

CHAPTER FOUR

AN OPEN REGISTER - ACCESS ISSUES

4.1 INTRODUCTION

In order to determine whether to support Recommendation One of the Law Reform Commission's Report, the Committee considered the effects and implications of adopting an Open Register in regard to the privacy of individual citizens, data protection, and the purposes for which the data is collected and subsequently used.

A major issue of the Inquiry was the role and function of the Registry. The various practices developed within the Registry, based on the legislative discretionary power of the Principal Registrar, and the growth in the uses of data, have contributed to the development of varying opinions as to the Registry's role.

Throughout the Inquiry the Committee has consistently endeavoured to balance considerations of the public benefit of open access and the need for individual privacy. Current Registry policies have led the public to expect that restricted access will continue, with older records being progressively released. However, the Committee believe that the practices of the Registry in relation to access and the statutory discretion with which the Principal Registrar is empowered, are not widely understood. The fact that practices are not clearly defined, and the criteria used to approve access not readily available, contributes to misunderstandings.

This chapter reviews issues relating to privacy; the nature of the data collected; the use of Registry records for identification, medical research, genealogical studies, statistical analysis and commercial applications; and outlines what the Committee believes to be the role and functions of the Registry.

4.2 PRIVACY CONCERNS

In endeavouring to balance the public and private benefits of access to Registry data, the Committee has had regard to increasing public awareness of the need to protect data collected on individuals, as computer capabilities increase and the technology is more widely used.

When the New South Wales Law Reform Commission undertook its inquiry into the Registry, no Commonwealth privacy legislation was in place. For the purposes of that

inquiry, the Commission formulated its own principles of data protection for general application.¹⁴⁸ The principles it adopted indicated that only the minimum personal data required should be sought and recorded; that care should be taken to ensure the accuracy of all information recorded; and that access to the information should be consistent with the socially accepted purposes of the Register. The Law Reform Commission indicated that Registry practices are generally in accordance with these principles, suggesting that the reasons for the secrecy of a closed Register "appear to centre on considerations of privacy and confidentiality."¹⁴⁹

4.2.1 The Purpose Specification Principle

In its Report, *Unauthorised Release of Government Information*, the Independent Commission Against Corruption recognises the right to privacy in relation to the collection of information and access to government data bases.¹⁵⁰ The Commission considered the question of ownership of information collected, stating:

if the information is to be "owned" at all, it belongs to the person to whom it relates. If it has been made available to a government department for a specific purpose, then in the absence of special circumstances, that department should not use it, or allow its use, for any other purpose.¹⁵¹

The Committee was advised in evidence that the "purpose specification principle" is a fundamental principle which underlies all privacy and data protection laws.¹⁵² The principle requires that when a person discloses information for a specific purpose, either under compulsion or in confidence, the information should generally be used only for the purpose for which it was required or given, and disclosed only to persons who need it for that specific purpose.

¹⁴⁸ NSW Law Reform Commission. 1988. para 4.3, p.25. The principles were formulated from the NSW Privacy Committee Guidelines for the Operation of Personal Data Systems; The Australian Law Reform Commission report on privacy; and freedom of information legislation.

¹⁴⁹ Ibid. p.29

¹⁵⁰ Independent Commission Against Corruption, 1992, pp.176-182

¹⁵¹ Ibid. p.153

¹⁵² Evidence. Alston, 30.7.92, p.51

The Privacy Committee of New South Wales emphasised that application of the principle becomes particularly important when disclosure of the information is compulsory, as is the case for information collected for the Register of Births, Deaths and Marriages.¹⁵³

The Registry submission gives due regard to the principle, stating that:

The general privacy principle underlying disclosure of personal information is that disclosure other than for a purpose that governed the collection of that information would violate the individual's reasonable expectation of privacy, and therefore should not occur.¹⁵⁴

Further, the submission indicates that the principle is part of the standards implicit in the operation of the Registry's policy of restricted access, with generally only those persons affected by entries on the Register having access to and control over the release of the information, unless a broader public interest is involved.¹⁵⁵

The Law Reform Commission also indicated support for the purpose specification principle in indicating that "access to the information should be consistent with the socially accepted purposes of the Register."¹⁵⁶

The Committee acknowledges the importance of the concept of the purpose specification principle in determining access to Registry information, and believes that the role and function of the Registry and the purposes for which information is used must be clarified.

4.2.2 Consistency and Uniformity

A significant issue raised by the Independent Commission Against Corruption in its Report is that of consistency.¹⁵⁷ Consistency was considered to be important in inhibiting the unauthorised use of information in two respects: consistency of approach

153 Ibid.

154 Submission 87A. New South Wales Registry Of Births, Deaths and Marriages. p.21

155 Ibid.

156 NSW Law Reform Commission, 1988, para 4.12, pp.25-27

157 Independent Commission Against Corruption, 1992 pp.171-172

(for example, government departments having a set of uniform rules for handling what may be basically the same information); and consistency in the law. The I.C.A.C. Report also noted that it was imperative that every effort be made to achieve consistency with other States and between the States and the Commonwealth.¹⁵⁸

The latter point is particularly relevant to the Committee's Inquiry, as different access arrangements exist throughout Australia. As described in Chapter Three, public access to data stored in Registries throughout Australia varies. To some extent the differences in times from which records are available is a factor of the way in which they have been physically consolidated rather than any issue of individual privacy.¹⁵⁹

The Principal Registrars from Registries across Australia meet on a regular basis to consider matters affecting service delivery, including widening the availability of certificates to the general public. This forum is instrumental in the development of consistency in regard to the release of personal information from the Register to the public. The Committee is of the view that an Australia-wide approach to the release of Registry data is desirable, based on considerations of parity in the rights of citizens and facilitation of research. In this regard the Committee determined that the responsible New South Wales Minister, the Attorney General, should pursue with the Commonwealth Government and other States a policy of uniformity of access to Registry data.

Recommendation 2:

That the Attorney General pursue with the Commonwealth government and other States a policy of uniformity and national access to Registry data.

Comment was made in Chapter 2 of this Report regarding the increased flow of information across state and international boundaries which has grown with the development of electronic communications. The Independent Commission Against Corruption Report raises the issue of uniformity as vital to achieving efficient data security. Legislation was considered essential to achieve uniformity in managing and transferring government information.¹⁶⁰ It was suggested in the Independent

¹⁵⁸ Ibid. p.172

¹⁵⁹ Submission 87A. Registry of Births, Deaths and Marriages. p.23

¹⁶⁰ Independent Commission Against Corruption, 1992, p.172

Commission Against Corruption Report that the development of legislative measures are also necessary to overcome corrupt trade and to meet the community's expectation that the Government will respect and maintain the confidentiality of the increasing amounts of personal information it holds.¹⁶¹

The Committee recognises and supports the need for uniformity and consistency in the way in which personal information held by the government is managed. In recognising the need for uniformity in legislation and practices, the Committee has refrained from developing any specific recommendations in this area, but supports agreement between states to achieve equal access rights.

4.2.3 The Public Nature of the Register

In evidence provided to the Committee the Commissioner in charge of the Law Reform Commission's Inquiry suggested that the Register is a public Register and ought to be acknowledged up front as a public Register.¹⁶² The implication is that the data should therefore be readily available to members of the public.

It was brought to the attention of the Committee that other public records such as probate records are open to the public to view or copy. Access to probate records depends on the age of the record sought and is subject to the payment of a prescribed fee. While the subject of a probate record is deceased, the Committee felt that family members of the subject of a probate record, and similarly of a Death Certificate, may be sensitive to the release of such information.

The Committee determined that the fact that government records or property might be described as public should not necessarily guarantee open access or common public usage. For example, Parliament House is a public building but access to certain areas is not publicly available. The Committee deemed that the Register is a public record only in the sense that the data is being held in trust, by the state. It is considered that there is a need for the government to respect and maintain the confidentiality of individuals particularly when the information was provided on a compulsory basis. Access is therefore only warranted for individual applicants or authorised agents acting in the subject's interests, or organisations acting in a broader public interest. The Committee considers that such interests would include law enforcement, the prevention of fraud and medical and demographic research.

¹⁶¹ Ibid. p.176

¹⁶² Evidence. Gamble, 5.8.92, p.13

4.3 REGISTRY DATA

In considering the question of open access to the Register, the Committee considered the amount of data recorded, the accuracy of that data and the various uses to which that data may be put. The Committee deliberated on the purpose of data collection and the role and function of the Registry.

4.3.1 Amount of Data Collected

As outlined in Chapter 3, the New South Wales Register contains more personal data than a number of Registers in other jurisdictions, and providing greater access to records would therefore allow more personal details to become available.

In the absence of a definitive statement of the purpose of data collection, the Commissioner in charge of the Law Reform Commission's Inquiry expressed concern that more information may be collected and recorded than is actually necessary.¹⁶³ An open Register, it was claimed, might discourage the collection of excess information by making privacy concerns more paramount.¹⁶⁴ The Privacy Committee of New South Wales also indicated that only the minimum amount of personal information necessary should be collected.¹⁶⁵

The Committee conversely heard that a number of organisations have pressured the Australian Bureau of Statistics to collect and provide additional information.¹⁶⁶ The Deputy Commonwealth Statistician, Mr Denis Farrell, indicated that the Bureau is seeking to develop a collection standard in terms of the items of information and the processing of data. For consistency of information across Australia standardised systems and procedures were said to be essential.¹⁶⁷

The Committee determined that the extent of personal data collected by the Registry is not specifically relevant to the Committee's Terms of Reference except in evaluating the

¹⁶³ NSW Law Reform Commission. 1988, Rec.2, p.31

¹⁶⁴ Evidence. Gamble, 5.8.92, p.12

¹⁶⁵ Submission 64. Privacy Committee, p.53

¹⁶⁶ Evidence, Farrell, 5.8.92, p.8

¹⁶⁷ Evidence. Farrell, 5.8.92, p.9

implications of any release of that data resulting from the introduction of an open Register.

4.3.2 Accuracy of Registry Data

The New South Wales Law Reform Commission indicated in 1988 that, in relation to the accuracy of the information held by the Registry of Births, Deaths and Marriages:

the Register will continue to offer reasonably accurate information, but will not be a completely reliable source of personal data.¹⁶⁸

It was suggested that "the accuracy of the information would be better maintained by more public access to it."¹⁶⁹ The Commission held that members of the public would be in a position to notice any inaccuracies and request that amendments be made to the Register record.

The Committee heard that the Registry data was of considerable importance, particularly for the development of population estimates, developing the formula for Commonwealth grants and the distribution of electoral seats. The question of accuracy is therefore very important. The Deputy Commonwealth Statistician of the Australian Bureau of Statistics asserted that the Registry provides "as good a source of information as any country in the world, in terms of the quality of the Register."¹⁷⁰ This view is based on both the accuracy of the information a person supplies and the coverage in ensuring that every birth, death and marriage is registered.

While the Law Reform Commission believed accuracy would be enhanced by greater public access, the Committee heard conflicting evidence that an open Register may undermine the accuracy and coverage of the data that is made available to the Bureau. If informants were aware that the information they provided was to be more easily accessible and would be used for a broader range of purposes than is now the case, it was argued that they may be less inclined to provide the correct information.¹⁷¹

¹⁶⁸ NSW Law Reform Commission. 1988, pp.26-27

¹⁶⁹ Evidence. Gamble, 5.8.92, p.12

¹⁷⁰ Evidence. Farrell, 5.8.92, p.3

¹⁷¹ Ibid. p.4

The Committee considers that achieving high degrees of accuracy and coverage is a fundamental part of the role of the Registry as a statistical record-keeper. The present policy of the Registry is to consider that it is the right of an individual "to be aware of and have access to" information held about them and to challenge the accuracy of that data.¹⁷² Whilst there is no specific right under the legislation to make corrections to records of registrations, the Principal Registrar indicated that changes are made to records if she is satisfied of the need for an amendment. The Committee was satisfied that the accuracy and coverage of personal details provided to the Registry are not compromised by the operation of a closed Register.

4.4 USES OF REGISTRY DATA

The *Registration of Births, Deaths and Marriages Act 1973* does not clearly define the purpose for which personal data should be collected nor the uses which may be considered acceptable. The Act provides the Principal Registrar with the discretion to allow or restrict access and, as detailed in Chapter 3, legislation provides for data to be provided to a number of government agencies.

The uses to which Registry data may be put formed a considerable part of the Committee's deliberations on whether to adopt the Law Reform Commission Report's Recommendation One supporting an open Register. Evidence was taken concerning the uses to which Registry data has been put and the nature of requests for further access. The Committee gave due consideration to the public benefit of such uses and the possible effects of proposed uses on the privacy of individuals. This section reviews the existing and proposed uses for Registry data considered by the Committee.

4.4.1 Entitlements and Identification

The original role of the Registry in recording information on individuals and their family ancestry resulted in that information being used to establish rights to entitlements such as inheritance. In evidence before the Committee, the Principal Registrar put the view that while the fundamental role of the Registry has not changed, "the type of entitlement has probably changed."¹⁷³ The increasing use of certificates as a form of identification to access these entitlements has resulted in the issue of these certificates evolving as a function of the Registry, despite the lack of any original intention to this effect. This has

¹⁷² Submission 87. NSW Registry of Births, Deaths and Marriages. p.20

¹⁷³ Evidence. Flett, 30.7.92, p.74

occurred as a result of the importance being placed on the certificates by other agencies, rather than any appreciation of their integrity as identity documents by the Registry itself:

It doesn't mean that it actually proves your identity, the Registry is not an identity bureau.¹⁷⁴

A number of government organisations, such as the Roads and Traffic Authority, use Birth Certificates as a form of identification, either entirely or in part. Legislation such as the *Cash Transactions Reporting Act 1988* has confirmed and formalised the use of Birth Certificates for this purpose.¹⁷⁵ The Committee acknowledges that certificates are now an integral part of the processes leading toward the provision of certain social benefits, such as an Australian passport, driver's licence or bank account.¹⁷⁶

The Committee recognises that the value placed by external agencies such as the Passports Office on certificates from the Registry has affected the way in which the Registry functions. The increased reliance on certificates for identification purposes requires more resources to be allocated to the task of issuing certificates and to improving security measures. Initiatives are being considered collectively by all Australian registries to increase the authenticity of the certificates, through improving the quality of the paper used, and placing a watermark in the paper.¹⁷⁷

The Law Reform Commission Report recommended an open Register on the basis of some key perceptions of the weaknesses of the current system in verifying the identity of certificate applicants:

There is no foolproof identity system, and therefore no practical way of verifying the identity of those applying for access. The Principal Registrar must rely on the honesty of applicants in assessing whether to release the information.¹⁷⁸

¹⁷⁴ Evidence. Flett, 30.7.92, p.74

¹⁷⁵ Evidence. Rowlands, 5.8.92, p.4

¹⁷⁶ Evidence. Middleweek, 5.8.92, p.38

¹⁷⁷ Submission 87. NSW Registry of Births, Deaths and Marriages. p.18

¹⁷⁸ NSW Law Reform Commission, 1988, p.29

In evidence it was suggested that it is possible for forged certificates to be produced. The Committee considered that whilst it may never be possible to prevent professional criminals forging certificates, the steps being undertaken by the Registry in protecting the authenticity of Registry documents would minimise the opportunity for fraud.

4.4.2 Medical, Historical and Demographic Research

The Committee recognises the important public benefit to the community of medical, historical and demographic research. The Committee also acknowledges that the use by medical researchers and other health personnel, particularly geneticists, of data contained in Registry records may facilitate their understanding and the treatment of medical conditions.

The Executive Director of the Cancer Council stated that, although cancer is a notifiable disease in New South Wales, five percent of cases are first reported on the Death Certificate.¹⁷⁹ She noted that the Registers of births and marriages could also be useful in assisting in epidemiological research:

we are most interested in the Death Register ... (but) ... if one was doing a cohort study of cancer, one could take a whole group of births and follow them through and determine which ones get cancer and which ones don't... (and) the Marriage Register could be used to check on name changes.¹⁸⁰

The Australian Institute of Health and Welfare supports a National Death Index using Register data, based on the view that the public benefits of such a development outweigh any privacy concerns that may exist. In evidence before the Committee, the Director of the Institute noted that the National Health and Medical Research Council first approved the establishment of a National Death Index in 1979. The Council of Australian Health Ministers approved the development of such an Index, to facilitate medical research, in 1984. However it was noted that negotiations with New South Wales about specific circumstances under which their Index data could be made available were yet to be concluded.¹⁸¹ The Committee supports the establishment of a National Death Index.

¹⁷⁹ Evidence. Taylor, 30.7.92, p.22

¹⁸⁰ Ibid. p.17

¹⁸¹ Evidence. Smith, 30.7.92, p.19

Recommendation 3:

That negotiations on the establishment of a National Death Index be concluded as a matter of priority.

The Executive Member of the Privacy Committee of New South Wales was critical of the ethical standards which govern medical research projects, arguing that the ethical guidelines provided by the National Health and Medical Research Council were open to interpretation, with the consideration of applications by Ethics Committees of the various Area Health Boards yielding different outcomes.¹⁸²

In evidence the Committee was advised of the problems which result from the absence of a clear access policy to Registry records. The Director of the Australian Institute of Health and Welfare indicated that in a number of cases proposed medical research projects have been reviewed and accepted by the Federal Privacy Commissioner. Dr Smith noted that instances occur in which there was a clear, obvious and sometimes urgent public interest in medical studies being undertaken. He also indicated that proposed medical research projects were not only subject to the scrutiny of the Institute's ethical and scientific criteria but also in most instances proposed projects are referred by the Registry to the Privacy Committee of New South Wales, when such projects require access to both Indexes and full registration details:

We do not seem to have been able to establish any general principles that would allow medical researchers access to the data. Every case is examined on a one-off basis and that has resulted in some very very lengthy delays in these important studies proceeding.¹⁸³

The adequacy of ethical standards for medical research is a complex matter involving both national and state standards and consideration of the degree of discretion these standards allow individual medical organisations. This matter is further considered at 5.7.

The Committee appreciates the difficulties people suffering from genetic disorders such as Huntington's disease face in gaining access to information on deaths in their family.

¹⁸² Evidence. Morgan, 30.7.92, p.52

¹⁸³ Evidence. Smith, 30.7.92, p.19

There are at present no formal arrangements for such individuals or medical professionals acting on their behalf to carry out research on the genetic history of the disorder and its characteristics within their family. Access to Indexes and certificates is only available on the basis of the arrangements for individual access based on relationship to the subject and the payment of fees. These considerations do not apply to large organisations such as the Cancer Council, which receive data on magnetic tapes on the basis of long-standing arrangements. Other medical researchers who need only non-identifying, computer generated information on large segments of the population, pay only for the transfer of this data, often from the Australian Bureau of Statistics. Any costs associated with manipulating that data to meet the request are also charged to the researcher. Researchers studying groups of individuals with particular disorders must, however, apply to the Registry and pay for information on the basis of the manual searches required. The Committee believes that the Registry should consider the introduction of special arrangements which provide access to Death Certificates when it is demonstrated that cause of death needs to be ascertained where a recognised genetic disorder is being investigated, either by individuals or medical professionals.

Evidence was also heard regarding the use of Registry data for social science and historical research purposes. Researchers may be able to gain access to Registry records at the discretion of the Principal Registrar, although no clear principles concerning the ethical use of data for this type of research exist.¹⁸⁴

The Deputy Commonwealth Statistician, Mr Denis Farrell, indicated to the Committee that the Bureau are governed by the Commonwealth *Privacy Act 1988* and the secrecy provisions contained in the *Census and Statistics Act 1905*, as amended. The Committee were advised that the policy of the Bureau was not to release personal information of any type from any of its statistical collections.¹⁸⁵ General statistical information compiled from births, deaths and marriages that contains any reference to individual records is only obtainable upon application through the individual Registries from whose records the data is compiled, and not directly from the Bureau.¹⁸⁶ The value of this statistical data for historical, social science and medical research is further compromised by different information on, for example, Aboriginal births and deaths, being recorded and released in various states.¹⁸⁷ The Committee recognises the vital role such statistical information

184 Evidence. Spearitt, 4.9.92, p.33

185 Evidence. Farrell, 5.8.92, p.5

186 Ibid. p.8

187 Ibid. p.8A

can offer in the formulation of government policies and programs, and believes that national standards should be developed for the recording, reliability and release of statistical information. The views of representatives of the Aboriginal community should be sought in relation to the recording and use of data relating to Aboriginality.

The Committee appreciates that both the Registry records and the statistical data produced from them is of value for research purposes, and considers that there is a need for greater clarification of the access arrangements to Registry records by researchers.

4.4.3 Genealogical Research

A further function of the Registry which has developed over time is its use as a source of information for genealogical studies. The Committee received a large number of submissions in support of an open Register from individuals and representative organisations with a specific interest in researching family histories.

Genealogists acknowledged that much of the information available to researchers through the birth, death and marriage records is in fact also available from probate indexes, personal announcements in newspapers, legal and public notices, church registers, cemetery transcriptions and burial registers.¹⁸⁸ The task of searching such sources can be time consuming and exacting. The release of birth, death and marriage records to the present day would, it was claimed, serve to consolidate the information currently available, and also release additional details to researchers.¹⁸⁹

While it was suggested that the fact that a large amount of personal information is already freely available negates arguments concerning the need to protect individual privacy, the evidence heard by the Committee suggested that genealogists are aware of the delicate balance between privacy considerations and the public interest:

I do not believe anybody's privacy should be invaded, but I do believe that we have the right to know our history.¹⁹⁰

A distinction was often drawn in this regard between access to the Indexes and access to certificates or registrations. The proposal to open all Indexes to date for public access is

188 Submission 59. NSW Association of Family History Societies. p.2

189 Ibid.

190 Evidence. Vine Hall, 5.8.92, pp.79-80

widely supported by genealogists. Opinions differ, however, regarding the access that should be allowable for certificates, since privacy concerns relating to this access are seen to be more relevant. The Committee heard in evidence that the present arrangements restricting access to certificates should continue:

a genealogist, a historian, is going back in time I personally, as a historian and genealogist respect the sensitivity of the people who are living and their privacy considerations ... the historian would be looking at the information as contained in the Registers for a much older registration, I don't think they would be looking for current information unless they have the permission of a living party.¹⁹¹

Other genealogists suggested in evidence before the Committee that the access restrictions should be amended to allow free access to all Death Certificates, with the progressive release of Birth Certificates after 75 years and Marriage Certificates after 50 years.¹⁹² An alternative view was that Birth Certificates should be available after 72 years and Marriage Certificates for the years preceding 1930.¹⁹³ Other evidence suggested that ideally access to all certificates regardless of their age should be available to the public.¹⁹⁴

In supporting open Indexes, there was an appreciation that some of the information contained in the Indexes is sensitive and that the privacy of living individuals should be protected by some means.¹⁹⁵ There was some support for removing identifying information from the indexes to protect the privacy of persons for whom such information may indeed be sensitive.¹⁹⁶

191 Evidence. Donohoe, 5.8.92, p.54

192 Evidence. Killion, 5.8.92, p.5, and Garnsey, 5.8.92, p.7

193 Evidence. Vine Hall, 5.8.92, p.70

194 Evidence. Worthington, 5.8.92, p.9

195 Evidence. Vine Hall, 5.8.92, p.72

196 Ibid.

Genealogists also support an open Register in order to promote increased uniformity of access provisions throughout Australian states and overseas.¹⁹⁷ Genealogists, it is claimed, "feel strongly discriminated against in comparison to those with families in other states and countries."¹⁹⁸

Open Registers in other jurisdictions, it was argued, have had minimal effects on the privacy of individuals.¹⁹⁹ It was also suggested that, rather than Registry information being used for any malicious purpose, it was used for positive purposes including reuniting families after long periods of separation for a variety of reasons.²⁰⁰ As outlined in Chapter 3, the Committee became aware that the amount of information available on Registers in other jurisdictions varied from that recorded in New South Wales, affecting the amount of information which would be available should an open Register system be introduced in this state.

The Committee is mindful of the privacy of the citizens of New South Wales and the purposes to which data can be put. The Committee is concerned with the ethical implications of research which is conducted for commercial purposes. The Committee has considered the fact that genealogical research is not always undertaken by individuals researching their own family, but is sometimes undertaken by others for commercial gain, which may in some circumstances have privacy implications.

4.4.4 Other Uses

Other purposes for which Registry records may be used, including possible commercial uses, were considered by the Committee. The role of the Registry was never intended to include any promotion of private gain by individuals or businesses. In its Report, the Law Reform Commission was mindful of this possibility, and thus differentiated between giving free access to the Indexes, which contain a small amount of information, and access to the certificates. Certificates in jurisdictions with open Register systems are

197 Submission 78. Australasian Federation of Family History Organisations. p.2

198 Submission 39. Nick Vine Hall. p.2

199 Submission 59. Society of Australian Genealogists. p.2

200 Evidence. Worthington, 30.7.92, p.11

issued in response to individual applications and upon the imposition of a fee, which discourages applications for commercial purposes.²⁰¹

In evidence given to the Committee, Registry staff indicated that disclosure of personal information to parties not authorised by the subject or acting in some broader public interest would result not only in a breach of privacy, but also possibly in an action for breach of confidence.²⁰²

The Committee is aware that there are a number of commercial opportunities for which applications may be made to the Registry for access to data. In particular the Committee is aware that companies marketing products or services may express interest in accessing data. Such uses of Registry data are considered by the Committee to be inappropriate.

It is recognised that some future commercial uses for Registry data may be in the public interest. However, the use of the information to locate a person is considered, generally, to be an invasion of privacy rather than an appropriate use of the data. The Committee is of the view that a person may change their name through marriage or usage, with the wish not to be found, particularly following violent relationships. Only the pursuit of individuals for the purpose of law enforcement is determined a valid use in such instances.

4.5 FUNCTION OF THE REGISTRY

As indicated earlier in this Chapter the *Registration of Births, Deaths and Marriages Act 1973*, does not clearly define the purpose for which data is collected, but focuses on the procedural functions of the Registry. Access to the data, as noted in Chapter 3, is provided either in legislation or through the discretion given to the Principal Registrar to allow or restrict access.

The purposes of registration suggested by the Law Reform Commission are outlined in terms of the public and private purposes implicit in the establishment of the Registry in 1856. Information is collected to provide statistical data to the government and the public, and to serve as an authentic legal record for proving descent and identity.²⁰³ In

²⁰¹ NSW Law Reform Commission, 1988, p.30

²⁰² Submission 87A. NSW Registry of Births, Deaths and Marriages. p.21

²⁰³ NSW Law Reform Commission, 1988, p.16

evidence before the Committee, Professor Helen Gamble, former Law Reform Commissioner, suggested that:

the Registry was never there to establish anyone's identity or to maintain a genealogical record the real reason for setting it up ... was the statistical function ... to collect public information ... to send home to England on the state of the colony.²⁰⁴

The Registry submission describes its role as being:

- . to record all births, deaths and marriages occurring in New South Wales,
- . to store this information in perpetuity, and
- . to provide access for the purposes of establishing legal identity, age, entitlement to citizenship or a change in status.

The registry also has a responsibility to supply statistical data to the Australian Bureau of Statistics and to administer the Commonwealth *Marriage Act* of 1961.²⁰⁵

The Committee considers that the role of the Registry can be defined by considering its original functions, with an appreciation of its more recent role of establishing proof toward identity for a range of entitlements. A secondary function which has developed over time is the use of Registry records for genealogical and medical research purposes.

In relation to the role and function of the Registry and its operation, the Committee makes the following recommendation:

²⁰⁴ Evidence. Gamble, 05.08.92, p.21

²⁰⁵ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.7

Recommendation 4:

- . That the *Registration of Births, Deaths and Marriages Act 1973* be amended to define the functions of the Registry, and
- . That those functions include:
 - . the collection and provision of statistical data;
 - . the recognition of Registry data as evidence toward the establishment of a range of citizen entitlements; and
 - . the retention and maintenance of records for perpetuity.