government departments have extensive access to the information recorded in the Register. The Principal Registrar advises that information is released subject to the 'necessary assurances regarding confidentiality'. The NSW LRC believes no change is necessary but recommends that those providing the information be made aware of the extent of government access to it. It is concerned as to questions of privacy especially with the current development of on-line computer access to the Register.

Members of the public can gain access to information on the Register by ordering certificates. Certificates are either full or 'extract' which provide name, surname, date and place of birth only. They are awarded to any person who applies in writing and supplies a 'sufficient' reason. The Registry exercises strict control over the issue of such certificates. They are generally only issued to the named person, on their authorisation or to their next of kin. The NSW LRC questions whether such control is necessary especially compared with the English policy of open access. If so, what is a 'sufficient' reason? It holds the view that the Registry should continue to require and record all details but that the flexibility of certificates should be increased. This can be facilitated with the availability of the new computer system. For example details not relevant to the applicant's purpose or claimed to be embarrassing to the person concerned may be omitted. However, in view of the Registry's many and important functions, both public and private, people should be able to order a 'almost full' certificate which satisfies the purpose for which they require it.

* * *

child divorce

> Insanity is hereditary — you get it from your children.
>
> bumper sticker

community welfare services act 1970 (Victoria). A Victorian boy, who could not get on with his parents, ran away from home when he was almost 15. Social workers advised him of the provisions of section 104 of the Community Welfare Services Act 1970 (Vic) which enables a child under the age of 17 to apply to the court for an order that he or she be admitted to the care of the Community Welfare Services Department as a ward of the state. The court will grant such an application 'if it is satisfied by the evidence before it, that there is substantial and presently irreconcilable differences between the person having care and custody of the young person and the young person to the extent that the care and custody of the young person are likely to be seriously disrupted . . .' [Section 104(3)].

two way provision. Although cases under this section have been characterised as 'child divorce' cases, and have, in the main, been brought by children, it should be noted that an application under this section can also be made by the child's parents or guardian.

application granted. The Victorian boy's application was granted by the Childrens' Court on 26 September 1986. The boy had been granted legal aid and was legally represented. His parents were not legally represented and, after an effort at reconciliation by a social worker, left the court before the final order was made by the magistrate.

parent's application to quash order. The boy's parents applied to the

Supreme Court to have the order set aside on the ground that they were denied natural justice at the hearing. They argued that:

- They were not given adequate notice of the proceedings.
- They should have been granted an adjournment to obtain legal resprresentation.
- Four reports prepared by social workers and a psychiatrist which were used as evidence for the 'irreconcilable differences' between themselves and their son were not disclosed to them.
- They were not given the right to cross examine the assertions made in those reports.

judgment. Justice McGarvie pointed out in his judgment that it was not his role to decide whether the Children's Court should have made the order they did on the basis of the evidence of family relations, but rather to determine whether the decision making process was fair to both parties. The question in issue was what the principles of natural justice required in this case and whether they had been complied with. Justice McGarvie treated each of the areas in which the parents argued that they had been denied natural justice in turn.

notice of proceedings. It was held that, although the parents did not receive written notice of the hearing, they knew as much about the application brought against them as they would have if it had been served on them. The absence of written notice did not constitute a denial of natural justice in these circumstances.

absence of legal representation. Similarly the absence of legal representation was held not to breach the principles of natural justice. There is no absolute right to legal representation. The proceedings had been adjourned on two previous occasions to allow the parents to obtain legal representation. It was held that it was open to the magistrate to exercise his discretion to refuse a further adjournment for this purpose in view of the countervailing arguments that the matter should, in the interests of the child, be resolved as soon as practicable.

non-disclosure of reports. The failure of the magistrate to disclose the four reports to the parents was held to be a denial of natural justice. The reports contained serious allegations reflecting on the parents' suitability to look after their son. Justice McGarvie stressed that as the Children's Court order deprived the parents of their rights of guardianship it was imperative that they be given an opportunity to answer the case being put against them.

cross-examination. Justice McGarvie rejected the argument that denying the parents the right to cross-examine those who wrote the reports, was a breach of natural justice.

children's court order set-aside. On the ground that non-disclosure of the four reports constituted a breach of natural justice, the Children's Court order was quashed. However since the boy had turned 17 by that stage, he was not under any obligation to live with his parents. He has chosen not to do so.

effect of decision. The basic effect of this decision is to emphasise that the separation of a child from his or her parents is not something that

can be achieved unilaterally by either the parents or the child. In determining whether such an order should be made the court must be satisfied that both parties have had an opportunity to present their case and to answer the case against them. If this is done then it is less likely that an unjust decision will be made.

* * *

revitalising parliament

> Caesar neglected the warnings of the Ides of March.
> We should all remember what happened to him.
>
> The Hon Justice Michael Kirby

On 15 March 1988 (the Ides of March) the Hon Justice Michael Kirby CMG, President of the New South Wales Court of Appeal and former Chairman of the Australian Law Reform Commission made an address at a National Goals and Directions dinner at Parliament House in Sydney.

Justice Kirby commenced by listing the benefits of life in Australia. They include: a legal system and independent judges; a stable constitution; parliamentary democracy, and high standards of literacy. He went on, however, to analyse these benefits and found them to be somewhat lacking in quality. The following is an edited text of his address.

limited access to the courts. We have the law administered by independent judges in the courts, long established. And yet, because of the frequent failure of reform, some of the laws work an injustice. And, despite enhanced legal aid in recent years, many citizens cannot afford to assert and enforce their rights. For the very rich and very poor access to the courts is more of a reality than for citizens of middle Australia.

a constitutional deep freeze. We have a constitution which is old by the standards of the world. It is stable and speaks with the authority of continuity. And yet, because of the failure of so many referenda, Australia has been described by Professor Sawer as 'constitutionally speaking, the frozen continent'. For constitional change we have had to rely upon the uncertain probability of judges adapting the language of the text, sometimes beyond the wildest dreams and expectations of the Founding Fathers of the Commonwealth.

loss of parliamentary power. We have parliamentary democracy and free and honest elections such as are enjoyed in only a small minority of the countries of the earth. And yet we see increasingly the loss of power of Parliament. And sometimes we see the disinclination of our elected representatives to look into the future, beyond the ephemeral opinions demonstrated in those polls.

Parliament remains the great centrepiece of our democracy. But its power has rapidly declined in recent years and I see no sign that the tide is turning. Unless reforms are introduced, it is likely that the influence of parliaments in Australia will continue to erode in the century ahead. And that would be a tragedy for democratic values in our country.

The features of the decline of our Parliament are well documented. Power has been lost to the Executive Government. Increasingly in the past ten years even the Executive Government has lost power to the Prime Min-