

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 mercile 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.

- *History research:* The “melting pot” of modern Australia will require detailed history research, only possible with extensive and identifiable data.
- *Genealogy:* The search for personal identity and one’s ancestors is an increasing interest in Australia.

In a Ministerial statement on the report, the Federal Treasurer, Mr. John Howard M.P., responded promptly, on 20 November 1979, to two recommendations:

- *Tabling questions:* The government decided not to adopt this recommendation in relation to the 1981 Census because of time constraints. “In respect of later Censuses, the government will give further consideration to this recommendation. The government does, however, agree with the basic intention of the recommendation, which is that Parliament be fully informed at the time it considers the regulations”. The Treasurer then tabled in Parliament the language of the questions presently proposed.
- *Keeping the Census data:* After carefully weighing “the arguments for and against the proposal” the government decided not to accept the recommendation that the Census raw data be kept. “The government believes that it would be inconsistent with [the gathering of statistical information] and ... the guarantee of confidentiality to retain information on identified persons or households for research purposes. ... Consequently the present practice of destroying all records of names and addresses and of not entering into the computer record such names and addresses will be continued”.

Following the Treasurer’s statement, Mr. Donald Cameron M.P., who expressed great concern about the collection procedures of the 1976 Census, expressed satisfaction with the proposals made for improved, tightened procedures, designed to give greater protection to privacy of returns.

In like vein, the editorial in the *Australian Financial Review* (27 November) analysed the Treasurer’s statement. It commended the decision to table in Parliament the text of the presently proposed questions:

“This in itself, when studied by those who have reservations about the Census, should dispel much of the concern that was aroused last time”.

So far as retention is concerned, the editor lined up with the government decision:

“The history of the 20th century is hardly so tranquil as to give much reason to individuals to trust the goodwill of governments, bureaucrats or law reformers, for the indefinite future. Many migrants from Europe in particular, would not want to have their family income and (optional though not all people realise this) religious details on file. ... The government has certainly taken a decision which is reassuring for those who are concerned about the future of civil liberties, at a time when too many incursions are being made possible by the extension of the powers of security agencies”.

Having let fly these views on the “academic industry” and research values of Census data, the editor commends as “worthy of serious consideration” the “long and carefully considered report” and the “numerous other recommendations with respect to the protection of privacy of individuals” put forward in ALRC12.

The Commissioner in charge of the Privacy reference and principal author of the report on the Census was Mr. David St.L. Kelly. Mr. Kelly returns to the University of Adelaide in February 1980 after a three and a half year term with the Law Reform Commission. Before leaving the A.L.R.C. Mr. Kelly will put the finishing touches on a discussion paper on the general protection for privacy, due to be released February 1980.

## Uniform Defamation Law Progress

“The louder he talked of his honour, the faster we counted our spoons”.

Ralph Waldo Emerson, c.1875

The W.A. Attorney-General, Mr Ian Medcalf Q.C. has tabled in State Parliament a report by