Labor Minister. On 8 December 1983 the committee handed down its report. It described the Institute as an inefficient, ineffective and costly failure. It declared that the Institute had failed to understand the social and political issues of people disadvantaged by cultural and ethnic diversity. It claimed that the Institute's record in 'encouraging harmonious community relations' was non-existent. The committee recommended that the Institute be scrapped and replaced by a new independent statutory authority 'with greater social and political visibility' and directly accountable to the government.

Responding to the report, the Opposition Spokesman on Ethnic Affairs, Mr Michael Hodgman MP, reacted angrily, calling for a debate in the Australian Parliament in 1984. The Chairman of the Institute, Mr Frank Galbally, criticised the report. Within days of the report's publication, the Institute issued a detailed 'Response'. According to a note in the Melbourne *Age* (9 December 1983) Mr Galbally called the report a 'divisive, corrosive and entirely cynical political document'. He said that the report contained many errors of fact and was likely to destroy a non-partisan approach to multiculturalism in Australia. Mr Galbally called on the Prime Minister, Mr Hawke, to throw the report 'into a rubbish bin'. He declared that 'the whole exercise has been shoddy and I have nothing but contempt for the report. It contains unfortunate political mud-slinging of the worst sort'. However, in December 1983 an interim Council of the Institute was appointed including Dr Moss Cass who will now have the responsibility of introducing the reforms set out in his committee's report.

human rights. Meanwhile, various changes to the Migration Act have been proposed by the Minister for Immigration and Ethnic Affairs, Mr Stewart West MP. They include revision of the Oath of Allegiance required of migrants. The new Oath will delete reference to the Queen and substitute a promise to obey Australia's laws. The Minister for Finance, Mr Dawkins, has also indicated removal of the reference to the status of 'British Subject' in Australian Public Service legislation.

The Human Rights Commission is continuing its inquiry into the treatment of immigrants. At a public hearing held in Melbourne on 14 November, Mr Michael Clothier, a lawyer with the Legal Aid Commission of Victoria, told the HRC that under present Australian law immigrants had fewer common law rights than 'the meanest criminals'. He said that injustices occurred because an immigrant in Australia on a temporary visa who married an Australian citizen was not granted permanent resident status until the department officials were satisfied that the marriage was 'genuine'. If such marriages broke up, a person was no longer granted an extension of his or her visa and became a prohibited immigrant liable to deportation even if there were Australian children of the marriage. He claimed that the department's 'very actions are a cause for the breakup of marriage'. The HRC Chairman, Dame Roma Mitchell, and Deputy Chairman, Mr Peter Bailey, are examining the Australian Migration Act to determine whether its provisions are consistent with human rights' obligations accepted by Australia.

Important reforms governing migration appeals are also under consideration in the Administrative Review Council in Canberra. As well, important changes affecting the right of non English-speaking persons to notification of rights and the provision of interpreters is included in the Criminal Investigation Bill which Senator Evans has promised to reintroduce into Federal Parliament early in 1984.

armageddon never was

Power corrupts, but lack of power corrupts absolutely.
Adlai Stevenson, 1960.

fanatical proponent. It is now a year since the Freedom of Information Act 1982 came into force in Federal matters in Australia. Legislation to widen the scope of the Act has

been passed. Mr John Spender QC (Lib NSW) said that he particularly welcomed the amendment effected by the Amending Bill removing the 5-year retrospective limit on documents containing personal information. The FOI Act, as amended, will provide a strong basis for the ALRC proposals on privacy protection. These proposals (see first item this issue) significantly expand the rights to privacy first provided in the FOI Act and extend them to the private sector, in the first instance in the ACT.

Numerous commentators have been reviewing the first year of the operation of the FOI Act. Writing in the *Canberra Times* (10 September 1983) Mr Jack Waterford, the Canberra journalist and notable litigant under the Act, declared that the long feared FOI armageddon 'never was'. Referring to the Public Service Board's Annual Report, Mr Waterford declared that the PSB officers were 'never the world's most fanatical proponents of administrative law reform or of FOI'. The Annual Report of the PSB, written before the appointment of the new Chairman, Dr Peter Wilenski, contains what Waterford describes as 'its annual blasts':

> Without so much as an admission that the Board had initially over-reacted, it was said that 'initial experience with the Act has been that requests made under it for information have been far fewer than forecast'. However, in many cases requests have been more complex, involving a large number of documents and the affairs of a number of portfolios. In net terms, however, for most departments and authorities the workload implications have been less than forecast.

The PSB initially approved virtually all requests for extra staff to deal with 'the foreshadowed armageddon'. 529 full-time and 16 part-time positions were approved. Many of these officers are now being 'transferred'. Some FOI units are being disbanded altogether.

On 15 December 1983 a detailed report on the operation of the FOI Act was tabled in the Senate. Prepared by the Attorney-General's Department under FOI mentor Lindsay Curtis, it is the first of the planned yearly reviews of the legislation. Some departments have maintained their concern, notably the Treasury whose head, Mr John Stone, according to the report, is the only Permanent Head not to delegate his power to make decisions on refusing access to documents. The Treasury comments on the Act, quoted in the Attorney-General's report, assert that FOI is 'labour-intensive and charges for access under the Act are inadequate'.

The largest targets, as expected, have been the departments with the largest citizen clientele, including Social Security (1 177, 20%), Veterans' Affairs (1 049, 18.5%) and Taxation (1 126, 19.8%). The lack of the use of the Act by business interests is indicated by the fact that the Department of Industry and Commerce received only 68 requests (1.2%). According to the report, a total of 62% of the decisions on all requests were accepted in full. 25% were granted in part and only 13% were refused outright.

Meanwhile, in late October 1983 it was announced that the government had set a deadline before the end of the year for the receipt of the White Paper on public service reform being prepared for consideration by the Cabinet Machinery of Government Subcommittee. The Minister on Public Service Matters, Mr John Dawkins, announced that legislation to reform the Australian Public Service would be introduced in 1984. The aim of the legislation would be to create a senior executive service, transfer control over staffing matters from the Public Service Board to the Department of Finance and improve the efficiency of the Federal Public Service. The appointment of Dr Peter Wilenski, a member of the Public Service Reform Task Force, as Chairman of the Public Service Board in October 1983 will bring to the task a person who has been examining and reporting on administrative law reform for many years.

pandora's box. A series of important decisions of the Administrative Appeals Tribunal

(AAT), and one of the Documents Review Tribunal, indicate that significant independent scrutiny of disputed claims for access under the Federal FOI Act in Australia.

- In mid September 1983 AAT President, Justice Daryl Davies, affirmed the National Companies and Securities Commission's decision not to grant News Corporation Limited access to certain documents held by the Commission. The AAT held that the secrecy provision governing the NCSC was a relevant enactment to assure the confidentiality of the document sought. The Attorney-General's Department has already announced a general review of secrecy provisions in Federal legislation, many of which long precede, are wider than, and run counter to, the FOI policy.

- Also in September, the AAT demonstrated that it would not be 'fooled around' by government departments in cases involving claims for access to accessible documents. In very strong language, Justice Davies, dealing with a claim for access to records of a trust fund operated by the Capital Territory Health Commission, declared that the witness before him, a senior Federal official, had been involved in 'the closest case of clear perjury I have ever come across on this tribunal'. The strong language and the widespread publicity given to it will doubtless have the effect of bringing even many recalcitrant bureaucrats into line with the legislation.

- On 4 October 1983 Justice Beaumont in the Federal Court delivered what the *Australian* (5 October 1983) declared was a 'landmark decision' concerning access to part of an interim report into the Legal Department of the Australian Broadcasting Corporation. In his judgment, Justice Beaumont said that unrestricted access could be given to those parts of the report containing 'purely factual material'. However, he ruled that the report's 'advice, opinion or recommendations' should be withheld in the public interest. The report was instigated by the Commonwealth Ombudsman and compiled earlier in the year by past NSW Law Society President, Ms Mahla Pearlman. Mr Michael Cosby, radio producer of the ABC program 'The Law Report', applied to the Federal Court to have the report made public under the Freedom of Information Act. According to Bill West in the *Australian*, the decision of Justice Beaumont 'may have the effect of reducing access to information'. Interestingly, Justice Beaumont referred to significant American law in reaching his decision, largely because of the lack of British precedents on the subject of FOI.

- At the end of October 1983 the first ruling of the Document Review Tribunal refused access to Cabinet documents under the FOI Act. Justice T R Morling, constituting the tribunal, upheld a certificate by the Secretary of the Department (Sir Geoffrey Yeend) that documents sought by the intrepid Mr Waterford were not accessible. The judge held that the workings of Cabinet would be prejudiced if the documents were made public. He said that as long as there were reasonable grounds for the claim that the documents were Cabinet documents or prepared for submission to Cabinet, that was 'the end of the question'. In those circumstances, the documents were exempted under the FOI Act.

- On 2 November 1983, members of the Greek community failed before the AAT to make the Ombudsman disclose information about the so-called 'Greek conspiracy case'. The case involved about 130 persons living in Greece

whose pensions were suspended or cancelled after dawn raids on Sydney doctors' surgeries in 1978. Almost all of the charges arising out of the raids were later dropped. In 1979, the Commonwealth Ombudsman was asked to investigate actions by the Department of Social Security. The Public Interest Advocacy Centre in New South Wales brought proceedings in the AAT on behalf of 30 complainants seeking a preliminary report which, it was said, the Commonwealth Ombudsman had sent to the department. The AAT held that enquiries by the Ombudsman were confidential, subject only to a discretion to report a matter to Parliament or the Prime Minister. Disclosure of other documents was prohibited. Nonetheless the AAT made it clear that the mere prohibition of disclosure in a Federal act would not alone preclude disclosure under the Act, unless the statutory prohibition was 'necessary for the protection of an essential public interest'.

ongoing reform. In November 1983 the Attorney-General tabled in Parliament the Seventh Annual Report of the Administrative Review Council (ARC). This is the body chaired by Mr Ernest Tucker which maintains scrutiny of administrative reforms in the Federal public sector. Important events disclosed in the report of the Council for 1982/3 are:

- the report on review of taxation decisions. The Council has recommended that the jurisdiction of the Taxation Boards of Review should be transferred to the AAT;
- the review of the compensation legislation governing Federal employees. The ARC has recommended, amongst other things, the imposition of a 60-day time limit for the initial determination of claim by the Compensation Commission;
- the report on land use in the ACT has been published (ARC 14);
- reports have also been published on the Australian Federal Police (ARC 15) and decisions under the Broadcasting and Television Act (ARC 16);
- the ARC is currently working on the relationship between the functions of the Ombudsman and the AAT and review of the operation of the Administrative Decisions (Judicial Review) Act 1977.

Amongst interesting observations in the ARC report is a reflection on the commencement of the Freedom of Information Act and commentary on the recommendations of the report of the Review of Commonwealth Administration, which focused on the costs of administrative review and the need to balance the requirements of individual justice and sound administration.

reforms spread. Meanwhile, in the Australian States and in New Zealand too, things are happening as the FOI movement gathers steam:

- The Melbourne *Age* (20 September 1983) recorded the first appeal under the Victorian Freedom of Information Act. Mr Frank Penhalluriack appealed to the County Court of Victoria against a refusal to provide information under the State FOI legislation. Mr Penhalluriack said that he believed the information he sought could help him with two test cases on weekend trading law due to be heard in the Supreme Court.

- In New South Wales legislation introduced on 1 December 1983 proposes a State Freedom of Information Act. Under the Bill as introduced, members of the public will have a legally enforceable right to State Government documents, including personal files about them. Access will be given to documents up to five years old and the government department is

to have 45 days in which to respond. Appeal is provided in respect of disputed exemptions to the District Court of New South Wales. But this right can be removed in the most sensitive areas of Cabinet and Executive Council material and documents affecting law enforcement and the protection of public safety. In the first two categories, the Secretary of the Premier's Department, Mr G Gleeson, can issue conclusive certificates denying access. In the law enforcement area, conclusive certificates can be issued by the Minister. Opposition Spokesman Mr Tim Moore MP whilst critical of aspects of the Bill said that the NSW Bill was 'a major step in the right direction'. The NSW Premier, Mr Neville Wran QC, said that the Bill would be allowed to lie on the table until 1984 and that the government was willing to consider 'constructive amendments'.

- Across the Tasman Sea in New Zealand, the Official Information Act is now in force. According to the Chief Ombudsman, Mr George Laking (Auckland *Star*, 13 October 1983) he received 98 requests in the first three months of the operation of the Act. Mr Laking said that Government Ministers, departments and agencies were mostly withholding information under the general provision which permits exemption where it is 'necessary to maintain effective conduct of public affairs'. He said that the number of requests made to him were higher than anticipated and that if the requests continue to be made at the present rate 'the workload of my office will be increased by at least 50%'. He pointed out that under the New Zealand legislation the onus is on those who seek to withhold information to satisfy the Ombudsman that it should be withheld. But as in Australia, the seemingly expected inundation of requests for information has not come about in New Zealand. According to the *New Zealand Herald* (13 September 1983) many departments were reporting that the bulk of requests being made under the Act and being granted had actually come from staff who 'queued up after July 1 to see what was contained in their personnel records'. Mr Paul Willis, Policy Branch Information contact officer of the Ministry of Defence was reported as saying that though departments had 'geared up' to face a 'major increase in requests for information', in the outcome the legislation was, in general, a 'non event'. It seems that we cannot even report that the bureaucratic armageddon has arrived across the Tasman.

media stir

The trouble with the publishing business is that too many people who have half a mind to write do so.

William Targ

media meet. A big event of the last quarter was the organisation of a Media Law Association seminar in the palatial Regent Hotel, Sydney. The seminar gathered together under the aegis of Sydney barrister Michael McHugh QC to examine a draft Defamation Bill 1983 released for public discussion by the Federal Attorney-General, Senator Evans. The Bill represents the product of nearly three years' discussion by the Standing Committee of Attorneys-General of the ALRC report on defamation law reform, *Unfair Publication* (ALRC 11). Leading participants in the seminar included the Attorney-General himself, Justice David Hunt of the Supreme Court of New South Wales, the President of the Australian Journalists' Association, numerous other news interests and Mr Murray Wilcox QC, formerly Commissioner in charge of the ALRC project.

The Attorney-General said that the purpose of the Bill was to secure a uniform defamation law for Australia. It aimed to balance the