Another development worth noting in the United States is the approval by a Senate Sub-Committee by a narrow vote of a Bill declaring that human life begins at conception and that a foetus is entitled to all the legal rights of a human being. The Bill, titled 'Human Life Bill', is backed by anti-abortion forces and is designed to negate decisions of the United States Supreme Court permitting abortions in the first six months of pregnancy. It will now go to the Senate amidst cries by opponents that it will make all abortions, and even some contraceptive measures, acts of murder. Certainly, if a similar law were adopted in Australia, it would provide further dilemmas for the doctors engaged in the test tube fertilisation programme.

treatment of children. One vexed issue which has now been referred to the Law Reform Commission of Western Australia relates to the provision of medical services to young people. On 5 July 1981, the State Attorney-General, Mr. Ian Medcalfe QC, announced terms of reference to the WALRC for the development of a uniform law on this subject:

> For some time the Standing Committee of Attorneys-General has been concerned at the uncoordinated aspects of the law relating to the provision of medical services for minors. I suggested that [this subject] could be examined by our State law reform commission with a view to receiving recommendations which could form the basis of enacting uniform legislation throughout Australia. The committee agreed to my suggestion and the terms of reference have been settled. This demonstrates the high regard in which our law reform commission is held in other parts of Australia.

The terms of reference given to the WALRC require particular attention to such matters as:

- provision of contraceptive and psychiatric services;
- provision to other persons by minors of body organs and tissues;
- special needs relating to drug, tobacco and alcohol dependence and sexually transmitted diseases;
- claims of minors for privacy and confidentiality.

Mr. Medcalf declared that the terms of reference, which covered many other controversial topics, provided 'a large canvas, embracing many topics'. He predicted that it would be 'some time' before the study was completed. Certainly, if the ALRC projects which overlap the new WALRC inquiry are any guide, the terms of reference are replete with issues that will stir public passions.

The ALRC itself divided on the issue of donations by minors to other family members for organ transplantation. Laws based on the ALRC report have also divided on this issue. Sir Zelman Cowen and Mr. Justice Brennan dissented from the majority view that in limited circumstances minors ought to be permitted, with judicial approval, to donate to close family members.

The issue of children's privacy stirred passions as no other topic of the privacy inquiry did. A note on this subject is found in [1981] *Reform* 22.

Mr. Philip Clarke, Executive Officer and Director of Research of the WALRC, has indicated that the Commission plans to release a working paper towards the end of 1982. Already the Commission has written to health departments and agencies throughout Australia seeking submissions and assistance. The case is an interesting experiment in uniform law reform. The medico-legal area provides plenty of work for uniform law reform. The adoption in a number of jurisdictions of the ALRC report on Human Tissue Transplants indicates that this is an area of operations in which LRCs can play a useful role in helping the democratic lawmaking process to face up to hard and sensitive problems. Certainly, the problems are coming thick and fast. And new means are needed to assist the tortoise of the law in its race with the energetic hare of science and technology.

privacy concerns

> Without information, life is no more than the shadow of death
>
> Molière, *The Would-Be Gentleman,* 1670.

privacy poll. In August 1981 the ALRC released the results of a detailed public opinion poll concerning Australian attitudes to privacy. The poll was conducted in connection with the ALRC project for the preparation of new Australian laws for the protection of privacy. Amongst the most significant results were:

- 59% of people expressed concern with threats to their individual privacy in Australia today. Of these, 21% were very concerned. Only 7% were not at all concerned;
- almost two-thirds of people (64%) believe there should be laws to protect personal privacy;
- 87% of the people surveyed agreed that a person should have access to information about himself held by others. Only 9% disagreed and 4% said they did not know;
- almost one-third of the people surveyed believed they had been victims of an improper invasion of privacy;
- 90% of people surveyed did not believe that the authorities should have a right to tap their telephone. But, of those surveyed, 72% did not believe that their telephone had ever been tapped; 23% were not certain and only 5% believed that their telephone had been intercepted.

The survey on privacy attitudes was conducted by Bennett Research. It was funded by Ogilvy & Mather Pty. Ltd., as part of its service to customers and at the suggestion of the ALRC.

Commenting on the poll, the ALRC Chairman pointed out that it was the first comprehensive national survey of Australian attitudes to privacy. Similar surveys had accompanied inquiries in Britain and the United States:

> I am convinced that the road to effective law reform in the future will involve much greater use of scientific public opinion polls. We cannot turn all difficult problems over to the pollster. Some problems cannot easily be reduced to polls. Polls can get it wrong. They can be superficial and biased in the questions asked. But the results of this poll are the best available indication of Australian public attitudes to privacy. Law reformers advising parliaments need to be aware of these attitudes so that they can come up with laws that will be acceptable and in tune with public attitudes. Law reformers today, like lawmakers, ignore public opinion at their peril.

rights of access. The Commissioner in charge of the ALRC privacy project, Associate Professor Robert Hayes, said that of greatest interest was the endorsement by the poll of the principle that persons should generally have a legal right of access to information held by others:

> The overwhelming endorsement in the poll (87% agreeing) that persons should generally have a right of access to information about themselves held by others bears out the tentative proposal of the ALRC in its discussion paper on privacy protection. The Commission suggested that Australian laws should follow the European and North American precedents and introduce a basic legal right, with few exceptions, to have an enforceable means of access to personal information about oneself. Especially as more and more information is placed on computer, and as increasing numbers of decisions are made on the basis of such information, the right of access can be seen as the key to effective privacy control over personal information in the future. If the individual has a right of access, he will be able to see how others are seeing him and how decisions are being made on the basis of information about him. He will be able to correct, update and annotate information which is untrue, out of date or unfair. The Federal Government has already endorsed this principle in recent amendments to the Freedom of Information Bill. It is therefore well on the way to being accepted as a principle in Australian law.

Professor Hayes conceded that application of the principle in particular areas would pose problems. He instanced access to:

- national security data;
- police intelligence data;
- personal confidential job references;
- some medical information.

However, Professor Hayes said that the exceptions to rights of access should be limited and

clearly identified in the law. He said that the public opinion poll showed a healthy appreciation of the need for more effective privacy laws in Australia.

the foi debate. Meanwhile, the Freedom of Information Bill, in its much-amended form, has passed through the Australian Senate and will shortly be considered by the House of Representatives. A number of important amendments were accepted by the government, including the amendment incorporating rights of correction in relation to personal information disclosed under the FOI legislation and which was found to be false or misleading.

In New Zealand, the supplementary report of the Committee on Official Information has now been published, *'Towards Open Government'*. The committee, chaired by Sir Alan Danks, previously delivered an interim report. This is reviewed, [1981] *Reform* 59. The new report identifies the two issues which had agitated the greatest public concern following the earlier paper:

- The location of final decisions on access — should it lie generally with the Executive Government, the Ombudsman or the courts?
- The creation of an Information Authority standing apart from the Ombudsman but independent of the ordinary Executive.

The NZ Committee concluded that the earlier recommendations on these two issues should stand. On the subject of the 'last word' the NZ committee's view is plain:

> Any veto by a Minister of an Ombudsman's findings [that information should be made available] would itself be subject to judicial review. ... [But] in the ordinary course such an application for review would be most unlikely to succeed. The courts allow Ministers almost complete freedom in what would obviously be a policy area; they will not enter upon the question whether an executive policy, or a policy decision, is wise or is in fact in the public interest. If, however, it was shown that the Minister has misdirected himself on a question of law or taken irrelevant matters into consideration, his decision could be held invalid. ... In short we do not share fears either that the Ombudsman's power of review would be ineffective, or that the public servants and the Executive would be 'above the law' in responding to requests for information.
>
> Our recommendations as we see them give full recognition to the Rule of Law, while preserving a proper degree of autonomy and freedom of action for the government.

The New Zealand Minister for Justice, Mr. Jim McLay, has again pointed to the importance of changing attitudes of the bureaucracy, not simply the law. In a speech to the Commonwealth Press Union in Wellington, he said

> An Official Information Act will call for changes in what are very ingrained attitudes. An instinctive disposition to secrecy is by no means confined to governments or to bureaucrats within governments. Some large enterprises in the private sector are not the most open of institutions.

The NZ report attaches a draft Official Information Bill with detailed comments by the committee on the draft clauses. The report provides an interesting contrast to the Australian, Canadian and United States laws or proposed laws, each of which envisaged greater powers in the independent courts or tribunals finally to determine the disputed claims for access to government information. The NZ committee was unconvinced:

> Those who favour depriving the Executive Government of the power to decide had tended to deny the concept of Ministerial accountability to Parliament as a practical reality in recent times. However, we believe that in this context the criticism is fallacious. ... A Minister is and remains answerable in a way no-one else can be. ... Judges and Ombudsmen are neither elected by nor are they accountable to the people. ... Whatever the courts may do, a Minister is ultimately responsible for the administration of his portfolio. If the courts make a mistake and the release of information did prove harmful to the public interest or the citizen, it would be the Minister and not the court who would have to pick up the pieces.

One interesting provision contained in the draft Bill (clause 31) provides that where a Minister declines to accept the Ombudsman's recom-

mendation, the decision, the ground for it and (except in cases of national security) the source and purport of any advice on which it was based, are all to be published in the *Gazette.*

Progress continues to be made on laws governing access to information. The ALRC report on privacy is well advanced. Professor Hayes hopes to have it completed by the end of 1981 or early in 1982. Developments overseas and the public opinion poll at home suggest that Federal legislation on privacy before 1984 will be well timed.

odds and ends

■*accident compensation.* The present system of compensating victims of injury and accident in Australia came under critical review in the last quarter:

- At the Australian Legal Convention Mr. J.L. Sher QC of Melbourne said that the advent of accident awards of more than $1 million should lead to pressure for annual awards more accurately assessed, to take the place of the 'sophisticated guesswork' which goes into current calculations;
- Professor Harold Luntz of the Melbourne Law School, commenting on Mr. Sher's remarks, called for an even more radical solution, namely the introduction of a national compensation scheme. Professor Luntz said that the present system of fault compensation, supplemented by statutory schemes, left many seriously injured people completely uncompensated. In England the Pearson Commission had found that only 25% of seriously injured people ever received compensation.
- Writing in the *Sydney Morning Herald* (18 May 1981) Mr. Alan Tyree, Lecturer in Law at the University of New South Wales, pointed to the New Zealand Woodhouse scheme as a more comprehensive and acceptable means of caring for accident victims. Amongst the chief arguments cited by Mr. Tyree is the fact that studies have shown that only 45% of overall costs of the existing compensation system go to the victim. Large percentages must be paid to lawyers and administrators.
- In an address to a jury after it brought in a verdict of $2.6 million, Mr. Justice Lee in *Skow* v. *Public Transport Commission* in the Supreme Court of New South Wales, had his say:

> There is, I believe, grave disquiet in the community in regard to verdicts in favour of severely disabled persons arrived at by the application of Common Law principles. ... Many people think that [the calculation required] goes dangerously close to playing God. But whether it may be viewed in that way or not it can, at the best, only be regarded as an exercise in sheer fantasy. ... Many people believe that it is not in the interests of the community to continue with the present system and it may be seriously doubted whether even a large verdict is in the plaintiff's interest either. Only Parliament can alter the present system but the need for a system which, whilst attending to the injured person's requirements arising from his injuries, avoids placing huge sums of money in his hands, is pressing.

Both the *Sydney Morning Herald* (10 July 1981) and the *Age* (14 July 1981) agreed with Mr. Sher's proposal for annual awards. But each asserted that such a reform would not remove the need for a comprehensive national compensation scheme. Critics of the Woodhouse proposal have not, however, been silent:

- Mr. P.S.M. Phillips MLC, in a recent address in Parliament, criticis-