

Terms of Reference

In 1976 the Commission was asked to advise upon:

- (1) the extent to which undue intrusions into or interferences with privacy arise or are capable of arising under the laws of Western Australia, and the extent to which procedures adopted to give effect to those laws give rise or permit such intrusions or interferences, with particular reference to but not confined to the following matters:
 - (a) the collection, recording or storage of information by state departments, authorities or corporations, or by persons or corporations licensed under those laws for purposes related to the collection, recording, storage or communication of information;
 - (b) the communication of the information referred to above to any government department, or to any authority, corporation or person;
 - (c) powers of entry on premises or search of persons or premises by police and other officials; and
 - (d) powers exercisable by persons or authorities other than courts to summon the attendance of persons to answer questions or produce documents.
- (2) (a) what legislative or other measures are required to provide proper protection and redress in the cases referred to above;
- (b) what changes are required in the law in force in the state to provide protection against, or redress for, undue intrusions into or interferences with privacy arising, inter alia, from the obtaining, recording, storage or communication of information in relation to individuals, or from entry onto private property with particular reference to, but not confined to, the following:
 - (i) data storage;
 - (ii) the credit reference system;
 - (iii) debt collectors;
 - (iv) medical, employment, banking and like records;
 - (v) listening, optical, photographic and other like devices;
 - (vi) security guards and private investigators;
 - (vii) entry onto private property by persons such as collectors, canvassers and salesmen;
 - (viii) employment agencies;
 - (ix) press, radio, and television;
 - (x) confidential relationships such as lawyer and client and doctors and patient.
- (3) any other related matter; but excluding inquiries on matters falling within the Terms of Reference of the Commonwealth Royal Commission on Intelligence and Security or matters relating to national security or defence.

The terms of reference were widened in 1978 when the Attorney-General requested that they include 'consideration as to whether a person's criminal record should be expunged after a stipulated time, and if so, in what circumstances and under what conditions, and as to whether the record should revive in the event of the person sustaining a further conviction'.

Background of Reference

The Commission's reference was parallel to a reference given by the Commonwealth Attorney-General to the Australian Law Reform Commission (ALRC). The purpose of the parallel reference was to enable the Commission to evaluate the recommendations of the ALRC, to make appropriate recommendations at the state level, and to explore the possibility of developing legislation suitable for adoption on a uniform basis throughout Australia.

To supplement the exercise undertaken by the ALRC, and to minimise duplication of effort, the Commission produced a working paper examining the exercise of statutory powers of intrusion by state officials. The working paper led to preparatory work towards a draft report, but this was never completed.

The ALRC reference resulted in a privacy report.¹ Although this report ultimately led to legislation,² the continual changes to the Commonwealth proposals and the need to concentrate the Commission's resources on projects with higher priority led to work on the reference being deferred.

Reference Withdrawn

The reference was deferred in 1986, with the Commission and the Attorney-General agreeing to identify specific areas affecting privacy for individual examination. The reports on *Confidentiality of Medical Records and Medical Research*³ and *Professional Privilege for Confidential Communications*,⁴ certain aspects of the report on *Police Act Offences*,⁵ and the earlier working paper on *Privacy and Statutory Powers of Intrusion*⁶ all dealt with aspects of the terms of reference of the privacy project. The reference was formally withdrawn in 1993.

1 Australian Law Reform Commission, *Privacy*, Report No 22 (1983).

2 *Telecommunications (Interception) Amendment Act 1987 (Cth)*; *Privacy Act 1988 (Cth)*.

3 Law Reform Commission of Western Australia, *Confidentiality of Medical Records and Medical Research*, Project No 65(II) (1990).

4 Law Reform Commission of Western Australia, *Professional Privilege for Confidential Communications*, Project No 90 (1993).

5 Law Reform Commission of Western Australia, *Police Act Offences*, Project No 85 (1992).

6 Law Reform Commission of Western Australia, *Privacy and Statutory Powers of Intrusion*, Working Paper and Survey, Project No 65 (1991).