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WESTERN AUSTRALIAN INSTITUTE OF TECHNOLOGY
SEMINAR ON FREEDOM OF INFORMATION IN RELATION TO THE IMPACT OF TECHNOLOGY ON SOCIETY AND THE ENVIRONMENT
TUESDAY 14 NOVEMBER, 1978

PUTTING FREEDOM OF INFORMATION IN ITS PLACE

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

October 1978

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1. THE FREEDOM OF INFORMATION BILL

Few pieces of legislation have attracted so much controversy as the Commonwealth Government's Freedom of Information Bill, 1978. A wholly admirable procedure has been adopted, quite rare in our parliamentary tradition, of introducing the Bill and then leaving it lie on the table of Parliament to secure public comment and criticism. A similar course was adopted with the Criminal Investigation Bill, 1977 and the Human Rights Commission Bill, 1977. In these cases too, controversy surrounded the proposed measures. Each of them lapsed when Parliament was dissolved in November 1977. But neither has been forgotten. Negotiations for State participation in a national Human Rights Commission are continuing, apparently with some prospects of success. The Commonwealth Attorney-General, Senator Durack has announced his intention to review the Criminal Investigation Bill in the light of comment. He expects "to have a revised Bill prepared for the Autumn sittings of Parliament next year".[1]

Perhaps it is because the public is not accustomed to being given a general opportunity to criticise draft legislation, at relative leisure, that some of the criticism of the three Bills has been extravagant.

Each of the Bills has a common theme. This is the collection in a statute of the Australian Federal Parliament of important civil and political rights enjoyed by Australians. The debate about human rights is not, of course, a new one. But it has gained impetus in the aftermath of the Second World War. Growing knowledge of and concern about technological change increase the urgency of stating (and providing machinery for the defence of) rights which we are prepared to take seriously.

The Commonwealth Attorney-General has been vigorous in his defence of the Freedom of Information Bill. Introducing it into Parliament, Senator Durack described the Bill as-

> "... a major initiative by the Government in its programme of administrative law reform. It is, in many respects, a unique initiative. Although a number of countries have freedom of information legislation, this is the first occasion on which a Westminster style government has brought forward such a measure. This Bill ... will establish for members of the public legally enforceable rights of access to information in documentary form held by Ministers and Government agencies except where an overriding interest may require confidentiality to be maintained".[2]

The Attorney-General has stressed that the Government expects the legislation, once passed, to be administered in accordance with the policy "that as much information as possible should be provided to those seeking it". The ultimate aim of the law is "to make the Commonwealth administration more responsible to the public needs".

The principal thesis advanced by Senator Durack is that-

> "The fact that the Bill establishes a presumption in favour of disclosure, will be a lever to compel a department denying access to a document to make out its case in terms of actual harm that might flow from release of that document".[3]

Critics of the Bill have been vocal both inside and outside Parliament. Senator Allan Missen is Chairman of the Senate Committee on Constitutional and Legal Affairs, to which the Bill has now been referred by the Senate. Before this

reference occurred, Senator Missen had expressed the view that the Bill did not strike the appropriate balance between openness and confidentiality. Among criticisms mentioned by him were the following:[4]

* past or existing documents created before the Act are not accessible
* under many exemptions, conclusive certificates can be given by Ministers, not examinable by the Administrative Appeals Tribunal
* the absence of provision for payment of costs, even where a document is wrongly declined
* the width of the expressions "Cabinet documents" and "internal working documents"

"It will be seen that these exemptions, prepared by the Public Service, are covering a very wide field. It might be said that you have what appears to be a shining apple, but when most of the fruit has been eaten away, there is not much benefit".

The Shadow Attorney-General, Mr. Lionel Bowen has been especially critical of the scope of exemptions and the procedural defects as he saw them-

> "It comes at a time when the need for real rather than illusory public access to the workings of government is critical. The bureaucratic process today is more complex than ever before and the danger of a Minister becoming the creature of his bureaucrats is more prevalent than ever before".

A consultant to the Royal Commission on Government Administration (the Coombs Commission), Mr. John McMillan has decribed the issue of "Freedom of Information" in Australia as "closed".[5] The legislation, he asserts, will "do more to entrench the administration's right to withhold initial information than to secure the public's right of access to it". The same view has been expressed by Professor Colin Howard, Dean of the Melbourne Law School. Senator Durack has not accepted this criticism. Answering an editorial in the

West Australian[6] asserting that abandonment of the present Bill and a "fresh start" was "the only acceptable alternative", the Attorney-General claims that the public debate so far has failed to appreciate that the Bill would make real and substantial changes to the present law-

* Acccess to information held by the Government would be based on a legally enforceable right rather than depending on the discretion of Ministers and officials.

* For the first time, a member of the public will have the right to demand information. Ministers and officials who seek to deny access will have to justify their refusal.

* For the first time there will be a positive obligation on departments to make available manuals and guidelines by which decisions affecting the public are made.[7]

Senator Durack has pointed out, as is obvious, that total disclosure of all information in the hands of government occurs nowhere and would not be acceptable in the national interest. The Government had to make a judgment about how far disclosure of information should be compelled without disrupting the operations of government itself, or adversely affecting business or privacy interests.

The West Australian, whilst conceding the need for some information to remain confidential, continued to assert that the "powers that the Bill would give Ministers and senior civil servants to refuse access without any right of appeal are far too sweeping".[8]

The Bill is now with the Senate Committee where the issues outlined above will be debated afresh.

It is not my function or intention to enter into the debate about alleged merits and defects of the Bill. I am sure that some of the criticism has under-estimated the extent to which the Bill may contribute to a psychological change in administration and the degree to which the media and the parliamentary forum will be used to diminish, in practice, the

claims for exemption. It is now for the Senate Committee to report on the Bill[10] and then to say whether or not the proper balance has been struck between the competing public interests identified by the Attorney-General.

With one observation of Senator Durack I fully agree. This is his assertion that there had been a general failure to recognise the Freedom of Information Bill in the context of "other initiatives taken by the Government in the area of administrative law reform". The aim of the new administrative law is to "produce a new climate - a change in the attitudes of the bureaucracy and the public towards the disclosure of official information".[11]

The purpose of this paper is to help put the freedom of information debate into context. Seeing the debate in context may help us come to correct conclusions.

2. LEGISLATIVE CONTEXT: INFORMATION AND COMMONWEALTH ADMINISTRATION

The Freedom of Information Bill 1978 is not an isolated measure picked by random out of the United States Statute Book and adapted for application to the parliamentary system of Australia. It represents the latest in a series of administrative law reforms that have been pioneered by successive governments of the Commonwealth. The growth of the role of government of this century and the dangers which this growth entails for the ordinary individual were recognsised in the 1930's when Lord Hewart wrote The New Despotism.

> "In 1957 the United Kingdom Parliament received an important report from the Franks Committee which recommended the establishment of a Council on Tribunals to keep administrators in check. Such a Council was established in 1958. It attracted scarcely a mention in Australia. We were just not interested. In the late 1960s a series of committees were established to consider modern procedures for the review of bureaucratic decisions. Following their reports, legislation was introduced during the Whitlam Government and the initiative continues vigorously under the present Administration.

The recurrent themes of the committees were three:

* The development of a comprehensive structure of independent institutions to supervise the bureaucracy.

* The avoidance of the haphazard growth of government bodies and the provision of basic rules of fair conduct.

* Ensuring that the system actually worked by providing that the citizen could secure access to government information to make sure that decisions by government made on that evidence and affecting him were fair and right".

Since 1975 three important Acts have been passed which will certainly produce big changes in Commonwealth government procedures of decision making and in the access by individuals to information in the hands of government. The Acts are-

* Administrative Appeals Tribunal Act 1975
* Ombudsman Act 1976
* Administrative Decisions (Judicial Review) Act 1977

The Freedom of Information Bill is part of a comprehensive "package" of legislation which is designed to do nothing less than alter the accountability of public administration to the individual. Further legislation has been promised including-

* Comprehensive privacy legislation, to follow receipt of the report of the Law Reform Commission on its reference on privacy protection; and
* Legislation to lay down minimum procedures of Commonwealth Tribunals, including basic requirements to ensure that natural justice and fairness are observed in such tribunals.

The legislation already enacted establishes four "guardians" for the individual in his dealings with the Commonwealth bureaucracy. These are-

* Administrative Appeals Tribunal. A new national general appeals tribunal has been established. It is a quasi-judicial body headed by Mr. Justice Brennan, formerly a leading member of the Queensland Bar. Its functions are to review decisions within its jurisdiction, made by Ministers, subordinate tribunals and

administrators. It not only reviews the legality of a bureaucratic decision and the facts upon which that decision was based but also the policy underlying the decision. It is this third power which goes beyond the orthodox functions of judges in the past and permits the tribunal to "flush out" hitherto secret policy directives so that they can be debated and justified in the open.

* Commonwealth Ombudsman. This new officer is the recipient and investigator of grievances in matters of administration. Professor Jack Richardson has already received thousands of complaints about bureaucratic delays, insensitivity and indifference. He can report errors to senior public servants, Ministers, the Prime Minister and ultimately to Parliament, in order to ensure good administration and fairness to the citizen. He is now operating most informally and some complaints are being dealt with promptly by telephone.
* Administrative Review Council. A general supervisory body has been established to keep the new structure of administrative reforms under review. This body is constantly advising the Commonwealth about additional jurisdiction that should be given to the Administrative Appeals Tribunal, new methods of reviewing bureaucratic decisions and improved procedures that should be adopted in the Commonwealth's Public Service. It receives and considers suggestions from citizens and reports to the Attorney-General.
* Federal Court of Australia. A new system of judicial review has been established, committing to the Federal Court scrutiny of the legality of administrative decisions. Whereas the old law for judicial review was complicated by antique remedies, the new review involves a simpler and speedier procedure. Moreover, it introduces an important right to have reasons stated. It is this right which is perhaps the most important innovation of all.

Each of the measures described above, and already enacted provides new machinery by which individuals affected by government decisions can extract information out of government which previously it may not have volunteered. The Administrative Appeals Tribunal Act and the Administrative Decisions (Judicial Review) Act provide for the giving of reasons, the statement of material findings of fact and reference to relevant evidence. The second mentioned Act has not yet been proclaimed to commence. However, it has passed through Parliament and will probably come into operation in 1979 when decisions have been made concerning permissible exemptions from the obligations of the Act.

There is an, as yet, little known provision in the Judicial Review Act which will entitle a person affected by a decision of a Commonwealth public servant under a Commonwealth law, without commencing any legal proceedings whatsoever, to obtain on request a statement in writing -

* setting out the findings on material questions of fact
* referring to evidence and other material on which the findings were based; and
* giving the reasons for the decision.

W.S. Gilbert once declared that it was one of the "happiest characteristics of this glorious country that official utterances are invariably regarded as unanswerable". Now, in the Commonwealth, they will be questionable. The answers given will be open to scrutiny by judges and others and by the Parliament and the public. The Judicial Review Act, when proclaimed, will give the words "public servant" a fresh vitality. The Ombudsman Act 1976 provides for indirect access by the individual to government information. The Ombudsman, on behalf of the complainant, secures access to documents and other material in order to judge whether administrative action has been wrong.

In the area of privacy protection, legislation has not yet been proposed to the Commonwealth Government by the Law Reform Commission. However the common machinery adopted in North America and Europe for the defence of privacy is general access by the individual to his own information, whether in the hands of government or private sector. Modern privacy is no longer a concern about bedrooms and peep-holes. It is a concern about information held on the individual, through which others (who can make decisions affecting his life) perceive him. To ensure that the individual retains a capacity to have some control over the perceptions which others have on him (that being the privacy right) the principle has been adopted in most privacy laws that the individual should have access to his own information to make sure that it is accurate, up to date, fair and comprehensive. Machinery to uphold these qualities of information differs from country to country. In the United States the machinery tends to be the courts. In the civil law countries and Europe, administrative procedures have been established.

Although it is too early to say the precise direction which Australian laws for privacy protection will take, it appears unlikely that they will fail to incorporate this critical "right to access". This right was at the heart of the Swedish privacy law passed in 1973, the United States Privacy Act passed (federally) in 1974, the German federal law of 1976 and the French legislation, enacted last year, which came into operation early in 1978.

This, then, is the position that is reached. Until now, in the public sector, there was a tradition of bureaucratic secrecy upheld, in some cases, by legislation tracing its origins to the administrative traditions of Whitehall and the Official Secrets Act 1911. In such circumstances, access to information in the hands of government was a "privilege" not a "right". Asserting the "privilege" depended upon the will, determination or patience of the individual, his position in life or the help he secured from a Member of Parliament, the media or another source of influence.

In the Commonwealth's administration, under the pressure of legislation enacted by successive governments, this is changing. Subject to exceptions, the Ombudsman, the Administrative Appeals Tribunal and the Federal Court can secure access, on the behalf of an individual, to government information affecting that individual. The right to reasons in the Administrative Decisions (Judicial Review) Act 1978[12] is most comprehensive. It does not even require the commencement of litigation. The Freedom of Information Bill differs from the laws mentioned in that no particular "interest" or personal involvement or concern is required to justify a claim for access to information under the Bill. It is not even limited to Australian citizens as, for example, the equivalent United States and Canadian legislation are.

The debate will continue about the scope of these reforms and whether they go far enough. The one thing that does emerge clearly is that information and access to it is becoming of major importance. Knowledge is power. It permits the exposure of wrongful conduct and the criticism of impropriety, delay and incompetence. The changes wrought by the legislative reforms outlined have been ill perceived. They have not been attended by much publicity.[13] However, as they are cited, they will, in time, shift the possession of power which attends the control over access to information.

Wider individual access to public information is not secured without problems. The costs attending the administrative reforms have been brought to the attention in the latest Annual Report of the Public Service Board of the Commonwealth.[14] The perils of substituting the opinions of unelected judges for the decisions of Ministers responsible to Parliament and acting with the advice of their departments, has already been called to attention by Professor Gordon Reid of the University of Western Australia. The Chief Justice of New South Wales recently expressed concern about the proliferation of tribunals and the potential loss of relevancy of the general court

system, as the important decisions of society are turned over to specialist bodies, in preferance to the general courts. All of these are important issues, deserving of attention as we develop new administrative machinery to apply new administrative checks and balances.

When discussing the Freedom of Information Bill, it is vital, as it seems to me, not to see it in isolation but as part of a comprehensive mosaic of legislation. Most of the legislation requires an individual with a special involvement of his own, some proprietary or other interest to justify access to government files. Privacy protection legislation could scarcely be otherwise. What is unique about the Freedom of Information Bill is the absence of such a special requirement. Just being in Australia is deemed enough.

3. THE INSTITUTIONAL CONTEXT: THE F.O.I. DEBATE

The United States Freedom of Information Act was based on a Swedish precedent. Its persuasive influence is now being felt throughout the English speaking world.

So far the Federal Bill in Australia is the first effort by a Westminster parliamentary system to translate the American legislation into a country with the Cabinet system of government. But other moves are on the horizon.

In South Australia an announcement was made on 21 June 1978 that a government committee would be established to investigate freedom of information legislation for that State and to draw up detailed instructions for a Bill. Legislation by the end of the year was foreshadowed but the Bill has not yet been produced.

In New South Wales, a review of the New South Wales government administration is being conducted by Professor Peter Wilenski, as Commissioner. Already in his Interim Report, Directions for Change he has proposed the introduction of systems of administrative control somewhat similar to those

adopted in the Commonwealth. Furthermore, freedom of information legislation was foreshadowed.[15] An electoral promise by the N.S.W. Premier, Mr. Wran, before the recent State election, was that, if returned, as it was, his Government would establish a tribunal for administrative appeals.

In Canada, a national debate about freedom of information is continuing, and some steps have been taken by the establishment of a Human Rights Commission including a privacy commissioner. In Ontario, a Provincial commission has been established to report on freedom of information and privacy. It has begun to hold public hearings and has issued a research program.

In England, the long awaited white paper on reform of the Official Secrets Act fell short of the expectation of those committed to freedom of information legislation in that country. The only major reform proposed was to limit the cases where disclosure of government "secrets" rendered the public service officer liable to criminal sanctions under the Act. The London Times contrasted the legislation recommended with the Labour Government's electoral manifesto to replace the Official Secrets Act with a statute putting the onus (as the Australian Bill does) on public authorities to justify withholding information. The Franks Committee in 1957 had recommended repeal of s.2 of the Act. A report by Justice (the British section of the International Commission of Jurists) had urged in 1978 that failure to disclose documents should be maladministration warranting investigation by the Parliamentary Commissioner (Ombudsman).[16] However, the British Government has so far stood firm against a general Freedom of Information Act. The Times commented-

> "British government has not been so successful in advancing the welfare of the country that the habit of secrecy can be justified by results. Some secrecy is necessary for government, but nothing like as much as is practised in London. The cause of public information is not merely a search by newspapers for more grist for their mills. It is important to efficiency and to democracy.[17]

Efficiency, human rights, political democracy. These are the issues that are at stake. But the Freedom of Information Bill is only one part of the machinery to secure these ends. The machinery is "oiled" by information: access to it and control over it. Because power and political principle are equally involved in determining the extent to which access will be allowed, it is not at all surprising that we have a major national debate about the Freedom of Information Bill the machinery by which final decisions will be made on that access. The point made for present purposes is that legislation providing some access has already been passed. In part, this legislation is already in operation. Further such legislation has been promised. The debate should be seen not about one Bill but about the general claim to control of and access to information, particularly in the public sector of our society.

This review has not exhausted the relevant legislative developments. The Australian Law Reform Commission, for example, has a reference for the reform of the law relating to compulsory acquisition of property by the Commonwealth for public purposes. The Commission's Discussion Paper has proposed a pre-acquisition inquiry at which government would be required to disclose and justify its reasons for acquisition of particular property.[18] Proposals are also made for the supply of valuation and other information to a person affected by compulsory acquisition.[19] The Criminal Investigation Bill 1977 (based on the Law Reform Commission's second report) requires the service of notices and the giving of information to persons under restraint concerning their rights.[20] Much consumer legislation is based upon the principle that the consumer's relative inferiority should be corrected, to some extent, by the supply of notices of rights and other information. The general literacy of the population and increasing education levels in all sections of the community make these developments unremarkable, indeed inevitable. Nevertheless they represent a shift in relative levels of possession of information, the full consequences of which have not yet been appreciated.

4. THE TECHNOLOGICAL CONTEXT: COMPUTERS, SATELLITES AND THE REST

Compulsory general education and mass literacy produces growing demands for and expectations of access to information. These demands and expectations are now met by developments of science and technology which are vitally relevant to the collection and distribution of information. Surveillance and other bugging devices are in a minor league. The telecommunications system and the mass media reticulate information through distance and at a speed and cost that would not have been thought possible even in recent years past. The developments of recent memory are those which are most significant for the collection and movement of information.

> "Four centuries ago, Caxton printed Chaucer's Canterbury Tales. From that time onwards, the spread of information by means of the printed word became one of the principal motive forces in the advance of western civilisation. Indirectly, the printing press helped to bring about fundamental changes in the European way of life; it was the dissemination of knowledge via the printed word, from the monasteries and the learned institutions where it had been confined ... that was a necessary pre-condition for the industrial revolution. Now, for the last thirty years, we have been at the threshold of a new era, in which the storage, processing and transmission of information have developed at explosive rates. In the early 70's, for instance, fast memories had reached ten^8 bits, in the late 70's, ten^{12} bits, and in the early 80's, probably ten^{16} bits. For comparison, the maximum amount of information storable in the human brain by the age of 50 is estimated to be ten^{10}bits".[21]

There are a number of features of computing which affect the availability of and control over information. These features have been identified many times. They include-

* The scale of information storage capacity which becomes possible with computing.
* The rapid and increasing speed of the retrieval of automated data.

* The markedly diminishing cost of collecting and retrieving information, proportionate to this scale and speed.
* The capability of the resource to transfer, combine and multiply information supplied for many purposes, including purposes different than those originally intended by the supplier.
* The susceptibility of this resource to centralisation of control, in the name of efficiency and economy.
* Unintelligibility of much data in raw form and the need for special training to secure access to and control of it.[22]

The amazing advances in information technology can be illustrated, anecdotally, by a few illustrations. It is estimated that in the time period from 1955 to 1975 the data processing industry of the United States grew from annual expenditures of approximately $500 million to $41 billion, a factor of 80. By 1980 the expenditures are expected to double and then to double again by 1985. Growth by such factors, and the capital and research inevitably expended to procure such growth testifies to the massive increases of available information and power to store, retrieve and manipulate it.

Conventional computers were in part superceded by mini computers evolved in the late 1960's, the latter being physically small and portable. Micro computers are much smaller still in physical size and cost less than mini computers. Hand calculators are well known examples of this technology. -

> "Already, there are microprocessors with limited memory that occupy a single circuit package of less than two square inches in area; they require very little power, operate at high speeds, and sell for under ten dollars in large quantities. When such a basic processor package is combined with additional memory, power supply, and interface circuits for bulk memory and input/output, the

> cost is still under a thousand dollars and the volume is about one cubic foot. The micro processor state-of-the-art is now rapidly approaching and overtaking the capability of some minicomputers".[23]

In the course of the last decade data communication systems have become inextricably linked with data processing systems. The drive for advances in communications technology has come from users of data processing systems and has led to the pioneering of new uses of computer systems which in turn depend heavily on data communications.

> "The history of telecommunications is one of continuing progress. In the last 50 years, data transmission capacity of major telecommunications systems has increased three orders of magnitude: from 3,000 characters per second in the early 1920's by multiplexing 12 voice channels on a single wire pair to 8 million characters per second in today's coaxial cable and micro wave systems carrying 32,000 voice channels simultaneously. ... Communication channels are either landlines, including micro waves or satellite systems ... The number of communications satellite circuits has grown impressively. For example the first INTELSAT communication satellite in 1965 provided 240 circuits at a cost of $22,000 per circuit per month with a satellite life time of 1.5 years; 10 years later INTELSAT IV provides 6,000 circuits at $600 per circuit. Moreover present satellite lifetime is expected to exceed 7 years and the INTELSAT V is expected to provide 100,000 circuits for ten years at $30 per circuit".[24]

In short, data collection and transmission is becoming massive in its quantity and in its capability. Its speed increases as its costs diminishes. The exponential increase in the volume of information flow will bring in its train many opportunities; but also problems. A report by Vice President Rockefeller's committee of September 1976 identified some of the "key characteristics of the new information environment created by information technology".[25]

* A shrinkage of time and distance constraints upon communications. Satellite communications provide long distance capability to use computers and other information technology throughout the world.

* Greater nationwide dependence upon information and communication services ...

* An increase in the interdependence of previously autonomous institutions and services ...

* Conceptual changes in economic, social and political processes induced by increased information and communications.

* A decrease in the "time cushion" between social and technical changes and their impact and consequences. The introduction of devices such as the pocket calculator and citizen band radio have had immediate effects on the social environment ... There is no longer time to anticipate the impact of information technology applications before they become part of our everyday lives.

* Global shrinkage and its consequent pressures on increased international information exchange.[26]

The recent Fourth International Conference on Computer Communication (I.C.C.C.) in Kyoto, Japan, confronted the remarkable developments in international co-operation and inter-dependence in the flow of information between countries and across national and federal borders. The first experiences of commercial national and international data networks (Telenet, Tymnet, Mark III and Cybernet in the United States Datapack in Canada, etc.) had been detailed at the I.C.C.C. in Toronto in 1976. Now, the experiments of 1976 are busy realities. Large international companies operate their own data network for internal use. The banking network, SWIFT, started operations at the end of 1977. It now has more than 500 European and American banks participating. International service operations, including SWIFT, SITA, (the airlines communication system in which more than 200 airlines participate) and others represent vast developing international data networks. Satellites will increasingly provide access and link up facilities that may in theory be independent of the various telecommunications carriers. The combination of satellite and computer will make possible instant access to a vast variety of data bases located throughout the world.[27]

The results of this technology upon information collection storage and distribution are both positive and negative. On the one hand, the integration of mankind's memory, information and mutual dependence must have enormous potential benefits for us all. The increased availability of information, the speed,

quantity and accuracy of its delivery and the integration of information from disparate sources will undoubtedly enhance economic and other development.

However, there are problems. They include the impact of this technology upon employment and on the vulnerability of States which are so intimately linked with each other. There is also the issue which has been described, in the English language, as "the protection of individual privacy" but is described in other tongues as "data protection and security" and "the protection of informational liberties".

There is an international concern to lay down rules, before it is too late, by which fairness in the use of computing can be established and machinery provided to enforce the rules of a community which is prepared to defend the importance of the individual human being within it. The common theme of this "privacy protection" legislation whether in North America or Europe is, as has been stated, the establishment of a generally enforceable right of access to information held upon an individual, particularly in automated systems. With this access goes knowledge and, at least, some measure of check and control.

The legislation described above and the debate on the Freedom of Information Bill must be considered in the context of rapidly changing methods of collecting storing and retrieving information. The capacity, without technical difficulties or problems of expense or delay, to store information outside a single State's jurisdiction makes international co-operation for the enforcement of "privacy" protection an urgent imperative. That this is so is recognised in current activity in the United Nations Organisation, the Council of Europe, the Nordic Council, the Commission of European Communities and in the Organisation for Economic Co-operation and Development.

CONCLUSION

We are entering the "post industrial society" which has been described by some economists as "the Information Age".

> "The economy will soon be one in which the production and application of knowledge will be the determining factor in competition. Just as the steam engine ushered in the Industrial Revolution and brought a host of public policy questions in its wake, the new information technology is ushering in the Information Age and its unique policy questions".[28]

The very speed with which the changes have come upon us and the apparently increasing speed with which new changes are occurring (most of them beyond the understanding of ordinary laymen) presents policy makers and law makers with intense difficulties. The particular difficulty of forecasting changes in information technology has arisen from the speed with which that technology has advanced - faster than any overseas technology ever has. To sum it up within 25 years we have witnessed -

* Maximum processing speed increase over 50,000 fold;
* High speed memory capacity increase over 10,000 fold;
* Reliability increase over a 1,000 fold;
* Physical volume has been reduced over 100,000 fold; and
* Cost per operation - price performance - has been reduced over 100,000 fold.[29]

Against this background it would be a bold man who would predict future changes. I will not do so. Enough has been said to make clear the outstanding features of the new Information Age.

The new information technology will facilitate the economic operation of the rules of access which have begun to find their way into Australian legislation and administrative practice. The debate is an international one. It is particularly vigorous in the inter-dependent Western economies which share similar systems of government and inter-dependent markets.

Consideration of the impact of information technology on the privacy rights of the individual is one issue that is receiving attention. It has been referred to the Law Reform Commission for

inquiry and report. Concern has lately been expressed about the effects of the new technology upon employment as this Century closes. The need, however, may be for an integrated national information policy. Decisions directed at one specific problem will have consequences for other problems.

> "... the rules for dissemination of government-held information ... affect the private information industry ... Changes in laws affecting copyright ... and postal rates ... publication of government documents ... and legislation such as the Right of Privacy Act ... and the Freedom of Information Act ... all affect the usefulness and accessibility of information, though these changes may have been initially prompted by discrete considerations ... At present no unit of government has the authority to respond to that reality".[30]

The new technology will deliver political and economic power to those who control it. If things are allowed to just drift, perceptions of individuality and other values in our society will surely change. People will simply come to tolerate intrusions that we would today regard as unacceptable. Some changes are, of course, inevitable. Some attributes of individual humanity we will want preserved. It is a recognition of this that has given the sense of urgency to Freedom of Information and Privacy legislation in North America and Europe. It is a good thing that the debate has also now begun in our country.

FOOTNOTES

1. (1978) 3 Commonwealth Record 892.

2. Commonwealth Parliamentary Debates (The Senate) 9 June 1978, 2693.

3. Id.,

4. The Age, 5 July 1978, 7.

5. (1978) 8 Federal Law Review 379.

6. 2 October 1978.

7. 9 October 1978, 7.

8. Editorial, 9 October 1978, 6.

9. It was referred on 26 September 1978 and public submissions have been called for.

10. The Archives Bill, 1978 "In so far as it relates to issues common to, or related to, the inquiry into the Freedom of Information Bill 1978", was also referred to the Senate Committee.

11. Letter, 9 October 1978, 7.

12. Administrative Decisions (Judicial Review) Act 1977, s.13(1).

13. Administrative Review Council (Aust.) First Annual Report (Foreword, Mr. Justice Brennan).

14. Public Service Board (Aust.) Annual Report 1978, 8-9 Cf. Administrative Review Council, Second Annual Report 1978, Foreword and para. 13.

15. P.S. Wilenski (Commissioner), Interim Report into N.S.W. Government administration Directions for Change, 1977, 285 (Ch.21). See also the Administrative Law Bill, 1977 (Vic.) and note the reference to the Western Australian Law Reform Commission on the supervisory jurisdiction of the Supreme Court over administrative decisions Annual Report 1977-78 of that Commission, 13.

16. Justice (British section of the International Commission of Jurists) Freedom of Information, 1978, 4. Cf W.C. Hodge, "Freedom of Information in New Zealand" [1978] Recent Law 284.

17. The Times, 20 July 1978, 17.

18. The Law Reform Commission (Aust.), Discussion Paper No. 5 Lands Acquisition Law : Reform Proposals, 1978, 8-9.

19. Id. 12.

20. Criminal Investigation Bill, 1977, cls. 18,20,21 etc.

21. Lord Avebury "Will Computers Really Change Our Way of Life?", mimeo. Paper delivered to the Australian Computer Society, Canberra, 29 August 1978.

22. Home Office (Eng) Computers and Privacy, 1975, Cmnd 6353.

23. The Report of the Privacy Protection Study Commission (U.S.), Personal Privacy in an Information Society, App. 5 Technology and Privacy, 1977, 62,

24. Id. 80.

25. Domestic Council Committe on the Right of Privacy (N.A.Rockefeller, Chairman) National Information Policy, 1976, 5.

26. Id. 5-6.

27. H.P. Gassmann, "Data Networks as Information Infrastructures: Challenge to International Co-operation", Mimeo paper delivered to the I.C.C.C. Conference, Kyoto, Japan, 26 September 1978, 1-2.

28. Rockefeller report, n.25, above, 9.

29. Appendix 5, n.23 above, 14.

30. Rockefeller report, n.25, above, 185.