

- *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

the W.A.L.R.C. on its long-standing review of the law of defamation. The review comprises a commentary on the A.L.R.C. report, *Unfair Publication* (ALRC 11) released in June 1979. At the request of Mr. Medcalf, the W.A.L.R.C. co-operated with the A.L.R.C. and this co-operation is acknowledged in the reports of both Commissions.

On most proposed reforms the two commissions are in substantial agreement.

- The distinction between libel and slander should be removed
- The death of a person defamed in his lifetime should not extinguish his cause of action.
- An action to prevent defamation of a deceased person should exist within three years of his death.
- Truth should be a defence to a defamation action (not, as at present in some jurisdictions, 'truth and public benefit' or 'truth and public interest').
- Defences such as fair comment, limited privilege and fair report should be clarified and widened to allow more scope for publication of matters of public interest.

On two important subjects, however, the Commissions are divided:

- *Fair report defence.* The A.L.R.C. proposed that defamatory matter, on a topic of public interest where the maker of the original statement is identified and the matter is not adopted by the publisher, should be capable of being republished with impunity, so long as a right of reply was afforded. The W.A.L.R.C. expressed concern that a remedy against the originator of the defamatory statement might not always be available or satisfactory. Such a defence might "invite the publication of unsubstantiated rumours".
- *Limited Privacy Protection.* The A.L.R.C. proposed, as a contribution to securing uniformity of defamation laws, that, where the "public benefit" element was

removed in the defence of justification, a limited positive protection against the publication of "private facts" as defined, should be given by the law. The W.A.L.R.C., whilst conceding that the proposal was "attractive" was not convinced that civil remedies, as opposed to administrative action, were the most desirable way of protecting privacy interests. The W.A.L.R.C. Commissioners thought that this form of privacy protection should be dealt with in the context of privacy protection generally. A less preferable solution would be to adopt a national standard of "truth and public interest".

The W.A.L.R.C. report attracted great interest in the media in the West. The *West Australian* (3 December) described the A.L.R.C. "package deal" as:

"Involving uniformity (to end the eight-headed jurisdictional morass of Australia's defamation laws), speedy dispute settlement (virtually on-the-spot remedies and an end to the stop-writ gag on free debate), speedy correction of published errors and finally a dash of privacy law. ... Sensibly the W.A. Law Reform Commissioners want to delay the privacy law. They make a strong case for deferment. The privacy proposal added a complex dimension to an already vexed topic and the W.A. commissioners, tuned to the factors that can impede law reform, fear that the privacy element may hamper progress".

The editor then calls for action:

"All in all, the federal commission's proposals, as refined by the W.A. commission, would go a long way towards meeting the need of the public to be informed on matters of concern to it without in any way conferring on the news media a licence to set about wantonly destroying reputations. Whatever the final views of our legislators, it is imperative that any new laws covering defamation in W.A. provide more public right to information than now".

Quite apart from the substantive subject matter of the W.A. report this was, as the report notes, the first time in Australia that the task of developing law reform proposals on a particular topic has been shared by federal and state law reform commissions. The W.A. report notes that it is appropriate that the sub-

ject should have been Defamation, because of "the interstate publication of newspapers magazines and other media developments which make it desirable that defamation law should be uniform throughout Australia". Uniformity of law is the common goal of the A.L.R.C. and the W.A.L.R.C in this area.

Other comments on the A.L.R.C. proposals for protection of privacy in publication came from:

- Mr. Frank Moorhouse, a member of the Australian Press Council, who in September 1979 expressed the fear that privacy legislation could "lead to an endorsement of prejudices and taboos in society".
- Mr. Ranald Macdonald, Managing Director of the publishers of the prestigious Melbourne newspaper *The Age* told a radio program that if politicians had their way Australia would have wide-ranging privacy legislation. He said that only limited privacy legislation should be introduced in Australia. *The Age* previously supported enactment of the A.L.R.C. "package".

In the context of the protection of the privacy of politicians, it is relevant to note the publication of the report of the Committee of Inquiry Concerning Public Duty and Private Interests. The report of the Committee, headed by the Chief Judge of the Federal Court, Sir Nigel Bowen, contains a wide-ranging review of the balance to be struck between the claims of public officers to privacy of their personal affairs and the conflict of interest situation that can arise for those who hold important offices of State. The key-stone of the report is a code of conduct, to apply to office holders. The establishment of new Parliamentary committees is proposed as a special machinery to investigate alleged misconduct. The government has announced "virtual acceptance of most of the proposals of the report", whilst deferring decision on the establishment of Parliamentary Ethics Committees and a proposed

Public Integrity Commission until consideration of the Parliamentary debate on the report.

What other developments are relevant to the A.L.R.C. proposals on defamation reform?

- On 26 September Attorney-General Durack announced that, to assist with the consideration of the A.L.R.C. report, the media interests and the public were asked to submit views for the consideration by an interdepartmental committee set up to make recommendations on the report before the end of January 1980.
- On 13 October it was announced that the Standing Committee of Attorneys-General meeting in Brisbane had secured the agreement to the circulation of non-confidential submissions made to the Commonwealth. This will permit the States to consider reform proposals. The Ministers noted with approval Victorian moves towards extending qualified privilege to fair reports of proceedings in the Parliaments and courts of all States and Territories in Australia. At present, a number of State laws confer protection only on reports of proceedings of the local Parliament and courts. The need for a wider protection was strongly urged in the A.L.R.C. report. Commenting on this move forward, the *West Australian* (26 September) said:

"The question of Parliamentary privilege extending across State boundaries is just one aspect of the confusion and variation in Australia's eight sets of defamation laws. The slow piecemeal progress towards reform is all the more frustrating for the fact that the shortcomings of these eight sets of laws have been thoroughly examined and exposed by the Australian Law Reform Commission. The commission presented last June draft legislation which would eliminate situations in which something said or written can be defensible in one State but not in another".

It is to be hoped that important but piecemeal progress such as is evidenced in the proposed Victorian legislation, will not delay national consideration of the "total package": a truly uniform Australian law of defamation.