on the Rehabilitation and Compensation of Persons Injured at Work was released in September 1980. The Committee recommended the establishment of a Workers Rehabilitation and Compensation Board which would exclude the operation of private insurers in the field. Abolition of the right of action at common law in any workers' compensation matter was also recommended.

It is understood that a report covering the possibility of introducing a No-Fault Motor Accident Scheme for the same State has also been prepared.

In New South Wales the Law Reform Commission is considering a feasibility investigation of a comprehensive accident compensation scheme for that State.

And there is growing evidence that people outside the reform movement are beginning to question the effectiveness of our accident liability insurance schemes. For example, in the light of requests from the State Insurance Office in Victoria for post-*Barrell* increases in third party motor car insurance premiums there were the predictable comments in the press about the unceasing cost escalations associated with third party motor car insurance premiums. However, some editorials (e.g. *The Age*) did consider that a more fundamental and fruitful change would be to extend the present limited no-fault system (which has operated in Victoria since 1974) into a full compensation scheme that excluded negligence actions.

It is also interesting to note that a national workers' compensation insurance company has been placing stress in their advertising of late, on safety auditing and rehabilitation of workers.

There is evidence of change at more personal levels also.

A judge of the Victorian Supreme Court recently observed that, while he was once a vehement opponent of the Woodhouse proposals, he now saw it as inevitable that accident compensation would eventually have to be taken out of the courts. He went on to note that approximately 25% of the Victorian Supreme Court's very clogged list constituted motor accident cases. Thus, amongst the many other benefits that would flow from reform of the tort system would be a significant contribution towards solving the endemic 'log jams' in court lists throughout the country.

Clearly the *Barrell Insurance* case has not directly influenced the reformers to set to their task but the dramatic growth in payout amounts which the case seems to have precipitated makes the task of arguing *against* the present schemes somewhat easier. Firstly, as the amounts grow in size the process of 'calculating' once and for all damages is seen more than ever for what it is — almost pure guesswork, and, secondly the potential for significant over-compensation for some, whilst many other accident victims receive no compensation whatsoever, is greater than ever.

Operating alternatives to our current mix of accident liability compensation schemes are to be seen close at hand. The cost effectiveness of the Victorian no-fault Motor Accident Scheme in comparison with the regrettably still-operating Victorian Third Party Insurance Scheme is clearly evident. An even more compelling guide to the manner in which we should be approaching the problem is provided by the successful New Zealand national accident compensation scheme. The economic and humanitarian attractiveness of such an alternative indicates that the sooner more people can be persuaded to consider the topic of accident compensation the sooner the no-fault alternative will be seen for what it really is — orthodox, desirable and inevitable.

It is largely to the *Barrell* case that we owe a vote of thanks for raising the broad issue of accident compensation as a matter for media attention in 1981.

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FREEDOM OF INFORMATION

After almost nine years as a plank of Federal government policy, freedom of information legislation was passed by one House of Parliament — the Senate — on 12 June 1981. The Freedom of Information Bill 1981 was introduced into the House of Representatives on 18 August 1981, and is expected to be passed before the House

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rises for the summer recess. The Bill, as introduced into the House, follows the form of the legislation passed by the Senate and is not expected to be amended. References herein are to the clauses of the Bill as introduced into the House on 18 August 1981.[1]

'Freedom of information' is a somewhat grandiloquent way of expressing the principle that in a democracy all citizens should be entitled to inspect the information held by government. The famous statement of United States President James Madison made in 1822 remains more than apt today:

> A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.[2]

Scandinavian countries enacted 'open records' legislation early in the 19th century and many States of the United States had similar laws long before the landmark U.S. Federal Freedom of Information Act of 1966.[3] Nonetheless it was that legislation which provided the main stimulus to public demands for similar legislation in a number of Westminster-style democracies, including Australia.[4]

The freedom of information principle has not won acceptance easily in Australia. It jeopardises the ability of governments to control the flow of information about government policy and actions, an instrument which is often critical in ensuring the government's political survival. It undermines the authority exercised by senior public servants in giving advice to Ministers by exposing their advice and their filtering of the information available to them to public scrutiny and criticism. These concerns often lie at the heart of arguments to the effect that the freedom of information principle is not appropriate for a Westminster-style system of government, founded on the principles of Cabinet secrecy and collective government and that the efficiency of government will be weakened by public requests for access to information. These contentions were convincingly refuted by the Senate Standing Committee on Constitutional and Legal Affairs in its important report of November, 1979.[5]

Nonetheless all participants in the debate on freedom of information concede that government must have some power to conceal certain classes of information from the wider community, at least for a time. Consequently legislation on this subject will be complex and there will be considerable room for argument over whether the appropriate balance has been struck between the individual's right of access to information and governmental or third party interests in the concealment of information. The ferocity of the criticism of the Federal government's Freedom of Information Bill 1978 and the revised Bill, introduced in April 1981, which crossed Party lines, amply demonstrates this point. The critics argued with some success that both Bills had struck the balance too heavily in favour of governmental interests in secrecy. Whether the compromise struck between the government and its critics in the Senate Bill passed on 12 June 1981 has redressed the balance will, no doubt, continue to be the subject of debate.

The Bill as passed by the Senate in June 1981 expresses the citizen's right of access in these terms:

> Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to — (a) a document of an agency, other than an exempt document; or (b) an official document of a Minister, other than an exempt document.[6]

[1] Generally see the Freedom of Information Bill 1981 as introduced into the Senate by the Attorney-General on 31 March and as amended in the Committee stages, 7 May, 29 May and 12 June: *Parlt. Debs. (Senate)* 1761-1796; 2350-2397; and 3243-3250 (1981).

[2] Brant I., *James Madison: Commander in Chief 1812-1836* (1961), VI, 450.

[3] Subsequently amended in 1974: generally 5 U.S.C. 552.

[4] Generally, Report by the Senate Standing Committee on Constitutional and Legal Affairs, *Freedom of Information*, Canberra 1979, 11 f.

[5] *Ibid.* 25 f.

[6] Clause 11.

The key terms, 'agency', 'document', 'document of an agency', 'exempt document' and 'official document of a Minister' are defined by the legislation.[7] A wide range of documents are the subject of exemption: documents affecting national security, defence, international relations and relations with the States; Cabinet documents; Executive Council documents; internal working documents; documents affecting the enforcement of the law and public safety; documents to which secrecy provisions of enactments apply; documents affecting financial or property interests of the Commonwealth; documents concerning certain operations of agencies; documents affecting personal privacy; documents affecting legal proceedings or subject to legal professional privilege; documents relating to business affairs; documents affecting national economy; documents containing material obtained in confidence; documents disclosure of which would be contempt of Parliament or contempt of court; privileged documents; and certain documents arising out of companies and securities legislation.[8] A Minister or agency may refuse access to a document or part of a document falling within an exemption. In the case of all but four categories of exemption, an individual denied access may apply for review of the denial to the Administrative Appeals Tribunal which may overrule the decision of the Minister or agency.[9] The four categories to which this right of review does not apply are, in the view of many, the most significant: documents affecting national security, defence, international relations and relations with the States; Cabinet documents; Executive Council documents; and internal working documents. In earlier drafts of the legislation the Government had steadfastly refused to permit any form of review. However, the Government has ultimately relented to the extent of enabling applications for review of denials of access in these areas to be referred to a Document Review Tribunal.[10] The Tribunal shall be constituted by one or three members of the status of a Supreme Court judge or equivalent, the number of members being determined according to the public importance of the question.[11] In the case of applications for review of decisions under the first three categories, the Document Review Tribunal's jurisdiction is limited to considering the question whether the Minister or public servant empowered to issue certificates that a document falls within one of these categories had reasonable grounds for that claim.[12] In the case of applications relating to the fourth category, internal working documents, the Tribunal is limited to considering the question whether there were reasonable grounds for the decision that disclosure would be contrary to the public interest.[13] The findings of the Tribunal on these questions are merely advisory. It is left to the responsible Minister to decide whether to accept the Tribunal's opinion and revoke a certificate.[14] The Tribunal will normally sit in public. If it wishes to inspect the documents the subject of the claim for exemption, it may do so on a confidential basis.[15] This solution to the problem of reviewing denials of access to a number of classes of government information of a particularly sensitive character is, undoubtedly, an improvement on the previous approach. It remains to be seen whether the mechanism of accountability to Parliament will work to reverse the decisions of Ministers who refuse to accept a Document Review Tribunal's opinion that a claim is unreasonable.

The combined effect of the general right of access and the exemption relating to personal privacy is, normally, to limit access to personal records held by government about an individual to that individual.[16] This right is likely to be utilized by many members of the community, especially those who have been adversely treated in areas such as social security, repatriation and taxation. In line with a number of overseas

[7] Clause 4(1).
[8] Part IV, clause 32 f.
[9] Clause 55(1).
[10] Clause 58(4) and (5).
[11] Clause 81.
[12] Clause 58.
[13] Clause 48(5).
[14] Clause 67(3).
[15] Clause 68.
[16] Especially clause 41(2).

laws on access to personal data, the legislation makes detailed provision for a right to seek amendment of statements contained in personal records released to the subject.[17]

Requests for access to records must be made in writing and provide such information as is reasonably necessary to enable the agency to identify the document sought. Requests must be dealt with as soon as practicable with a maximum time limit of 60 days.[18] Narrow grounds for deferring a response to a request for access are also provided.[19] A document may be supplied in response to a request with exempt matter deleted provided that it is practicable and the document as supplied would not be misleading.[20] Information Access Offices will be established by agencies, and agencies will be required to give access to a document at the Information Access Office nearest to the residence of the applicant which has appropriate facilities to provide access in the form requested.[21] Detailed provision is also made in regard to levying of charges for access. The criteria governing the setting of charges seek to limit them to the direct costs of providing access and confer a wide discretion on the agency to remit charges.[22]

To make effective use of these rights applicants need to have the means of identifying the location of information in which they may have an interest. This concern is addressed by provisions in the legislation which require agencies to publish indexes and directories outlining the contents of their information systems.[23] Moreover certain types of documents held in agencies must be periodically published and made available on request. These are documents used by an agency in making decisions or recommendations with respect to the rights, privileges or benefits of people under any scheme administered by an agency. In particular the legislation specifies manuals or other documents containing interpretation, rules guidelines or precedents including precedents in the nature of letters of advice.[24] The importance of giving individuals a right of access to these basic documents in the administration of Commonwealth benefits cannot be underestimated.

A number of Commonwealth agencies are entirely exempt from the requirements of the legislation, while several have been granted exemptions from the requirements in respect of certain types of documents. These exceptions are set out in Schedules to the legislation.[25] These provisions and the retention of a large number of secrecy provisions in other Commonwealth legislation (currently under review) represent major inroads on the principle of freedom of information.

Despite criticism, the legislation sets no specific date for commencement. It is not likely to come into operation until about the end of 1982. Normally it will not be possible to obtain access to documents created prior to the commencement date.[26] This rule is subject to two significant exceptions: personal records which came into existence not more than 5 years before the date of commencement must be released if requested, and documents reasonably necessary to enable a proper understanding of the principal document accessed.[27]

As this summary of the main features of the legislation suggests, there is still room for considerable criticism of the legislation. The Government has promised a major review of the legislation after three years of operation, when these criticisms and any others arising from the operation of the law will be considered.

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[17] Part V, clause 48 f., cl. 43A f. Generally, Australian Law Reform Commission Discussion Paper No. 14, *Privacy and Personal Information* (1980).
[18] Clause 19.
[19] Clause 21.
[20] Clause 22.
[21] Clause 28.
[22] Clauses 29, 30 and 94(2).
[23] Clause 8.
[24] Clause 9.
[25] Schedules 1 and 2.
[26] Clause 12(2).
[27] Clause 12(2)(a) and (b).

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THIS SPORTING LIFE

In the playgrounds of our youth, the ultimate form of juvenile sanction was to pick up one's toys and not play with the delinquent anymore. Today in the never-ending search for effective ways of signalling international disapproval, the sports boycott has become a novel addition to the arsenal of countries seeking less damaging alternatives to economic warfare.

Embargoes and boycotts originally came into being as measures designed to force nations to cease illegal or undesirable activities. Economic sanctions have been largely unsuccessful in the past because few countries possess the monopolistic control over an irreplaceable resource that is necessary to bring sustained pressure to bear. There is also growing scepticism as to whether even an effective sanction will really bring about fundamental changes in the way a state treats its citizens or conducts its foreign policy. Whatever the practical effect, the imposition of a sanction will invariably be read by the world community as a signal of disapproval. If these signals come more frequently and firmly, the delinquent state may well hesitate before it takes the next objectionable action.

Sports boycotts appear particularly well suited to this form of signalling for they generate intense world-wide media coverage and often have a direct effect upon the offending state's citizens. These boycotts are quick to mount and withdraw and are self-limiting. They are a unique resource — for example there can only be one Australian Olympic team — and any ban is subject to strict control through passport/visa restrictions.

The imposition of a sports boycott does, of course, entail some personal cost to the frustrated competitors and spectators. But the injury is limited to the one event and does not involve the substantial economic and trading damage that a resource/technology embargo would cause. And it is said the athletes are always free to attend the event as individuals, though not representatives of their country.

But perhaps the most laudable aspect of a sports boycott is that it avoids the unconscionable use of the food weapon and makes a gesture without breaking important trade contacts which provide a very real bridge between ideologically disparate nations while strengthening the fabric of international interdependence. Trading relations are beneficial to all parties and the world in general. They should not be used by a government for short-term grandstanding.

In 1976 the U.N. Department of Political and Security Council Affairs Centre Against Apartheid instituted the sports boycott in an international campaign to eliminate apartheid. It was promoted as the eagerly awaited sanction for the hitherto toothless conventions affirming human rights. The following year the General Assembly adopted the *International Declaration against Apartheid in Sport*, one article of which specifically called upon states to consider the withholding of entry permits to offending teams. Individual black African states had been unilaterally pursuing such a policy and lobbying for recognition of the tactic in regional/community organizations such as the British Commonwealth of Nations which drew up the somewhat hollow Gleneagles Agreement in 1977. That document merely sought 'to discourage' sporting contact with South Africa, however, Australia, for one, has chosen to interpret it as a prohibition of any contact even down to denying transit visas to the Springboks rugby team on their way to matches in New Zealand.

Some Third World countries are expanding the concept of a sports boycott to include not only individual athletes participating in South African events but even those who play the rogue state on their own soil. While this may be going too far, it does show the resolve of the black states on the issue.

By far the most heated and long-standing debate has been the question of whether sport is indeed a legitimate weapon at the disposal of a government. At one time the various national perceptions of the role of sport in society were equally valid. But observers now believe recent events have overtaken the traditional Western argument that sport and politics should not mix. Even if it were still possible to say that sport should take place in a political vacuum, that assertion would fail to impress those aggrieved Third World nations which fervently believe that sport, one of the few