> Governments unfairly or unreasonably interfere with their lives. . . . Our programme of reform will continue in 1979 and I will give you just some examples. In seeking to play our part in enhancing human rights in Australia, the Government will proceed with a Bill to ensure that Commonwealth laws, acts and practices conform with the International Covenant on Civil and Political Rights. The Government is also conducting discussions with the States to achieve a comprehensive and co-ordinated approach to protection of human rights throughout Australia. . . . The Government has submitted references to the Australian Law Reform Commission on a number of other areas in which reform may be desirable, including insurance contracts, the law relating to debtors, the incorporation in our legal system of traditional Aboriginal law and defamation. The Government will consider these reports as soon as they are completed."

The human rights debate is not, of course, confined to Australia. In England, a Report of the Select Committee of the House of Lords on a Bill of Rights (May 1978) was debated in the Lords on 29 November 1978. Many of the same arguments were repeated as we have heard lately in Australia. Lord Scarman pointed (col. 1346) to the inability of the common law to handle certain problems:

> ". . . the common law, marvellous as it has been in developing safeguards for human rights in certain fields, never succeeded in tackling the problem of the alien, never succeeded in tackling the problem of the woman and never succeeded in tackling the problem of religious minorities, and it has in our day had to be supplemented by detailed legislation to ensure a measure of justice to racial groups."

Lord Gordon-Walker joined Lord Lloyd of Hampstead in propounding the view that the incorporation of the European Convention of Human Rights would import "a new and formidable element of uncertainty into our law" (col. 1362). Lord Hailsham pointed to the flood of legislation and stood "unreservedly and solidly" behind Lord Scarman. In the end, by a majority of 56 to 30, the Lords adopted a resolution urging the Government "to introduce a Bill of Rights to incorporate the European Convention of Human Rights into the domestic law of the United Kingdom".

The Lords' debate has concluded. The international debate continues.

Census and Privacy

> "He uses statistics as a drunken man uses lamp-posts; for support rather than illumination."
> Andrew Lang, *circa* 1904.

A number of major developments in the A.L.R.C. project on privacy protection. The Report, *Unfair Publication: Defamation and Publication Privacy* (A.L.R.C.11) should be received from the Government Printer shortly. It will be tabled in Parliament and will advance the debate about privacy protection in the context of publication, particularly mass publications.

The Commission has developed a number of in-house papers concerning information privacy: a major international concern, stimulated by the developments of computers, satellites and information technology.

The first public Discussion Paper on this aspect of privacy protection deals with the Australian Census. Shortly after the A.L.R.C. was asked to report on privacy protection generally, in the Commonwealth's sphere, the Attorney-General wrote to the Commission specifically requesting that the implications of the census for individual privacy should be taken into account in the preparation of the Commission's report. Because of this request, the discrete nature of several of the problems raised and urgencies attached to the finalisation of procedures for the 1981 Australian Census, the Commission has proceeded to a Discussion Paper on the subject. That paper will be discussed in all parts of the country before the Commission proceeds to report upon it.

The Commissioner in charge of the Privacy Reference is Mr. D. St.L. Kelly. On 13 February 1979 he led a discussion about the issue, attended by A.L.R.C. Commissioners, the Australian Statistician (Mr. R. J. Cameron) and a number of consultants who are helping the Commission in this project. Those attending put forward different points of view, which included:

- the possible limitation of the Commonwealth's constitutional power with respect to census questions;
- the desirability of protecting civil liberties, including the "liberty" of immunity from privacy invasion by comprehensive inquiries;

- the need to secure statistical and other information to help social planning and to ensure that government receives vital information from poor and inarticulate citizens, who speak to it through statistics;
- the need to preserve historical and genealogical information.

The A.L.R.C. Discussion Paper, D.P. #8, *Privacy and the Census,* traces the origin and development of the census and seeks (so far as is relevant) to place in context the special problems of protecting privacy in the context of census and statistical collections, identifying the balance that must be struck in the protection of privacy generally.

In Australia there are already major legislative protections for individual privacy in the collection, storage and disclosure of census information. Furthermore, the Australian Bureau of Statistics has earned an impeccable record in ensuring that information supplied in the universal and compulsory census is protected during its collection and rapidly converted into unidentifiable statistics.

A number of specific proposals are contained in the A.L.R.C. Discussion Paper. They include:

- Census questions should be available to Parliament and the public when the Census regulations are laid before both Houses of Parliament.
- A more detailed statement of purposes should be delivered with the census form.
- More attention should be given to informing persons of their right to respond by personal return in lieu of a household return.
- Anomalies in penalties for disclosure of census information should be removed.
- Consideration should be given in future censuses to the abolition of personal collection and substitution of the use of the mail, as in Canada and the United States.

Major submissions were received by the A.L.R.C. from the Royal Australian Historical Society, the Society of Australian Genealogists and the Australian Dictionary of Biography. They urged the retention of census forms, duly secured against access, to be available to researchers after an appropriate interval. In Australia the original census forms are destroyed soon after the completion of the census. This is not the case in other Western Countries. In Britain, forms are retained but access to researchers is denied for 100 years. In the United States, the period is 72 years, although a Congressional Committee recently proposed a significant reduction in this period for medical research. In Sweden, the legal bar is only 20 years, but may soon be increased to 50 years.

Statisticians and privacy proponents oppose the retention of the individual form. They argue that destruction is necessary to encourage good returns and to assure privacy protection and public confidence. The A.L.R.C. has specifically raised this question for public debate.

The Australian Bureau of Statistics has published (February 1979) some preliminary views on the *Nature and Contents of the Census* for the 1981 National Census. Its preliminary views include:

- the name of each person should be asked on the census form;
- envelopes for census forms should be available to all persons who request them, but people should be asked not to use them unless they feel strongly about the census collector being able to see information;
- the 1981 Census should ask fewer questions and concentrate on major demographic, labour and housing requirements.

The opportunity for public comment is invited by the A.B.S. The A.L.R.C. public sittings in all parts of Australia should provide an early opportunity to debate the utility and methodology of the census. For details see p. 48.

The golden thread which runs through European and North American laws for the protection of individual privacy is the right of individual access to personal information about the data subject. This is perceived as the best protection for individual privacy in the computer age. At present, there is little point in allowing access, as the original returns are quickly converted to statistics and the forms are shortly thereafter destroyed, thereby removing all personal identifiers. If, as overseas, the census material were to be kept for historical and research purposes, the question of rights to access would be raised.

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