies overseas have already sent a great deal of primary material. All of this tends to show how Australia is "several years behind other countries" in protecting the privacy of its citizens.

A.L.R.C. Commissioners and staff have arranged meetings with Government officers in all Commonwealth Departments. At the request of the Government, special attention is to be given to Medibank and future Censuses. The Universities and private business organisations are also proving anxious to lend their support. Joint study groups have been formed comprising representatives of the A.L.R.C. and outside organisations to gather up-to-date information on the wide range of activities that will be covered by the reference. The A.L.R.C. Chairman has frequently stressed the urgency of the task. He has indicated that the Commission should seek to promote continuing public debate by issuing study papers and working papers. It should seek to report within the life of the 30th Parliament.

The addition of new Members to the Commission will add new drive and direction to the project. The Attorney-General has also authorised the appointment of additional research staff and the Commission is receiving considerable assistance from Commonwealth and State officers. The appointment of Sir Zelman Cowen, as a part-time Member of the Commission, is an especially happy one. In 1969 Sir Zelman delivered the Boyer Lectures on "The Private Man". In December 1975 he delivered the Tagore Lectures in Calcutta, India. He gave the lectures the title "The Right to Swing My Arm" taken from Holmes' aphorism : "My right to swing my arm ends at the point at which your nose begins". Lecture IV concluded scrutiny of the United States' protection of privacy with the view that "... after a long period of development there is no ready-made intellectually satisfying and workable concept of privacy law which can be taken from America and transplanted to other common law jurisdictions". Announcing Sir Zelman's appointment, the Attorney-General, Mr. Ellicott, concluded : "I am sure the contribution he will make to the Commission's study of the Privacy reference will enhance the stature of its final report".

Mr. Ellicott on Law Reform

The speech in which he announced appointments to the A.L.R.C. also gave the Commonwealth Attorney-General, Mr. Ellicott, an opportunity to put forward his approach to law reform in Australia. It was the second such opportunity in recent days, the first being his speech at the opening of the Third Law Reform Conference. Law reformers can take encouragement from what the new Attorney-General had to say.

Opening the Conference on 8 May, Mr. Ellicott laid emphasis upon the vitality of the Commonwealth of Nations and of the "transplanted common law" which he saw vividly demonstrated in the large collection of Commonwealth representatives present. Four of the five great federations of the British Commonwealth were attending the Conference and while recognising several important differences in our legal systems, the Attorney-General asserted that the "common features predominate and there is much to be gained by us all in the sharing of ideas. It will promote economy of effort and the maximisation of the talents available to law reform". Although there were no representatives present from the United Kingdom, Mr. Ellicott saw the participants as the "guardians of the English law and of its renewal". He pointed out that "the dynamic of the common law in its