

- The development of guidelines on basic rules to govern trans-border flows of data and the protection of personal data and privacy
- The legal and economic problems relating to trans-border flows of non-personal data.

The Expert Group is required to report upon the first item by 1 July 1979 and to work in close co-operation with the Council of Europe and the European Economic Communities.

A number of important developments have occurred in several European countries, many of which are not reflected in the laws of O.E.C.D. members outside Europe:

- The establishment of licensing and control of computer systems to ensure protection of individual privacy
- Limitation on the movement of information from one country to another, even for processing, unless reciprocal protection for individual privacy of such information is guaranteed in the recipient country
- Development of guidelines for the protection of privacy as a step towards an International Convention on Data Protection.

In discharging its task, the Expert Group will have to keep in balance a number of interests which are, potentially, in competition, in any privacy legislation:

- The need for efficient and economic use of computing and other information-retrieval systems
- The general desirability of the free flow of information between nations
- The need to protect privacy in such flows of information and to ensure the accuracy, timeliness, fairness and relevance of information
- General moves to uphold human rights and freedoms under the impact of scientific and technological developments.

In 1977 a major symposium was held in Vienna (see [1977] *Reform* 68). At this meeting the fear was expressed by some European countries that more than 70% of European data is being processed in the United States of America. This includes some data relevant to major economic decisions and national sovereignty. Fears were expressed that this tech-

nological fact diminishes sovereignty. The rapid development of satellites, the falling cost of satellite use and the position of Australia in the "off-peak" time zone for European and North American data networks, all make these expressed fears relevant for the Australian community.

On the other hand, a warning has been sounded that in the name of "privacy protection", economic and other barriers are being erected to diminish the international traffic in information. The Expert Group, at the request of the French representatives, is to give specific attention to customs and tariff barriers affecting information flows.

The O.E.C.D. effort to produce the basic rules on privacy protection comes at a critical time in Australia when the Commonwealth and most of the States are examining the need for privacy laws. The desirability of fitting Australian developments into the international jigsaw is an imperative arising from the international nature of computing. Rapid development of legislation in Europe, the proliferation of requirements of "reciprocal" protection for privacy and the fear of different State standards throughout Australia all make the work of the Expert Group of considerable immediate importance for Australia.

The A.L.R.C., in conjunction with the Department of Science, organised a seminar in Canberra on 26-27 June 1978 at which representatives of Commonwealth and State Governments, academics and the computing industry discussed the implications for Australia, nationally and internationally, of trans-border data flows. Further seminars will be held as the O.E.C.D. project develops.

## Complaints Against Police

"For the middle class, the police protect property, give directions and help old ladies. For the urban poor, the police are those who arrest you."

Michael Harrington,  
*The Other America*, 1962.

The A.L.R.C. supplementary report on *Complaints Against Police* has now been tabled in Federal Parliament. The Commission's first report, on the same subject, was produced in 1975. The proposals in it were

adopted by the then Government and included in the Australia Police Bill 1975. With the dissolution of Parliament in November 1975, the Bill lapsed and government policy changed. The proposal to amalgamate all Commonwealth police functions in Australia was dropped. Nevertheless, the A.L.R.C. was asked by Attorney-General Ellicott to review its report, making any changes necessary in the light of the decision to retain separate Commonwealth, A.C.T. and Northern Territory Police Forces.

Since the A.L.R.C. first report, a number of developments have reinforced key elements in the original proposals. These proposals suggested a three-unit approach to ensure the fair and independent handling of complaints against policemen.

- The Ombudsman to be an alternative recipient of complaints and a guardian for vigorous investigation
- A separate unit of police, to handle complaints, modelled on "A.10" at Scotland Yard
- A tribunal, headed by a judge, to deal with serious complaints, short of the criminal.

Developments since the report include:

- The then Commissioner of A.C.T. Police stated that the proposals were "mostly accepted by police forces as being an impartial and effective way of handling complaints"
- In advance of legislation, the A.C.T. Police in January 1978 set up an internal affairs branch
- The Northern Territory *Ombudsman Ordinance* 1978 confers a specific power on the Ombudsman to receive and investigate such complaints
- In his recent report to the Minister for Administrative Services, Sir Robert Mark, former Head of Scotland Yard, stressed that an effective system for handling complaints against police was essential to any modern police force.

The A.L.R.C. supplementary report retains the basic scheme proposed in the first report, with some modifications and changes. The Commission paid particular attention to the need to uphold overall authority of the Police Commissioner and to leave with police the

greatest possible responsibility for discipline compatible with the just disposition of complaints. Already the Commonwealth Ombudsman has certain functions under the *Ombudsman Act* to look at complaints against police. But sometimes these may limit him to investigating the way police handle a complaint, rather than the substance of the complaint. If the A.L.R.C. report is adopted, it will widen the scope of the Ombudsman's power, taking the Australian Ombudsman beyond the orthodox role in "matters of administration".

Some of the chief recommendations in the A.L.R.C. *Supplementary Report* are:

- In four special cases, the Ombudsman should have a reserve power to undertake an independent investigation of his own. These include the alleged involvement of senior police officers, members of the special unit itself, and where the Ombudsman is of the opinion that "in the public interest" the complaint should be investigated by him
- A full system of recording complaints should be introduced
- A modern police discipline code should be implemented
- Charges of breach of the code, arising from external complaints, should be determined by a police tribunal
- Identification numbers should be worn by Commonwealth police

The A.L.R.C. also called attention to the urgent need to adapt the system to apply to officers of Customs, the Narcotics Bureau and other police-type officers of the Commonwealth not presently subject to police discipline.

On 22 May 1978 the Premier of New South Wales, Mr. Wran, told delegates to the N.S.W. Police Association Conference that his government would introduce legislation in the next session of the N.S.W. Parliament to establish a police complaints tribunal. Mr. Wran said the aim was to protect the police as well as the public. An independent review of complaints and allegations against the police was needed, he said, to protect the reputation of the force and to deal with generalised allegations, as well as specific charges.

Meanwhile, in Victoria, two reports have been tabled relevant to reform of police procedures:

- The full three-volume report of the investigation by Mr. Barry Beach Q.C. into alleged police corruption in Victoria
- A report by the Committee headed by Mr. J. G. Norris Q.C. reviewing the Beach Report.

In his report, Mr. Beach proposed the establishment of an independent tribunal to handle police complaints. The Norris Committee established in December 1976 to reconsider the Beach proposals rejects almost all of the Beach suggestions. Apart from the Chairman, a retired Supreme Court judge, other members of the Norris committee were the former Chief Commissioner of Police and the permanent heads of the Law Department and Chief Secretary's Department in Victoria. The Norris Report says that most of the changes proposed by Mr. Beach are either unnecessary, based on a misunderstanding of the law, undesirable or impracticable. However, one commentator in *The Age* (18 May 1978) lamented:

"What depresses me most about the whole Beach affair is the feeling that, in this State, the rule of law is subordinate to public policy, and that public policy is to subordinate justice and civil rights to the susceptibilities of the police."

The Victorian Government has announced that it is considering both reports. If the Beach Inquiry proves nothing else, it does suggest the need for an orderly, routine and regular method of disposing of complaints against police in a low-key fashion. Mr. Beach's inquiry sat for two hundred and twenty-seven days, heard two hundred and forty witnesses, named fifty-five policemen in connection with charges of breach of Standing Orders, and resulted in thirty-three policemen being charged with offences. Most were heard in magistrate's courts. None was convicted. But the headlines and bitter controversy have done nothing for the morale and good name of the Victoria Police.

## Law in the Desert

"Each blade of grass has its spot on earth whence it draws its life, its strength; and so is man rooted to the land from which he draws his faith together with his life."

Joseph Conrad, *Lord Jim*, 1900.

Aboriginal customary laws are alive and well in Central Australia. That is the gist of

a report by two researchers of the Australian Law Reform Commission who recently conducted a field trip to the Pitjantjatjara area south-west of Alice Springs in the centre of the continent. The researchers, Bryan Keon-Cohen and Daryl Gunter, visited fourteen Aboriginal communities ranging over a 500-km stretch from Warburton in the west, on the fringes of the Great Victoria Desert, to Indulkana in the east, close to the Stuart Highway, 200 km south of Alice Springs.

The research visit was the first of a series which will take officers of the A.L.R.C. to about twenty-three areas in which Aboriginal Australians are still living in traditional or semi-traditional circumstances. The field visits are part of the A.L.R.C. research effort in connection with its reference on Aboriginal Customary Laws. The Reference asks the Commission whether the Australian legal system should give some recognition to Aboriginal tribal laws. If it should, the Commission is asked whether such recognition should be given through the ordinary courts or in some other way, i.e. local councils, local officers, etc. The Reference arose out of an increasing number of cases involving traditional Aboriginals coming before courts in Australia, where judicial officers have sought to ameliorate the injustice or irrelevance of Australian law, by various improvisations.

The Aboriginal communities visited were scattered over three jurisdictions (W.A., S.A. and N.T.) and ranged from private properties and mission centres to government-sponsored communities. However, all of them were self-managing with authority vested in an elected Aboriginal Community Council. The functioning and authority of the Councils varied from place to place. In day-to-day running of the settlement, including the hiring and firing of advisory staff, granting of entry permits, pursuit of development programmes, and so on, the Council is the centre of administration. In addition to speaking with Aboriginal communities, the researchers spent some time with Forster C.J. of the Northern Territory Supreme Court, magistrates, police, government and mission officers. The field report stresses that findings are at this stage tentative only and based on the localities visited. They may not be generally applicable.

The last few years have seen a revival of